a. Statutory Design

For starters, the "best system of emission reduction" plays a cabined role in the statutory scheme. The determination of the best system of emission reduction is entirely internal to the EPA. The EPA itself evaluates relevant scientific, technological, and economic evidence to identify, in its judgment, the "best system of emission reduction" available, and the "degree of emission limitation achievable" through it. 42 U.S.C. § 7411(a)(1).

In making that determination, the statute significantly reins in the EPA's judgment by requiring the Agency to (1) "tak[e] into account the cost of achieving such reduction," (2) factor in "any nonair quality health and environmental impact," (3) balance the effect on "energy requirements," and (4) ensure that the system has been "adequately demonstrated[.]" 42 U.S.C. § 7411(a)(1). To be "adequately demonstrated[,]" we have explained, the system must be shown to be reasonably "reliable," "efficient," and "expected to serve the interests of pollution control without becoming exorbitantly costly[.]" *Essex Chem. Corp. v. Ruckelshaus*, 486 F.2d 427, 433 (D.C. Cir. 1973), *cert. denied*, 416 U.S. 969 (1974); *see also Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375, 391 (D.C. Cir. 1973) (whether a system is adequately demonstrated "cannot be based on 'crystal ball' inquiry").[9]

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[9] In addition to these statutory constraints, the EPA has tied its own hands by requiring that the best system include only actions touching three bases: (i) they reduce emissions (rather than, for example, capturing emissions after they are released into the air by planting trees), (ii) sources themselves can implement them, and (iii) they target supply-side activities. *See* Clean Power Plan, 80 Fed. Reg. at 64,776, 64,778–64,779.

Once the EPA identifies a best system that meets those requirements and calculates the degree of emission limitation it allows, the Clean Air Act leaves it to the States to set their own standards of performance for their existing pollution sources. 42 U.S.C. § 7411(d). The cooperative-federalism design of Section 7411(d) gives the States broad discretion in achieving those emission limitations. *See AEP*, 564 U.S. at 428 ("The Act envisions extensive cooperation between federal and state authorities, generally permitting each State to take the first cut at determining how best to achieve EPA emissions standards within its domain[.]") (internal citations omitted). In addition, Section 7411(d) expressly allows States, in setting their emission standards, to "take into consideration, among other factors, the remaining useful life" of its existing sources. 42 U.S.C. § 7411(d).

So the EPA's scientific and technological identification of the best system of emission reduction cannot bear the major-question label. Determining the system is a task expressly and indisputably assigned by Congress to the EPA and requiring specialized agency expertise. That system serves only as the basis for the EPA to set the emission-reduction targets in its quantitative guidelines. The States retain the choice of how to meet those guidelines through standards of performance tailored to their various sources. Neither exercise entails resolution of a major question.

The EPA argues that its own best-system process raised a major question by "impos[ing] 'generation shifting[.]'" EPA Br. 99. But under Section 7411(d), the EPA does not impose the "best system of emission reduction" on anyone. Instead, each State decides for itself what measures to employ to meet the emission limits, and in so doing may elect to consider the "remaining useful life" of its plants and "other factors." 42 U.S.C. § 7411(d). *See* Clean Power Plan, 80 Fed. Reg. at

64,709–64,710, 64,783. The Clean Power Plan, in fact, afforded States considerable flexibility in choosing how to calculate and meet their emissions targets. *See, e.g.*, *id.* at 64,665, 64,756–64,757, 64,834–64,837.[10]

Congress already focused on the issue and made the decision to rope the EPA's selection of a best system of emission reduction about with all of those substantive and structural limitations. So the major questions doctrine does not provide any basis for concluding that the Clean Air Act *categorically* forecloses the EPA's consideration of even those generation-shifting measures that are already widely in use by States and power plants and have been demonstrated to be reasonable, reliable, effective, and not unduly disruptive to the regulated industry. *See* Clean Power Plan, 80 Fed. Reg. at 64,735, 64,769.

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[10] The Clean Power Plan expressly contemplated that States and sources might choose to meet their emissions targets by using measures other than the specific heat-rate improvements and generation shifting that the EPA had identified in its best system. *See* 80 Fed. Reg. at 64,755–64,758. The EPA offered a list of alternative available technologies that reduced power plants' carbon dioxide emissions per megawatt, including carbon capture and storage, heat-rate improvements at non-coal plants, fuel switching to gas, fuel switching to biomass, and waste heat-to-energy conversion. *Id.* at 64,756. In certain situations, for example, modifying coal-fired plants to burn natural gas could "help achieve emission limits consistent with the [best system]." *Id.* The Agency also identified a list of alternative measures that States could implement to lower overall emissions from fossil-fuel-fired plants. Those measures included, for example, demand-side energy efficiency—a policy tool that the EPA expected some States to use because "the potential emission reductions from demand-side [energy efficiency] rival those from [generation shifting] in magnitude[.]" *Id.*

In that respect, the EPA's argument sounds much like a second argument rejected by the Supreme Court in *UARG*. In addition to the scope question discussed above, the Court addressed whether the EPA could require facilities that emit conventional pollutants also to implement the "best available control technology" for greenhouse gases. *UARG*, 573 U.S. at 329–333 (citing 42 U.S.C. § 7475(a)(4)). Like the EPA here, the industry petitioners argued that the "best available control technology" standard was "fundamentally unsuited" to greenhouse gas emissions because it had "traditionally" focused on "end-of-stack controls." *Id.* at 329–330. "[A]pplying it to greenhouse gases," the industry petitioners insisted, would make the "best available control technology" standard "more about regulating energy use, which will enable regulators to control every aspect of a facility's operation and design[.]" *Id.* at 330 (internal quotation marks omitted).

The Supreme Court rejected that challenge. The Court explained that the EPA's guidance contemplated both "end-of-stack"–type controls *and* energy efficiency measures. *UARG*, 573 U.S. at 330. And, critically, the Court emphasized that the statute and regulations already imposed "important limitations on [best available control technology] that may work to mitigate petitioners' concerns about 'unbounded' regulatory authority." *Id.* at 331. Among those limitations was the EPA's longstanding statutory interpretation that the best available control technology was required "only for pollutants that the source itself emits," and the EPA's existing guidance that permitting authorities should "consider whether a proposed regulatory burden outweighs any reduction in emissions to be achieved." *Id.* The statute also required the EPA to determine the best available control technology with reference to "energy, environmental, and economic impacts and other costs." 42 U.S.C. § 7479(3); *see also UARG*, 573 U.S. at 333 n.9.

So too here: The numerous substantial and explicit constraints on the EPA's selection of a best system of emission reduction foreclose using the major questions doctrine to write additional, extratextual, and inflexibly categorical limitations into a statute whose "broad language * * * reflects an intentional effort to confer the flexibility necessary to forestall * * * obsolescence." *Massachusetts v. EPA*, 549 U.S. at 532; *see also Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 711 (D.C. Cir. 2000) (where Congress has spoken, court upholds as within agency authority an order that "fundamentally change[d] the regulatory environment in which utilities operate" and "introduc[ed] meaningful competition into an industry that since its inception has been highly regulated and affecting all utilities in a similar way"), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

The EPA points to the Supreme Court's statement in *UARG* that "[w]hen an agency claims to discover in a long-extant statute an unheralded power to regulate 'a significant portion of the American economy,' we typically greet its announcement with a measure of skepticism." 573 U.S. at 324 (quoting *Brown & Williamson*, 529 U.S. at 159).

True. But, as already explained, the EPA made no new discovery of regulatory power with the Clean Power Plan. While power plants are significant players in the American economy, they have been subject to regulation under Section 7411 for nearly half a century. *See, e.g.*, *Costle*, 657 F.2d at 318; *Oljato Chapter of Navajo Tribe v. Train*, 515 F.2d 654, 656–57 (D.C. Cir. 1975). Their emission of massive amounts of carbon dioxide has long been known. And the source of the EPA's duty to regulate that greenhouse gas pollution from power plants was the plain statutory text and Supreme Court precedent, not something the EPA pulled out of a hat. *See AEP*, 564 U.S. at 425; *Massachusetts v. EPA*, 549 U.S. at 532.

In sum, the Clean Air Act expressly confers regulatory authority on the EPA to set standards for reducing greenhouse gas emissions from fossil-fuel-fired power plants nationwide. Congress knew both the scope and importance of what it was doing. And it cabined the EPA's authority with concrete and judicially enforceable statutory limitations. The major questions doctrine is meant to discern, not override, such statutory judgments. Doubly so when the regulatory authority and its reach have been affirmed and enforced by the Supreme Court.

b. Regulatory Consequences

The problems with the EPA's approach to the major-question analysis do not stop there. The Agency also conflates the significance of greenhouse gas regulation of power plants generally with any significance attributable solely to the EPA's choice of a "best system of emission reduction"—the statutory provision where the EPA tried to anchor its major-question objection. Remember, the EPA concluded that the major questions doctrine was triggered centrally by (i) the Clean Power Plan's "billions of dollars of impact" on the economy; (ii) its effect on "every electricity customer"; (iii) the number of litigation challenges it spawned, "involving almost every State"; and (iv) its perceived shifting of regulatory authority between federal agencies and the States. ACE Rule, 84 Fed. Reg. at 32,529.

Taking the characterizations as true, those consequences are a product of the greenhouse gas *problem*, not of the best-system's role in the solution. Given the number and dispersion of fossil-fuel-fired power plants, any nationwide regulation of their greenhouse gas pollution that meaningfully addresses emissions will necessarily affect a broad swath of the Nation's electricity customers. Under the EPA's grave endangerment

finding, so too would a *failure* to regulate those greenhouse gas emissions. *See* 2009 Endangerment Finding, 74 Fed. Reg. at 66,496.

As for the "billions of dollars of impact[,]" the EPA has offered no evidence tying that cost to generation shifting rather than physical plant adjustments or a variety of other means States might choose for complying with emission limits. As the EPA itself previously acknowledged, generation shifting can be cheaper than other demonstrated methods of reducing greenhouse gas emissions, like carbon capture and storage, that take place "at" the source (and thus fall within the EPA's current statutory vision). *See* Clean Power Plan, 80 Fed. Reg. at 64,727.[11] Moreover, the Clean Power Plan's significant projected economic impact was not atypical for Clean Air Act rulemakings by the EPA. *See, e.g.*, *Costle*, 657 F.2d at 314 (upholding 1979 new source performance standards governing emission control by coal-burning power plants that imposed "tens of billions of dollars" of costs on the power sector).

Even assuming that the EPA's federalism concerns could trigger the major questions doctrine (rather than the federalism clear-statement canon), they carry no material weight here. That is because the statutory role of the best system of emission reduction under Section 7411(d) textually preserves and enforces the States' independent role in choosing from among the broadest range of options to set standards of performance appropriate to sources within their jurisdiction. In fact, it is the

[11] The EPA now takes the position that natural gas co-firing is not adequately demonstrated and that neither co-firing nor carbon capture and storage is part of the best system of emission reduction. *See* ACE Rule, 84 Fed. Reg. at 32,544–32,545, 32,549. But those methods are amenable to implementation "to" and "at" the source, in keeping with the EPA's statutory view.

ACE Rule's unreasoned barriers to certain compliance measures, like generation shifting and biomass co-firing, that hamstring the States. *See supra* Part II.A.3 (analyzing ACE Rule, 84 Fed. Reg. at 32,555–32,556).

Finally, it seems doubtful that the volume of litigation aimed at a regulation can reasonably bear on its major-question status. The Supreme Court has certainly never embraced that idea. For good reason. A doctrine at the mercy of litigation stratagems, or the mere existence of disagreements over which parties find advantage in filing suit, cannot be an elucidating or even logically relevant tool of statutory interpretation.

In any event, the EPA offers no basis for concluding that the best-system determination is what lit the litigation fire. After all, the ACE Rule too has been "subject to litigation" involving 43 States and all manner of other interested parties, despite the Rule's jettisoning of generation shifting as part of the best system of emission reduction. *See* Opinion Caption, *supra*.

c. Regulating in the Electricity Sector

The ACE Rule's last attempt to wrap the best-system determination in the major-question mantle asserts that including generation shifting as part of the best system of emission reduction lacks a "valid limiting principle," and that, by "shifting focus to the entire grid[,]" it would "empower" the Agency "to order the wholesale restructuring of any industrial sector[.]" ACE Rule, 84 Fed. Reg. at 32,529. But that is entirely wrong. The Clean Power Plan was aimed not at regulating the grid, but squarely and solely at controlling air pollution—a task at the heart of the EPA's mandate. Indeed, the EPA's reasoning in the ACE Rule defeats its own argument.

The EPA suggests that counting generation shifting among the tools for emission reduction risks expanding the Agency's regulatory sights too far, because "*any* action affecting a generator's operating costs could impact its order of dispatch and lead to generation shifting." ACE Rule, 84 Fed. Reg. at 32,529 (emphasis added). That is exactly right: *Any* regulation of power plants—even the most conventional, at-the-source controls—may cause a relative increase in the cost of doing business for particular plants but not others, with some generation-shifting effect. That is how pollution regulation in the electricity sector has always worked. Regulators—including, for example, Congress in the Clean Air Act's acid rain cap-and-trade program, 42 U.S.C. §§ 7651–7651o—have long facilitated those generation-shifting effects to serve the goal of pollution reduction. *See* Grid Experts Amicus Br. 13–15.

So the EPA's contention that it cannot consider measures resulting in generation shifting as part of its best system proves far too much: If that were so, the EPA would be limited to considering only measures that power plants could adopt at zero cost, so as to maintain their relative-dispatch position. That is, of course, incompatible with Congress' instruction that the best system take cost into account as only one factor among several, *see* 42 U.S.C. § 7411(a)(1), and contrary to the very nature of environmental law, which requires the regulation of polluters and material changes in their pollution emissions.

The EPA's argument also ignores, again, the critical statutory limitations that the Clean Air Act imposes on the selection of a best system of emission reduction and its function in state plans. Under Section 7411(d), the EPA lacks the authority to "order the wholesale restructuring" of anything. All it can do is identify the best system of emission reduction that has been adequately demonstrated within the cost, energy-

requirement, and other substantive constraints set by Congress, and then calculate achievable emission goals by reference to that system. 42 U.S.C. § 7411(a)(1). States, in turn, set standards of performance only "for" any "*existing source*[,]" and need not implement any aspect of the EPA's "best system[.]" *Id.* § 7411(d)(1) (emphasis added). And the EPA's determination about how best to combat air pollution is, of course, subject to judicial review, including on questions like whether a system has been adequately demonstrated and whether the Agency adequately considered costs. 42 U.S.C. § 7607(b); *cf. AEP*, 564 U.S. at 427; *UARG*, 573 U.S. at 333 n.9. Congress' carefully calibrated system—involving scientific and technological evidence-gathering, close study of existing industry practice, constrained discretion, divided regulatory authority, collaboration with States, and judicial review—leaves no room for the unauthorized agency overreach that the EPA fears.

A group of States and industry groups intervened with other major-question challenges, but their salvos all fall short. They argue that the major questions doctrine is implicated because the EPA has "'no expertise' in electricity generation, transmission, and reliability." State & Industry Intervenors Repeal Br. 30 (quoting *King*, 576 U.S. at 474); *see also Gonzales*, 546 U.S. at 267 (rejecting interpretive rule of the Attorney General that was "both beyond his expertise and incongruous with the statutory purposes and design"). But Section 7411 not only foresees, but *demands* that the EPA consider "energy requirements" when assessing the best system of emission reduction. 42 U.S.C. § 7411(a)(1). The Supreme Court in *AEP* recognized the EPA's signal role in regulating greenhouse gases under Section 7411 notwithstanding that the EPA must consider energy requirements and ensure a reliable energy supply when it does so. 564 U.S. at 427. The Court explained that, when the EPA

is formulating greenhouse gas regulations, it must consider not only "the environmental benefit potentially achievable," but also "our Nation's energy needs and the possibility of economic disruption[.]" *Id.* The Clean Air Act "entrusts such complex balancing to EPA in the first instance, in combination with state regulators." *Id.*; *see* 42 U.S.C. § 7411(a)(1). That definitive reading of the statute by the Supreme Court cannot suddenly become a forbidden major question when the EPA regulates as it was told to do.

The statutory scheme simply gives no quarter to the proposition that, in following Congress' directive to regulate electricity-producing power plants, the EPA is categorically forbidden to consider emission-reduction measures that take into account the nature of the electricity grid in which those power plants operate day in and day out. Nor is it sensible to categorically put off-limits the generation-shifting measures that power plants are already actually using to meet emission requirements. *See* Clean Power Plan, 80 Fed. Reg. at 64,784–64,785.

The State and Industry Intervenors also overlook that the EPA developed the Clean Power Plan with input from other agencies with relevant expertise. *See* Clean Power Plan, 80 Fed. Reg. at 64,672–64,673 (explaining that "[i]nput and assistance from FERC [the Federal Energy Regulatory Commission] and DOE [the Department of Energy] have been particularly important in shaping" aspects of the Clean Power Plan); *id.* at 64,671 (noting "extensive consultation with key agencies responsible for [electric system] reliability[,]" as well as reliance on the "EPA's longstanding principles in setting emission standards for the utility power sector"). *Contrast Delaware Dep't of Nat. Res. & Env't Control v. EPA*, 785 F.3d 1, 14, 18 (D.C. Cir. 2015) (invalidating rule in part because the EPA had failed to consult with other expert agencies on grid

reliability issues). EPA could hardly do its job without substantively engaging with the on-the-ground facts about the electricity system that power plants support. Quite the opposite: An agency's wooden refusal to factor in reality and such on-point considerations would ordinarily render its decisionmaking arbitrary and capricious. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

All told, the EPA's consideration of already-in-use generation shifting as part of the "best system of emission reduction" does nothing to enlarge the Agency's regulatory domain. "We are not talking about extending EPA jurisdiction over millions of previously unregulated entities," but about a familiar process of cooperative federalism applied to "entities already subject to * * * regulation" to address a recognized form of air pollution that repeatedly has been found to endanger public health and welfare. *See UARG*, 573 U.S. at 332. The major questions doctrine cannot rescue the ACE Rule's mistaken interpretation of Section 7411(d) as categorically confining the best system of emission reduction to physical adjustments made only "at" and "to" the power plant.

C. FEDERALISM

The federalism canon lends no support to the ACE Rule's decision to confine the best system of emission reduction to measures that apply exclusively at and to the source. That canon recognizes that "the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere." *Gregory v. Ashcroft*, 501 U.S. 452, 460–461 (1991). So as a matter of constitutional avoidance, courts require Congress to "enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power." *United States Forest Serv. v.*

Cowpasture River Pres. Ass'n, 140 S. Ct. 1837, 1849–1850 (2020).

The federalism clear-statement rule prevents direct federal intrusion into areas of traditional state responsibility unless Congress has made its intent to cross that line explicit. For example, courts will not assume that Congress meant to preempt a State's mandatory retirement age for state judges through the passage of a generic age discrimination law, unless it has clearly expressed its intent to police the qualifications of such high-level state officials. *See Gregory*, 501 U.S. at 463–464. Nor will courts lightly assume that Congress intended to claim state-owned land as part of the National Park System, *see Cowpasture River*, 140 S. Ct. at 1849–1850, to transform simple state-law assaults into breaches of international chemical weapons compacts, *see Bond v. United States*, 572 U.S. 844, 862–863 (2014), or to displace the States' traditional authority to regulate the practice of law, *see American Bar Ass'n v. FTC*, 430 F.3d 457, 466, 471–472 (D.C. Cir. 2005). Only when such conflicts between federal and state regulatory domains are plainly joined by Congress itself will the court confront the sensitive constitutional implications of such measures.

That doctrine does not support the EPA's cramped reading of Section 7411. Interstate air pollution is not an area of traditional state regulation. And federalism concerns do not bar the United States government from addressing areas of *federal* concern just because its actions have incidental effects on areas of state power. *Cf. FERC v. Electric Power Supply Ass'n*, 136 S. Ct. 760, 775–778 (2016) (federal regulation of wholesale electricity market did not intrude on traditional state authority over the retail electricity market, even though wholesale market regulation created an incentive for retail consumers to change their behavior in state-regulated markets).

What is more, the Supreme Court has suggested that the federalism clear-statement rule is of limited applicability when a federal regulatory regime is enforced through a statutory cooperative-federalism framework, as Section 7411(d) is. *See AT&T Corp. v. Iowa Util. Board*, 525 U.S. 366, 378 n.6 (1999) (noting appeals to States' rights as "most peculiar" in the context of "a federal program administered by 50 independent state agencies"); *see also Alaska Dep't of Env't Conservation v. EPA*, 540 U.S. 461 (2004) (declining to adopt dissent's proposed clear-statement rule for federal constraints on state implementation decisions in cooperative-federalism program). *See generally* Abbe Gluck, *Intrastatutory Federalism and Statutory Interpretation: State Implementation of Federal Law in Health Reform and Beyond*, 121 YALE L.J. 534, 555–556 (2011).

In any case, the Clean Power Plan's incorporation of generation shifting into its best system of emission reduction fell squarely within an area of the federal government's constitutional competence. The EPA does not dispute the government's authority or its statutory mandate to reduce the emission of pollutants that endanger public health and welfare. 42 U.S.C. § 7411(b)(1)(A), (d)(1). The EPA also agrees that greenhouse gases are among the pollutants properly regulated by the federal government. *See AEP*, 564 U.S. at 416–417, 424; *see also supra* Part I.B.2.

The Clean Power Plan directly regulated only the *amount* of greenhouse gas pollutants that may be emitted into the atmosphere. 80 Fed. Reg. at 64,663–64,664. That is an area of unique federal concern. After all, "[a]ir pollution is transient, heedless of state boundaries," *EME Homer City Generation*, 572 U.S. at 496, particularly where the pollutants are greenhouse gases, which have little if any localized effect but great cumulative impact. The inability of individual States

to redress the problem of interstate air pollution, in fact, was among the very reasons for the enactment of the Clean Air Act. *See* 42 U.S.C. § 7401(a)(1), (4); S. REP. NO. 88-638, at 3 (1963) ("Polluted air is not contained in a specific area but is carried from one political jurisdiction to another. It does not know State lines or city limits. Providing air of good quality * * * is a challenge and an obligation for Government operations on all levels."); *id.* at 5 ("The nationwide character of the air pollution problem requires an adequate Federal program to lend assistance, support, and stimulus to State and community programs.").

To be sure, the federal government's regulation of such an interstate problem can have indirect effects on State energy production and utility regulation decisions. But even when those effects are the fully anticipated "natural consequences" of an agency's policy choice, *Electric Power Supply Ass'n*, 136 S. Ct. at 776, that does not transform a fundamentally federal action in a core federal area of concern into a restriction on state action that triggers the federalism canon.[12]

The EPA protests that the Clean Power Plan breached that divide because it expressly considered generation shifting to

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[12] In the ACE Rule, the EPA suggested that the Clean Power Plan's best system of emission reduction was also impermissible as an encroachment on "measures and subjects exclusively left to FERC[.]" 84 Fed. Reg at 32,530. The EPA has not pressed that argument here. For good reason. The effects of environmental regulations on the power grid do not amount to power regulation statutorily reserved to FERC. And, in any event, the constitutional concerns that require us to patrol the boundaries between federal and state authority with vigilance do not support any similar clear-statement requirement regarding turf battles between federal agencies.

determine the best system of emission reduction and, in so doing, stepped on the States' power to regulate electrical utilities' mix of electricity generation. Reg.

But that argument has nothing to do with the narrow construction of Section 7411 that the EPA adopted. After all, the EPA could have set the same emission guidelines predicated on a best system of emission reduction that exclusively employed technological controls applicable at and to the source, like carbon capture and sequestration. And the EPA must agree that the federalism canon would play no role in determining the appropriateness of that system, since on the Agency's own reading, measures applicable at and to the source are precisely what Section 7411 allows.[13]

Nowhere does the EPA explain why reference to a different mechanism—generation shifting—in its calculation of the best system would raise materially different federalism

[13] While the EPA did not select carbon capture and sequestration as the best system of emission reduction in the ACE Rule, it excluded that process because of cost and feasibility concerns, not federalism interests. *See* 84 Fed. Reg. at 32,547–32,549. That exclusion was a change of position from the Clean Power Plan, where the EPA found that the process was "technically feasible and within price ranges that the EPA has found to be cost effective[.]" 80 Fed. Reg. at 64,727. Carbon capture and sequestration ultimately was not selected as the best system of emission reduction in the Clean Power Plan solely because generation shifting was even more cost-effective. *Id.* at 64,727–64,728. What matters here is that the EPA did not express any concern in either the ACE Rule or the Clean Power Plan that such a system would intrude upon traditional areas of State authority. In the ACE Rule, the EPA permits the use of such technological controls to meet its emission standards, 84 Fed. Reg. at 32,549, 32,555, as it did in the Clean Power Plan, 80 Fed. Reg. at 64,883–64,884.

concerns. Under either system, the only direct obligation imposed on States is the same: a federally set emissions guideline. In both scenarios, the States remain equally free to choose the compliance measures that best fit the needs of their State and industry. And as a practical matter, many if not most States would likely opt for generation shifting over carbon capture and sequestration under *either* rule because the former is cheaper for existing plants. *See* Clean Power Plan, 80 Fed. Reg. at 64,727–64,728; ACE Rule, 84 Fed. Reg. at 32,532 ("Market-based forces have already led to significant generation shifting in the power sector.").

The EPA also suggests that the clear-statement rule operates with particular force here because the Plan imposed uneven regulatory burdens weighted toward States with more high-emitting power plants. But that argument tries to twist principles of federalism into a command of regulatory homogenization that defies on-the-ground reality. Regulations under the Clean Air Act or any environmental law will commonly affect States differently depending on the States' activities. The regulation of pollutants associated with automotive manufacturing affects States with production facilities more than those without. *See, e.g.*, *General Motors Corp. v. United States*, 496 U.S. 530, 534–535 (1990). The regulation of mining-related pollutants imposes greater costs on States with more plentiful mineral resources. *See, e.g.*, *Alaska Dep't of Env't Conservation*, 540 U.S. at 469–470, 474; *Hodel v. Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 289–290 (1981). The same point applies to industries like petroleum refining, which are concentrated near navigable waters. *See generally* EIA, *U.S. Energy Mapping System* https://www.eia.gov/state/maps.php (last visited Jan. 11, 2021). Indeed, some regulations impose additional regulatory burdens based literally on the direction the wind blows. *See EME Homer City Generation*, 572 U.S. at 520. Likewise,

States with more navigable water necessarily carry more burdens under the Clean Water Act than those with less.

Affected States, of course, could raise statutory challenges to enforce the Clean Air Act's express constraints, such as required consideration of cost, non-air quality health and environmental impact, or energy requirements under Section 7411(a). And they could always challenge any unreasoned or unwarranted distinctions in regulatory coverage as arbitrary or capricious. But in the absence of such an objection, it does not offend—or even implicate—principles of federalism to observe that States whose industries pollute the Nation's air and so harm the public's health more will, in turn, be affected more by emission controls.

For all of those reasons, nothing in the federalism canon supports the EPA's effort to categorically constrict the best system of emission reduction to measures physically applied at and to the individual plant.

III. THE EPA'S AUTHORITY TO REGULATE CARBON DIOXIDE EMISSIONS UNDER SECTION 7411

A. THE COAL PETITIONERS' CHALLENGES

The North American Coal Corporation and Westmoreland Mining Holdings LLC, both coal mine operators (the Coal Petitioners), bring two challenges to the ACE Rule. Both question the EPA's legal authority to enact the rule. First, the Coal Petitioners argue that the EPA failed to make the required endangerment finding—that carbon dioxide emissions from power plants cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare—before regulating those emissions. *See* 42 U.S.C. § 7411(b)(1)(A). Second, they claim that the EPA's previous regulation of a different air pollutant (mercury) from power

plants under the Hazardous Air Pollutants provision, 42 U.S.C. § 7412, precludes the EPA from now regulating power plants' emission of greenhouse gases under Section 7411(d).

Both arguments fail. The EPA made the requisite endangerment finding in 2015, and the ACE Rule expressly retained that finding. As for the Section 7412 challenge, the EPA has correctly and consistently read the statute to allow the regulation both of a source's emission of hazardous substances under Section 7412 and of other pollutants emitted by the same source under Section 7411(d). The Coal Petitioners' argument rests not on the enacted statutory language, but instead on their own favored reading of one statutory amendment inserted by codifiers. Reading the statutory text as a whole—that is, all of the relevant language enacted by Congress, including two duly enacted amendments—the Clean Air Act authorizes the EPA to regulate both power plants' emissions of greenhouse gases under Section 7411(d) and hazardous air pollutants under Section 7412. That reading is reinforced by the statutory structure, purpose, and history.

1. Endangerment Finding

a. The Record of Endangerment

The Coal Petitioners argue that the ACE Rule was unlawful right out of the box because the EPA failed to make a statutorily required finding that greenhouse gas emissions from power plants cause air pollution that endangers the public health and welfare. That is wrong.

As a reminder, before the EPA can regulate a category of stationary sources like electricity-generating power plants under Section 7411, the EPA Administrator must first find that the source category "in his judgment * * * causes, or contributes, significantly to, air pollution which may

reasonably be anticipated to endanger the public health or welfare." 42 U.S.C. § 7411(b)(1)(A). A formal pronouncement meeting those criteria is known as an "endangerment finding." New Source Rule, 80 Fed. Reg. at 64,529. And once it is made, the EPA is not just empowered, but obligated, to regulate. *See* 42 U.S.C. § 7411(b)(1)(A); *see also supra* note 8.

After the Administrator makes an endangerment finding, the source category is added to the EPA's Section 7411 list, 42 U.S.C. § 7411(b)(1)(A), and the Administrator must promulgate emissions standards (called "standards of performance") for *new* sources in the category, *id.* § 7411(b)(1)(B). As relevant here, unless those dangerous emissions are regulated under another relevant provision of the Clean Air Act, the Administrator must also set an achievable emission guideline based on the "best system of emission reduction" and provide a process for States to submit a plan setting out standards of performance for *existing* stationary sources in that same category. *Id.* § 7411(d)(1)(A)(ii).

The EPA has for decades been regulating emissions other than carbon dioxide from electricity-generating power plants. In 1971, the EPA listed fossil-fuel-fired electricity-generating units with steam-generating boilers as a new source category under Section 7411(b) and promptly established standards of performance for them. *See* Air Pollution Prevention and Control: List of Categories of Stationary Sources, 36 Fed. Reg. 5931 (March 31, 1971); Standards of Performance for New Stationary Sources, 36 Fed. Reg. 24,876, 24,878–24,880 (Dec. 23, 1971). Then, in 1977, the EPA listed fossil-fuel-fired combustion turbines as a new source category under Section 7411 and set performance standards for them. *See* Air Pollution Prevention and Control: Addition to the List of Categories of Stationary Sources, 42 Fed. Reg. 53,657 (Oct. 3,

1977); New Stationary Sources Performance Standards; Electric Utility Steam Generating Units, 44 Fed. Reg. 33,580 (June 11, 1979). These categories cover the power plants at issue today. *See* New Source Rule, 80 Fed. Reg. at 64,531.

Through the 2015 New Source Rule, the EPA began regulating carbon dioxide emissions from electricity-generating power plants. *See* New Source Rule, 80 Fed. Reg. 64,510. Because power plants had already been listed as a regulated source category, the New Source Rule did not need to take any action to add those plants to the Section 7411 list of regulated sources. It just issued, for the first time, standards of performance for carbon dioxide emitted from new power plants. In so doing, the New Source Rule provided the statutory predicate and corresponding duty for the EPA to establish carbon dioxide emission standards for existing power plants as well. Clean Power Plan, 80 Fed. Reg. at 64,715; *see* 42 U.S.C. § 7411(d)(1). The New Source Rule now serves that same function for the ACE Rule, 84 Fed. Reg. at 32,533.

Because the New Source Rule did not add a new category of pollution sources to the Section 7411 list, the EPA concluded that no new endangerment finding was needed. New Source Rule, 80 Fed. Reg. at 64,529–64,530. The EPA nevertheless went on to explain that it chose to regulate carbon dioxide emissions from electricity-generating plants specifically because greenhouse gas pollution endangers public health and welfare and contributes significantly to air pollution. *See id.* at 64,530–64,531. The EPA found in particular that increased atmospheric levels of greenhouse gases, including carbon dioxide, could lead to, among other things, more frequent extreme weather events and wildfires; threats to mental and physical health, especially for children and the elderly; reduced access to food and safe water; and mass

migrations and displacements as a result of rising sea levels. *Id.* at 64,517–64,520.

b. Timeliness

At the outset, the EPA argues that we must disregard the Coal Petitioners' challenge concerning the endangerment finding because it was not timely filed. This is a close question, but we ultimately conclude that the petition is timely.

The Clean Air Act requires that petitions for review challenging an EPA regulation—including any Section 7411 standard of performance—generally must be filed within 60 days of the regulation's publication in the Federal Register. 42 U.S.C. § 7607(b)(1). The Clean Air Act's timeliness bar is "jurisdictional in nature[.]" *Motor & Equip. Mfrs. Ass'n v. Nichols*, 142 F.3d 449, 460 (D.C. Cir. 1998) (quoting *Edison Elec. Inst. v. EPA*, 996 F.2d 326, 331 (D.C. Cir. 1993)).

Importantly, Congress carved out an exception to that 60-day time limit if the petition "is based solely on grounds arising after [the] sixtieth day[.]" 42 U.S.C. § 7607(b)(1). In that situation, the clock resets, and the petitioner must file within 60 days of the occurrence of the new event that "ripens [the] claim" and thereby triggers the basis for a challenge. *Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102, 129 (D.C. Cir. 2012), *rev'd in part on other grounds sub nom. Utility Air Regulatory Group v. EPA* (*UARG*), 573 U.S. 302 (2014); *see also Alon Refining Krotz Springs, Inc. v. EPA*, 936 F.3d 628, 646 (D.C. Cir. 2019); *Honeywell Int'l, Inc. v. EPA*, 705 F.3d 470, 472–473 (D.C. Cir. 2013); *Sierra Club de Puerto Rico v. EPA*, 815 F.3d 22, 26 (D.C. Cir. 2016). A claim "ripens" for purposes of the Clean Air Act when "subsequent factual or legal development creat[es] new legal consequences" for the party seeking review. *Sierra Club de Puerto Rico*, 815

F.3d at 28. This type of delayed challenge is commonly referred to as an "after arising" claim.

We agree with the Coal Petitioners that the ACE Rule is an after-arising event that ripened their challenge to the New Source Rule's endangerment finding.

When the EPA promulgated the New Source Rule in 2015, the Coal Petitioners did not challenge that rule's endangerment finding.[14] That is because they did not plan "to build any new facilities affected by the New Source Rule," and so were not directly affected by it. Coal Pet'rs Reply Br. 3. But when the ACE Rule used the New Source Rule as the predicate for regulating existing coal-fired power plants, ACE Rule, 84 Fed. Reg. at 32,533, the Coal Petitioners became concretely aggrieved by the finding.

Under those circumstances, the Coal Petitioners' challenge to the New Source Rule as an insufficient predicate for the ACE Rule is timely. If the Coal Petitioners had filed suit when the New Source Rule was first promulgated in 2015, their standing would have been in doubt because they did not have any, or intend to build any, new power plants. An asserted injury arising from how the New Source Rule might come to

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[14] The Coal Petitioners claim that there is no timeliness problem because two trade associations with which the Coal Petitioners are affiliated—the National Mining Association and the United States Chamber of Commerce—challenged the New Source Rule. Coal Pet'rs Reply Br. 3 & n.2. There is no evidence or declaration regarding that relationship in the record, aside from counsel's representation at oral argument. Oral Argument Tr. 131:13–17. Because we hold that the after-arising exception makes the Coal Petitioners' own challenge timely, we do not address the relevance, if any, of a prior trade association challenge.

affect the regulation of their existing plants in the future might well have been too speculative to support judicial review. *See Coalition for Responsible Regulation*, 684 F.3d at 115–116, 129–131 (challenge to preexisting regulations was timely, where regulations first affected petitioners due to the recent promulgation of rule targeting motor vehicle emissions); *see also Sierra Club de Puerto Rico*, 815 F.3d at 27; *Honeywell, Int'l*, 705 F.3d at 473. That is why "this court has assured petitioners with unripe claims that 'they will not be foreclosed from judicial review when the appropriate time comes,' * * * and that they 'need not fear preclusion by reason of the 60-day stipulation barring judicial review,'" as long as they file a petition within 60 days of the injury that ripened their claim. *Coalition for Responsible Regulation*, 684 F.3d at 131 (formatting modified).

The EPA urges that the Coal Petitioners could have pressed a challenge to the New Source Rule in 2015 at the latest, as other coal-related entities did, once the EPA promulgated the Clean Power Plan in reliance on the New Source Rule's endangerment finding. *See North Dakota v. EPA*, No. 15-1381 (and consolidated cases).

Perhaps. *See North American Coal Corp. v. EPA*, No. 15-1451 (D.C. Cir.) (consolidated with *West Virginia v. EPA*, No. 15-1363 (D.C. Cir.)). But that would argue over spilled milk. The Clean Power Plan litigation came to a halt when the EPA reconsidered that rule, and the case was ultimately dismissed as moot after the ACE Rule withdrew the Clean Power Plan. Per Curiam Order, *West Virginia v. EPA*, No. 15-1363 (D.C. Cir. Sept. 17, 2019), ECF No. 1806952. The Coal Petitioners have raised their claim in the ACE Rule litigation, and it would

seem perverse to say they instead should have litigated the matter in a case that will never be decided.[15]

c. Adequacy of the Endangerment Finding

On the merits, the Coal Petitioners press a two-fold challenge to the EPA's compliance with the endangerment-finding requirement. First, they argue that Section 7411(b) requires the EPA to make a pollutant-specific endangerment finding for each stationary source category newly regulated under that provision. In their view, even though the EPA had already found that carbon dioxide emissions significantly cause or contribute to greenhouse gas air pollution that endanger the public health or welfare, the EPA also separately had to find that carbon dioxide specifically from coal-fired power plants is a significant source of that danger. 2009 Endangerment Finding, 74 Fed. Reg. at 66,499, 66,542 (for motor vehicles). Second, the Coal Petitioners claim that the EPA did not make such a finding, leaving it without authority to enact the ACE Rule.

We need not address the Coal Petitioners' first argument. Even assuming that Section 7411(b) requires a source-specific

[15] There is a second exception to the timeliness bar known as the "reopening rule." *See, e.g.*, *Environmental Def. v. EPA*, 467 F.3d 1329, 1333 (D.C. Cir. 2006). The gist of that rule is that the 60-day jurisdictional review window restarts when an agency, either explicitly or implicitly, reconsiders its former action. *See National Ass'n of Reversionary Prop. Owners v. Surface Transp. Bd.*, 158 F.3d 135, 141 (D.C. Cir. 1998); *National Mining Ass'n v. United States Dep't of Interior*, 70 F.3d 1345, 1351 (D.C. Cir. 1995). Because the after-arising ripeness exception preserves the Coal Petitioners' claim, we need not address the reopening doctrine.

endangerment finding for each pollutant, the EPA made a sufficient finding in the New Source Rule.

i. The New Source Rule

Before making the New Source Rule's endangerment finding keyed to carbon dioxide from new fossil-fuel-fired power plants, the EPA explained its "rational basis" for regulating those sources' emissions of that pollutant under Section 7411. New Source Rule, 80 Fed. Reg. at 64,530. The EPA first outlined why greenhouse gas emissions pose a danger to the public health and welfare, and then explained why it should regulate those emissions from power plants specifically.

For evidence of the harms posed by greenhouse gas air pollution, the EPA first pointed to its 2009 Endangerment Finding, made in connection with the motor vehicle emissions regulation at issue in *Coalition for Responsible Regulation*. New Source Rule, 80 Fed. Reg. at 64,530. There, this court upheld as reasonable the EPA's finding that greenhouse gas emissions threaten public health and welfare. *Id.*; *see also Coalition for Responsible Regulation*, 684 F.3d at 119–126.

In the 2015 New Source Rule, the Agency reviewed substantial scientific evidence, including contemporary studies from the National Research Council, the Intergovernmental Panel on Climate Change, and others that post-dated the record from the 2009 motor vehicle emissions regulation. 80 Fed. Reg. at 64,530–64,531; *see also id.* at 64,517–64,520 (detailing updated developments in scientific evidence). The EPA found that the new studies "len[t] further credence to the validity of the [2009] Endangerment Finding." *Id.* at 64,530. The EPA added that "[n]o information that commentators have presented or that the EPA has reviewed provides a basis for reaching a different conclusion," and that the science at the time had

reaffirmed its understanding of the effects of greenhouse gases on the public health and welfare. *Id.* "The facts," the EPA concluded, "unfortunately, have only grown stronger and the potential adverse consequences to public health and the environment more dire in the interim." *Id.* at 64,531.

The EPA next explained its reasons for regulating greenhouse gases from fossil-fuel-fired power plants specifically, pointing to the exceptionally high levels of emissions from those power plants. *See* New Source Rule, 80 Fed. Reg. at 64,522–64,523, 64,530. To that end, the EPA found that fossil-fuel-fired power plants are the largest stationary sources of greenhouse gas emissions in the United States, accounting for nearly one-third of the United States' greenhouse gas emissions and as much as three times the emissions from the next ten categories of stationary sources combined. *Id.* at 64,530. Coal-fired power plants in particular, the EPA added, are the largest of those large emitters, with just one coal-fired power plant emitting potentially millions of tons of carbon dioxide annually. *Id.* at 64,531. In that way, power plant emissions "far exceed[ed] in magnitude the emissions from motor vehicles," which had been the subject of the endangerment finding upheld in *Coalition for Responsible Regulation*. *Id.*

ii. All Required Findings Were Made

The Coal Petitioners acknowledge the EPA's findings, but argue that Section 7411 requires a two-part endangerment finding—that carbon dioxide from fossil-fuel-fired power plants (1) endangers the public health and welfare, and (2) causes or contributes significantly to greenhouse gas air pollution. *See* 42 U.S.C. § 7411(b)(1)(A) (findings must be for the "category of sources"). The Coal Petitioners do not contest

that carbon dioxide endangers the public health and welfare. *See* Oral Argument Tr. 129:21–22.

Instead, they train their arguments on the second prong, arguing that the New Source Rule did not properly make a finding that fossil-fuel-fired power plants "contribute[] significantly" to greenhouse gas pollution. First, they fault the EPA for relying on the New Source Rule, which provided a rational basis for regulation to support a significant-contribution finding.[16] Second, they argue that the EPA arbitrarily and capriciously failed to define the threshold measure of a "significant" contribution.

To survive those challenges, the EPA needed only to "articulate a satisfactory explanation" for the New Source Rule's endangerment finding, making a "rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.* (*State Farm*), 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)). For an endangerment

[16] The Coal Petitioners also argue that the EPA was wrong to rely on the 2009 Endangerment Finding because it used the lower "more than a *de minimis or* trivial" contribution standard. Coal Pet'rs Br. (quoting 2009 Endangerment Finding, 74 Fed. Reg. at 66,542). But the New Source Rule relies on the 2009 Endangerment Finding only for part one of the endangerment finding test—that greenhouse gas pollution may reasonably be anticipated to endanger the public health and welfare—which the Coal Petitioners do not contest. *See* New Source Rule, 80 Fed. Reg. at 64,530–64,531. The EPA separately considered the volume of greenhouse gas emissions that motor vehicles contribute to the problem and found it significant. *See* 2009 Endangerment Finding, 74 Fed. Reg. at 66,499, 66,543; *Coalition for Responsible Regulation*, 684 F.3d at 128.

finding, that choice need not include a "precise numerical value" that defines the threshold at which air pollution endangers the public health and welfare. *Coalition for Responsible Regulation*, 684 F.3d at 326. Instead, a "'more qualitative' approach," employing reasoned predictions based on "empirical data and scientific evidence," may suffice. *Id.* at 327 (quoting *Ethyl Corp. v. EPA*, 541 F.2d 1, 56 (D.C. Cir. 1976)). Such an approach "is a function of the precautionary thrust of the [Clean Air Act] and the multivariate and sometimes uncertain nature of climate science, not a sign of arbitrary or capricious decision-making." *Id.* By that measure, both of the Coal Petitioners' objections fail.

For starters, it is perfectly permissible, and commendably efficient, for an agency to re-confirm and build consistently upon such formally made factual determinations. It makes eminent sense, for example, for the EPA to take what it learned in regulating automobiles' greenhouse gas emissions and apply that in evaluating the need for regulation of another source of the same pollutant—fossil-fuel-fired power plants. What matters here is that the EPA did not simply conclude that power plants' greenhouse gas emissions significantly contribute to air pollution and stop there. Instead, the EPA went on to explain *why* that significant-contribution finding was warranted. *See* New Source Rule, 80 Fed. Reg. at 64,530–64,531 (explaining that power plants are the largest stationary sources of domestic greenhouse gas emissions and that each coal-fired plant may emit millions of tons of carbon dioxide per year).

The Coal Petitioners' argument that the EPA failed to articulate a specific threshold measurement for significance fares no better. While the failure to identify the trigger point for significance might prove problematic in cases at the margins, the EPA sensibly found that this one is not even close. Because of their substantial contribution of greenhouse gases,

"under any reasonable threshold or definition," carbon dioxide from fossil-fuel-fired power plants represents "a significant contribution" to air pollution. New Source Rule, 80 Fed. Reg. at 64,531; *cf. Massachusetts v. EPA*, 549 U.S. at 525 (While domestic automobile emissions accounted for less than one-third of the United States' domestic emissions, "[j]udged by any standard, U.S. motor-vehicle emissions make a meaningful contribution to greenhouse gas concentrations and * * * to global warming.").

In that regard, we have already held that nothing in the Clean Air Act "require[s] that [the] EPA set a precise numerical value as part of" a contribution endangerment finding. *Coalition for Responsible Regulation*, 684 F.3d at 122 (applying Section 7521(a)(1) of the Clean Air Act). So the "EPA need not establish a minimum threshold of risk or harm before determining whether an air pollutant endangers." *Id.* at 123.

Nevertheless, the Coal Petitioners insist that, before finding significance, the EPA had to decide whether its inquiry would (1) address domestic or global emissions, (2) be measured by a "simple percentage criterion" or another metric, (3) factor in historical trends and/or future projections, and (4) involve a different process for greenhouse gases than other pollutants. *See* Coal Pet'rs Br. 17. Whether the EPA could reasonably decide to factor in such considerations is not before us. What matters here is that nothing in the Clean Air Act or precedent mandates determinations on each of those factors—at least not in a case in which there is no showing that any of them would have made any difference. Given that the United States, at the time of the endangerment finding, was the second-largest emitter of greenhouse gases in the world, *see* 2009 Endangerment Finding, 74 Fed. Reg. at 66,538, it was not arbitrary or capricious for the EPA to conclude that the source

of close to one-third of those emissions is a significant contributor to air pollution by any measure. The global nature of the air pollution problem means that "[a] country or a source may be a large contributor, in comparison to other countries or sources, even though its percentage contribution may appear relatively small" in the context of total emissions worldwide. *Id.* Looking just at the Coal Petitioners' calculations, power plants contributed a hefty 4.5 percent to global greenhouse gas emissions in 2013. *See* Coal Pet'rs Br. 18. More to the point, a holding that greenhouse gas emissions by fossil-fuel-fired power plants are not significant would make it nigh impossible for any source of greenhouse gas pollution to cross that statutory threshold.[17]

For those reasons, we hold that the New Source Rule's endangerment finding provided a sufficient basis for the EPA's promulgation of the ACE Rule.

2. Section 7411 and Section 7412's Parallel Operation

a. Background on the 1990 Amendments

The Coal Petitioners next argue that the Clean Air Act expressly and unambiguously prohibits the EPA from

[17] The EPA recently solicited public comment through a proposed rule on the appropriateness of considering such factors when making a significant-contribution finding. *See* Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review, 84 Fed. Reg. 50,244, 50,269 (Sept. 24, 2019). But the EPA explained that the comments on the proposed rule are meant only "to inform the EPA's actions in future rules," *id.* at 50,267, and explicitly declined to consider the merits of the comments or adopt any of the factors in that final rule, *see* Oil and Natural Gas Sector: Emission Standards for New, Reconstructed,

regulating coal-fired power plants' carbon dioxide emissions under Section 7411(d) because those same power plants' mercury emissions are regulated under Section 7412's Hazardous Air Pollutants provision. The relevant statutory text says otherwise.

To set the stage, as relevant here, the Clean Air Act regulates pollutants emitted by stationary sources like power plants under three distinct programs: (1) the National Ambient Air Quality Standards (NAAQS) program that applies to emissions of six common air pollutants, 42 U.S.C. §§ 7408–7410; (2) the regulation of certain specified pollutants under the Hazardous Air Pollutants program, 42 U.S.C. § 7412; and (3) the regulation of all other dangerous pollutants from new and existing sources under Section 7411.

Congress designed the existing source provision in Section 7411(d) to ensure that there were "no gaps in control activities pertaining to stationary source emissions that pose any significant danger to public health or welfare." S. REP. NO. 91-1196, at 20 (1970). So Section 7411(d), in its gap-filling capacity, covers all dangerous pollutants except those already regulated by NAAQS or the Hazardous Air Pollutants provision. *See* Clean Air Act Amendments of 1990 ("1990 Amendments"), Pub. L. No. 101-549, § 108(g), § 302(a), 104 Stat. 2399, 2467, 2574.

From the passage of the Clean Air Act until its amendment in 1990, Congress had left substantially to the EPA the task of building a program to effectively identify and regulate hazardous air pollutants under Section 7412. Specifically, Section 7412(b)(1)(A)—Section 112(b)(1)(A) of the 1970

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and Modified Sources Review, 84 Fed. Reg. 57,018, 57,058 (Sept. 14, 2020).

Public Law—had instructed the EPA to publish a list of hazardous air pollutants that it would then regulate under Section 7412's terms. *See* Clean Air Act Amendments of 1970 ("1970 Amendments"), Pub. L. No. 91-604, sec. 4(a), § 112(b)(1)(A), 84 Stat. 1676, 1685. Section 7411(d), for its part, covered "any air pollutant * * * for which air quality criteria have not been issued or which is not included on a list published under section * * * 112(b)(1)(A)" by the EPA. *Id.*, sec. 4(a), § 111(d)(1)(A), 84 Stat. at 1684.

After two decades, Congress found that Section 7412 had "worked poorly" in that the EPA had regulated only eight hazardous pollutants under Section 7412. S. REP. NO. 102-228, at 128 (1989); *see id.* at 131. Through the 1990 Amendments to Section 7412, Congress forced the EPA's hand by statutorily designating 191 hazardous pollutants that Congress required the EPA to regulate. *See* 1990 Amendments, sec. 301, § 112(b)(1), 104 Stat. at 2532–2535 (codified at 42 U.S.C. § 7412(b)(1)); *see also* S. REP. NO. 102-228, at 133. Congress also called on the EPA to add to the list. 1990 Amendments, sec. 301, § 112(b)(2)–(3), 104 Stat. at 2535–2537 (codified at 42 U.S.C. § 7412(b)(2)–(3)). Neither greenhouse gases in general nor carbon dioxide in particular were on Congress' statutory list. Nor have they ever been added by the EPA.

That change to Section 7412(b) necessitated a corresponding technical change to Section 7411(d)'s carve-out of pollutants already regulated under the Hazardous Air Pollutants program, since the cross-referenced "list published under section * * * 112(b)(1)(A)" no longer existed. Congress' update of the statutory cross-reference is the root of the present dispute. That is because each chamber of Congress articulated

the technical correction differently, and yet both were enacted into law.

The Senate—in a section entitled "Conforming Amendments"—passed a straightforward amendment that struck "112(b)(1)(A)" from the Section 7411(d) exclusion, and replaced it with "112(b)"—which is the provision containing the new statutory list of hazardous pollutants to which the EPA could later add. 1990 Amendments, § 302(a), 104 Stat. at 2574. Just as before the 1990 Amendments, under the Senate Amendment, only hazardous pollutants on the Section 7412 list were excluded from Section 7411(d)'s regulation of existing sources' emissions, while dangerous pollutants not addressed by the Hazardous Air Pollutants or NAAQS programs remained in Section 7411(d)'s domain.

The House, for its part, called its technical amendment of the cross-reference "Miscellaneous Guidance," and it similarly deleted "112(a)(1)(B)[,]" and then excluded any air pollutant that is "emitted from a source category which is regulated under section 112." 1990 Amendments, § 108, 108(g), 104 Stat. at 2465, 2467.

Both of those amendments made it into the Conference Report, H.R. REP. NO. 101-952, at 73, 183 (1990) (Conf. Rep.), and, after being passed by both chambers of Congress and signed by the President, they both became part of the Public Law.

Congress' Office of the Legal Revision Counsel is tasked with compiling and codifying the public law and publishing it in the United States Code. The Counsel, of course, has no authority to alter the substance of the Statutes at Large. *See Ganem v. Heckler*, 746 F.2d 844, 851 (D.C. Cir. 1984) ("[T]he changes made by the codifiers, whose 'choice, made * * * without approval of Congress * * * should be given no weight,'

are of no substantive moment.") (internal quotation marks omitted) (quoting *North Dakota v. United States*, 460 U.S. 300, 310 n.13 (1983)); *see also Positive Law Codification*, OFFICE OF THE LAW REVISION COUNSEL, https://uscode.house.gov/codification/legislation.shtml (last visited Jan. 11, 2021) (For non-positive law titles, such as Title 42, "there are certain technical, although non-substantive, changes made to the text for purposes of inclusion in the Code.").

When faced with the Senate and House Amendments' differing articulations of the cross-reference update, the Counsel chose to publish only the House Amendment in the United States Code.

b. Interpreting the House and Senate Amendments

The Coal Petitioners argue that the House Amendment's technical update of the cross-reference actually worked a major substantive change in the law by categorically and unambiguously excluding from Section 7411 not the hazardous *pollutants* already regulated under Section 7412, but any *stationary sources* of hazardous pollutants regulated under Section 7412. In their view, once a source is subject to regulation under Section 7412 for any single listed hazardous pollutant, all of its other pollution emissions are off limits for regulation under Section 7411(d). More specifically, the Coal Petitioners' position is that, because the EPA regulates one hazardous air pollutant—mercury—emitted from coal-fired power plants, the EPA is powerless to regulate under Section 7411(d) every other non-"hazardous," but still

significantly dangerous, pollutant those same power plants emit, including greenhouse gases.[18]

On the other hand, for thirty years—from the enactment of the 1990 Amendments to the present day—the EPA has read the House's "Miscellaneous Guidance" as just that—a miscellaneous technical amendment that, like the Senate Amendment, simply updated the Section 7411(d) cross-reference to exclude the regulation of a stationary source's emission of pollutants that are already regulated under Section 7412.

For the Coal Petitioners' challenge to succeed, we would have to agree with their ambitious reading of the House Amendment as *precluding* regulation under Section 7411 of even those pollutants that are not covered by Section 7412. We also would have to ignore the duly enacted Senate Amendment entirely. And we would have to reject out of hand the EPA's three-decade-old harmonizing reading of the statutory amendments, the text of Section 7411(d), and the statutory structure. We decline the invitation because that is not how statutory interpretation works.

At the outset, the EPA seeks deference under *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). If this were an ordinary EPA interpretation of a Clean Air Act provision, we would apply exactly that framework. *See UARG*, 573 U.S. at 315 ("We review EPA's

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[18] *See* National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units, 77 Fed. Reg. 9304 (Feb. 16, 2012) (regulating mercury).

interpretations of the Clean Air Act using the standard set forth in *Chevron*[.]").

But this is no ordinary case. Here, the way in which the codifiers assembled the U.S. Code version of Section 7411(d) by omitting the Senate Amendment conflicts with the Statutes at Large, which is the definitive legal evidence of what the law is. 1 U.S.C. § 112; *see id.* § 204(a) (United States Code provides only *prima facie* evidence of the federal law). So any ambiguity arises from our duty to textually harmonize two duly enacted but differently articulated statutory provisions. In undertaking that task, we need not decide whether *Chevron* supplies the appropriate framework for reconciling conflicting statutory provisions. *Compare Scialabba v. Cuellar de Osorio*, 573 U.S. 41, 64 (2014) (Kagan, J.) (plurality opinion), *with id.* at 76 (Roberts, C.J.) (concurring in the judgment). Instead, we independently reach the same conclusion as the EPA, harmonizing the House and Senate Amendments by giving "full effect" to both. *Id.* at 64.

i. The Consistent Meaning of Both Amendments

In reconciling the Senate and House Amendments, we start with what the mission of the amendments was. The plain purpose of each amendment was to update Section 7411(d)'s outdated cross-reference to a list created by the EPA under Section 7412*(b)(1)(A)*, in light of Congress' publication of its new statutory list under Section 7412*(b)*. That is why the Senate labeled its provision a "[c]onforming [a]mendment," and the House called its version "[m]iscellaneous [g]uidance." *See* 1990 Amendments, § 302(a), 104 Stat. at 2574 (Senate Amendment); *id.* § 108(g), 104 Stat. at 2465, 2467 (House Amendment). Neither amendment was meant to work a major substantive change in the law.

The Senate took the most direct textual path to updating Section 7411(d)'s cross-reference. Using the Public Law section number for Section 7412 (that is, Section 112), the Senate Amendment simply substituted "section 112(b)" for the outdated reference to "section 112(b)(1)(A)." *See* 1990 Amendments, § 302(a), 104 Stat. at 2574. That way, the Senate Amendment maintains the parallelism of the two exclusions in Section 7411(d) for already-regulated pollutants that are either "included on a list published under section 108(a) [NAAQS] or 112(b) [the Hazardous Air Pollutants provision.]" *Id.* § 302(a), 104 Stat. at 2574 (incorporating Senate Amendment into the preexisting 1970 text, *see* 1970 Amendments, sec. 4(a), § 111(d)(1)(A), 84 Stat. at 1684). Both exclusionary clauses continue, as they had before the 1990 Amendments, to refer directly to specific air pollutants listed for regulation under other statutory provisions, and so to prevent duplicate regulation of the same harmful emissions.

The House Amendment was less efficient, but ended up in the same place. It substituted for "section 112(b)(1)(A)" the phrase an air pollutant that is "emitted from a source category which is regulated under section 112[.]" 1990 Amendments, § 108(g), 104 Stat. at 2467 (codified at 42 U.S.C. § 7411(d)(1)(A)(i)). So, with the House Amendment's phrasing, Section 7411(d)'s exclusion reads, as relevant here, that each State shall

> establish[] standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title [the NAAQS program] or emitted from a source category which is regulated under section 7412 of this title [the Hazardous Air Pollutant program] but (ii) to which a standard of performance under this section

> would apply if such existing source were a new source[.]

42 U.S.C. § 7411(d)(1)(A).

Reading the House Amendment within Section 7411(d)(1) "in [its] context and with a view to [its] place in the overall statutory scheme" shows that the House Amendment, like the Senate Amendment, just updated the cross-reference to exclude pollutant emissions already regulated for stationary sources under the Hazardous Air Pollutant program. *King v. Burwell*, 576 U.S. 473, 486 (2015) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132, 133 (2000)).

First, the entire point of the text that follows (i)—that is, romanette one—is to modify the phrase "air pollutant." "Air pollutant" is, in fact, the last antecedent to which all of the language in romanette one speaks. And grammatically, the last-antecedent rule means that a limiting phrase is generally read to "modify[] only the noun or phrase that it immediately follows." *Lockhart v. United States*, 136 S. Ct. 958, 962 (2016) (quoting *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003)). In other words, the whole point of romanette one, including the House Amendment language, is to define which "air pollutant[s]" cannot be regulated under Section 7411(d) because those same pollutants are already regulated under the NAAQS or Hazardous Air Pollutants programs.

Second, reading the entirety of romanette one to modify "air pollutant" gives the updated cross-reference to Section 7412 full meaning.[19] *See UARG*, 573 U.S. at 317 (The

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[19] Contrary to the separate opinion's view, *see* Separate Op. 34, use of the term "source category" (rather than "list") leaves open whether the EPA might regulate, in its Section 7411(d) gap-filling

phrase "any air pollutant" in Section 7411 must be given "a reasonable, context-appropriate meaning[.]"). The EPA has regulated over 140 source categories under Section 7412. EPA Br. 180. But it regulates only their emission of hazardous pollutants. In other words, Section 7412's regulatory scheme operates not broadly on the source category, but only on its emissions of the specified air pollutants. So Section 7412 does not and cannot police a source category's every emission, only its emission of "hazardous" air pollutants. That is why it is called the Hazardous Air Pollutants program, not the Hazardous Sources program. Reading Section 7411(d) as excluding only those air pollutants already governed by Section 7412's emissions regulations maps exactly onto romanette one's parallel exclusion of pollutants (not sources) already regulated under NAAQS. *See* 42 U.S.C. § 7411(d)(1)(A)(i). And it fits with Section 7411's gap-filling purpose, which is to capture those dangerous air pollutants not covered by NAAQS or the Hazardous Air Pollutants program. *See* S. REP. NO. 91-1196, at 20.

Third, at the same time that Congress amended Section 7411(d), it also added a savings clause,

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capacity, the emission even of hazardous air pollutants listed under Section 7412 when emitted by sources that Section 7412 does not reach, but to which Section 7411 does apply, *see* 42 U.S.C. § 7412(c)(1), (3)–(6); *see also* Clean Power Plan, 80 Fed. Reg. at 64,714–64,715 (stating that "both the House and Senate amendments should be read individually as having the same meaning in the context presented in this rule," but that "it is reasonable to interpret the House amendment of the Section [7412] Exclusion as only excluding the regulation of [hazardous air pollutant] emissions under [Clean Air Act] section [7411(d)] *and only when that source category is regulated under* [*Clean Air Act*] *section* [*7412.*]") (emphasis added).

Section 7412(d)(7), to the Hazardous Air Pollutants provision. That provision says that "[n]o emission standard or other requirement promulgated under this section shall be interpreted, construed, or applied to diminish or replace * * * applicable requirements established pursuant to section [7411], part C or D[.]" 1990 Amendments, sec. 301, § 112(d)(7), 104 Stat. at 2540–2541 (codified at 42 U.S.C. § 7412(d)(7)). That language requires reading Section 7411(d)'s simultaneously enacted cross-reference to regulation under Section 7412 narrowly and consistently with Section 7411(d)'s complementary role in the statutory scheme. It certainly does not allow courts to read the cross-reference as the major amputation of authority to regulate that the Coal Petitioners propose.

ii. The House Amendment Is Not a Trojan Horse

The Coal Petitioners and the separate opinion eschew reading the House and Senate updates of the cross-reference harmoniously. They prefer to pit the House Amendment against the Senate Amendment and espy in the former a major change in the law that—without a word of warning or explanation—would have significantly curtailed the regulation of air pollutants and broadly insulated stationary sources from regulatory oversight for their non-hazardous but still-dangerously polluting emissions.

There is a litany of problems with that approach.

For starters, recall that the House and Senate Amendments were meant to address an outdated statutory cross-reference. It is not the function of a single chamber's miscellaneous guidance or conforming amendment of a cross-reference to materially overhaul or truncate a statutory provision's operative reach. Instead, reading both amendments together as serving the same purpose of cross-referencing a new statutory

list of air pollutants fits with their legislative purpose and text. To be sure, the Clean Air Act "is far from a *chef d'oeuvre* of legislative draftsmanship," but "we, and EPA, must do our best, bearing in mind the 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" *UARG*, 573 U.S. at 320 (quoting *Brown & Williamson*, 529 U.S. at 133).

More to the point, neither the House nor Senate Amendment said anything about changing the EPA's affirmative regulatory obligation under Section 7411(d) to promulgate emissions guidelines for all air pollutants, except those already regulated under the NAAQS or Section 7412. Yet reading the House Amendment as abruptly withdrawing from Section 7411(d)'s reach entire source categories and all of the otherwise-unregulated emissions they spew would put the House Amendment in direct conflict with not only the unambiguous language of the Senate Amendment, but also with the Clean Air Act's gap-filling structure and purpose, as well as with EPA's overarching regulatory obligation. And it would supposedly do all of that contrary to the statutory history, in defiance of the technical and updating nature of the two Amendments, and without a whisper of warning by a single House or Senate member that the miscellaneous guidance would cripple Section 7411's correlative function in the statutory scheme.

At best, the Coal Petitioners' and separate opinion's vision of the House Amendment would have the EPA's regulatory authority under Section 7411(d) turn on a fluke of timing. The Section 7412(d)(7) savings clause mentioned above, by its terms, protects the operation of Section 7411 regulations already in effect. So, too, does the House Amendment, which only excises what already "is regulated" under Section 7412.

Under the Coal Petitioners' approach, then, the Clean Air Act would allow the EPA to regulate sources under both Section 7411(d) and Section 7412 if, and only if, the EPA adopted its Section 7411(d) regulation *before* the Section 7412 regulation. No rational explanation is offered as to why Congress would want the mere sequencing of regulations to render them either lawful or invalid.

More to the point, the Coal Petitioners and the separate opinion point to nothing in the legislative record even *hinting* at a rationale for removing Section 7412 sources entirely from Section 7411's reach. Nothing suggests that Congress intended to veer off in that substantive legislative direction. The Senate certainly had no such intention.

The Coal Petitioners suggest that the EPA could instead regulate carbon dioxide under Section 7412. But they do not really mean it, as they say in the same breath that carbon dioxide would be a "poor fit" for Section 7412. Coal Pet'rs Br. 33 n.8. That is because Section 7412 strictly regulates all sources that emit ten tons per year or more of hazardous pollutants. 42 U.S.C. § 7412(a)(1). Adding carbon dioxide to that list would lead to a massive regulatory expansion of EPA authority to include everything from schools to hospitals and apartment buildings. *Cf. UARG*, 573 U.S. at 328. It would make no sense to conclude that Congress intended an unheralded string of words in a "Miscellaneous Guidance" amendment to hobble the gap-filling function of Section 7411(d) and to disable the EPA from addressing the source of one-third of this country's greenhouse gas emissions.

Nor can the Coal Petitioners hang their hats on the inclusion of the House Amendment in the codified version of Section 7411(d). Putting aside that the two amendments readily can, and so must, be read harmoniously as just updating

the exclusion of already-regulated air pollutants, it is settled that "the Code cannot prevail over the Statutes at Large when the two are inconsistent." *Stephan v. United States*, 319 U.S. 423, 426 (1943); *see also Five Flags Pipe Line Co. v. Department of Transp.*, 854 F.2d 1438, 1440 (D.C. Cir. 1988) ("[W]here the language of the Statutes at Large conflicts with the language in the United States Code that has not been enacted into positive law, the language of the Statutes at Large controls.").

The Coal Petitioners' and the separate opinion's other efforts to cast aside the Senate Amendment all fail.

First, the Coal Petitioners and the separate opinion point to the Chafee-Baucus Statement of Senate Managers, in which Senators Chafee and Baucus addressed the negotiations surrounding the "Miscellaneous Guidance" in the 1990 Amendments. Using this statement, the Coal Petitioners and the separate opinion try to brush off the duly enacted Senate Amendment as a scrivener's or drafter's error. To that end, they stress the Managers' statement that, in the "Conference agreement," the "Senate recedes to the House except * * * with respect to the requirement regarding judicial review of reports * * * and with respect to transportation planning[.]" 136 CONG. REC. 36,007, 36,067 (Oct. 27, 1990).

That argument does not even get out of the starting gate. It should go without saying that two Managers' description of what a report said does not override the Conference Report itself. And it surely cannot erase the Senate Amendment text that was enacted by both the House and the Senate, and signed into law by the President.

In fact, the Managers were wrong about what the Conference Report said. What the Conference Report actually says is that "the Senate recede[s] from its disagreement to the

amendment of the House to the text of the bill and agree to the same *with an amendment as follows*." H.R. REP. NO. 101-952, at 1 (Conf. Rep.) (emphasis added). The "amendment [that] follow[ed]" included the text of the Senate Amendment as well as the House Amendment. *See id.* at 73, 183. So the agreement retained the Senate Amendment language; the Senate plainly did not withdraw it. The accompanying joint explanatory statement of the Conference Committee confirms that the Senate receded to the House subject to this amendment, "which [was] a substitute for the Senate bill and the House amendment" and contained both the House and Senate Amendments at issue here. *See id.* at 335.

Beyond that, the Chafee-Baucus statement cannot bear the weight the Coal Petitioners and the separate opinion need it to carry. At most, as a "statement of managers," it purports to summarize the more than 800-page Conference Report. 136 CONG. REC. at 36,065. We generally do not view such statements as persuasive evidence of congressional intent, let alone an excuse for unceremoniously discarding unambiguous statutory text as a "drafter's error." *See* Separate Op. at 25 *cf. Weyerhaeuser Co. v. Costle*, 590 F.2d 1011, 1052 n.67 (D.C. Cir. 1978). Not to mention that we have specifically ruled that this very same floor statement carries little weight. *Environmental Def. Fund, Inc. v. EPA*, 82 F.3d 451, 460 n.11 (D.C. Cir. 1996). Simply put, the statement's purpose was to explain the report, not to change the content of the law, to resolve substantive conflicts, or to effect sweeping change in the statute's reach. *See Glossary Term: Statement of Managers*, U.S. SENATE, https://www.senate.gov/reference/glossary_term/statement_of_managers.htm (last visited Jan. 11, 2021).

Second, the Coal Petitioners argue that we should disregard the Senate Amendment because it is a "[c]onforming

[a]mendment." *See* 1990 Amendments, § 302, 104 Stat. at 2574. A conforming amendment can serve to harmonize statutory provisions, which is exactly what the Senate Amendment did by updating the cross-reference. *See Burgess v. United States*, 553 U.S. 124, 135 (2008).

That does not mean that the statutory provision can be ignored. *See Burgess*, 553 U.S. at 135. The Senate Amendment's careful maintenance of the status quo through a cross-reference update evidences a deliberate preservation of the prior regulatory scope of Section 7411.

By the way, if labels were what matters, the House's "Miscellaneous *Guidance*" provides no platform for the major legislative surgery on Section 7411 that the Coal Petitioners and the separate opinion envision.

Third, the Coal Petitioners ask us to defer to the Office of the Law Revision Counsel's decision to codify the House Amendment rather than the Senate Amendment. The separate opinion reasons as well that the Office of Law Revision Counsel is "the leading candidate" for deference. Separate Op. 23.

No such deference is due. While the Office of the Law Revision Counsel has expertise in the technical aspects of the codification process, it has no license, without Congress' approval, to change the substantive meaning of enacted law or to throw away an entire statutory provision. *See Ganem*, 746 F.2d at 851. That is why the Public Law prevails over the United States Code in case of conflict. *See* 1 U.S.C. § 112; *Stephan*, 319 U.S. at 426; *United States v. Welden*, 377 U.S. 95, 98 n.4 (1964).

Fourth, the Coal Petitioners point to Congress' drafting manuals, which suggest that a first-in-time amendment, such as

the House Amendment, supersedes a later-in-the-legislative-process amendment like the Senate Amendment. *See* U.S. SENATE, OFFICE OF LEGISLATIVE COUNSEL, LEGISLATIVE DRAFTING MANUAL ("SENATE MANUAL") § 126(d) (1997) ("If, after a first amendment to a provision is made * * * , the provision is again amended, the assumption is that the earlier (preceding) amendments have been executed."); U.S. HOUSE OF REPRESENTATIVES, OFFICE OF LEGISLATIVE COUNSEL, HOUSE LEGISLATIVE COUNSEL'S MANUAL ON DRAFTING STYLE ("HOUSE MANUAL") § 332(d) (1995) ("The assumption is that the earlier (preceding) amendments have been executed.").

One problem is that the Coal Petitioners provide no evidence that those manuals or their provisions were in place at the time of the 1990 Amendments.

A bigger problem is that it is doubtful that the cited manual provisions even apply in this scenario. These provisions are located in sections for "Cumulative Amendments," in which an amended provision is added onto by later provisions. *See* SENATE MANUAL § 126(d); HOUSE MANUAL § 332(d). Both manuals suggest that language should be added to such a provision to "alert the reader" to the later amendments. SENATE MANUAL § 126(d); *see also, e.g.*, HOUSE MANUAL § 332(d)(1) (suggesting the following language for a cumulative amendment: "Title XX is amended by adding after section 123 (as added by section 802 of this Act) the following new section:"). That alert did not happen here. The House Amendment in Section 108 includes no reference to the Senate Amendment in Section 302, and there is no evidence that Congress believed it was adopting contradictory amendments in the final law.

The biggest problem of all is that nothing in the manuals says that a later but duly enacted amendment that has been signed into law can be cast aside as meaningless. Nor would it make any sense to do so here, when Congress placed the Senate Amendment in the logical statutory position to update a cross-reference to Section 7412. That amendment is located in the Public Law title addressing Hazardous Air Pollutants and is the very first provision (in Section 302 of the Public Law) that follows the many changes to Section 7412's Hazardous Air Pollutants program (in Section 301 of the Public Law). *See* 1990 Amendments, title III, sec. 301, § 112, 104 Stat. at 2531; *id.* sec. § 302(s), 104 Stat. at 2574. The House Amendment, on the other hand, appears as "[m]iscellaneous [g]uidance" in the title of the Public Law pertaining to the NAAQS program, not the Hazardous Air Pollutants program. *See* 1990 Amendments, title I, § 108(g), 104 Stat. at 2467.

Finally, the Coal Petitioners and the separate opinion insist that, by subsuming the Senate Amendment's targeted focus within their much broader reading of the House Amendment, they are somehow giving effect to both. *See* Coal Pet'rs Br. 29–30; Separate Op. 28–30. The separate opinion sees it as no different than if a father did not want to name a child after a president from Virginia, and a mother did not want to name the child after any president. There is no conflict there, as the separate opinion sees it, because the mother's sweeping prohibition includes "every name excluded by the father (and then some)." Separate Op. 29–30.

But, of course, it is the "and then some" that is the problem. By vastly overshooting the technical task of correcting a cross-reference, the separate opinion's and Coal Petitioners' proposed reading of the House Amendment is not "supplement[ing]" the Senate Amendment's exclusion of duplicate regulation. Separate Op. 30. It is supplanting it by

destroying the Senate Amendment's express preservation of Section 7411(d)'s pre-existing regulatory directive. To borrow the analogy, the separate opinion's vision of parental harmony is likely to be entirely lost on the father whose heart was set on naming his child Abraham, Theodore, or Harry.

The Coal Petitioners' and separate opinion's fundamental mistake in claiming to give effect to both Amendments is that the statute cannot mean both what the Senate Amendment says and what they think the House Amendment says: Section 7411(d) as amended in the 1990 Act cannot have simultaneously preserved and eliminated Section 7411(d)'s preexisting reach. As this case shows, the difference is quite material: It determines whether Section 7411(d) allows any regulation of power plants' greenhouse gas emissions or not. Given that, it blinks reality to claim that absorbing the Senate Amendment into the House Amendment in the manner the Coal Petitioners and the separate opinion propose somehow retains the Senate Amendment's independent effect. A mouse swallowed by a snake, while still present in some metaphysical way, hardly feels equally preserved.

At bottom, when confronted with two competing and duly enacted statutory provisions, a court's job is not to pick a winner and a loser. The judicial duty is to read statutory text as a harmonized whole, not to foment irreconcilability. *See Bell Atl. Tel. Cos. v. FCC*, 131 F.3d 1044, 1047 (D.C. Cir. 1997) ("Where, as here, we are charged with understanding the relationship between two different provisions within the same statute, we must analyze the language of each to make sense of the whole."). Reading both amendments consistently "pursue[s] a middle course" that "vitiates neither provision but implements to the fullest extent possible the directives of each[.]" *Citizens to Save Spencer Cnty. v. EPA*, 600 F.2d 844, 871 (D.C. Cir. 1979). Said another way, the better and quite

natural reading of all of the relevant enacted statutory text, structure, context, purpose, and history is one that harmonizes the House and Senate Amendments, avoids determining that one chamber of Congress smuggled dramatic and unlikely changes to the Agency's regulatory authority into the Act through miscellaneous "guidance," and instead faithfully accomplishes the legislative adjustment needed to respond to the changes to Section 7412.

iii. The Harmonized Reading Stands the Test of Time

Reading the two provisions consistently as successfully performing their "conforming" and "miscellaneous" task of updating Section 7411(d)'s cross-reference to continue to exclude air pollutants already regulated under Section 7412 also maps onto the EPA's consistent interpretation of the statute. And that reading has stood the test of time, without congressional correction. The EPA first announced its interpretation of Section 7411(d) as excluding Section 7412's hazardous pollutants, rather than source categories, in the immediate wake of the 1990 Amendments. *See* Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills, 56 Fed. Reg. 24,468, 24,469 (May 30, 1991) (explaining that Section 7411(d) requires States to submit plans for standards of performance for pollutants that endanger the public health or welfare but are "not 'hazardous' within the meaning of section 112 of the CAA and [are] not controlled under sections 108 through 110 of the CAA"). The EPA has not deviated from that interpretation in the ensuing decades. Oral Argument Tr. 174:19–22. The EPA's view also gives effect to Section 7411(d)'s gap-filling purpose, *see* S. REP. NO. 91-1196, at 20, by allowing it to continue to regulate dangerous pollutants that are not policed by Section 7412 or NAAQS.

The EPA's interpretation also dovetails with the development of judicial precedent. The Supreme Court has specifically addressed Section 7411(d)'s regulation of carbon dioxide emissions from fossil-fuel-fired power plants. In *American Electric Power Co. v. Connecticut* (*AEP*), the Supreme Court held that the Clean Air Act foreclosed any federal common law right to challenge the regulation (or lack thereof) of carbon dioxide emissions from power plants. 564 U.S. 410, 424–425 (2011). In so ruling, the Supreme Court relied on the displacing force of Section 7411, and specifically Section 7411(d). *Id.* In ruling that "the Clean Air Act and the EPA actions it authorizes displace any federal common-law right to seek abatement of carbon-dioxide emissions from fossil-fuel fired powerplants," the Supreme Court pointed directly to the Section 7411 regulatory scheme, including, "most relevant here, § 7411(d)." *Id.* at 424. The Supreme Court even noted that the "EPA is currently engaged in a § 7411 rulemaking to set standards for greenhouse gas emissions from fossil-fuel fired powerplants." *Id.* at 425. As the Supreme Court explained, Section 7411 "'speaks directly' to emissions of carbon dioxide from * * * [power] plants." *Id.* at 424.

The Coal Petitioners and the separate opinion put all their eggs in a footnote in *AEP* that notes Section 7411(d)'s exclusions. The footnote states that the "EPA may not employ § 7411(d) if existing sources of the pollutant in question are regulated under the national ambient air quality standard program, §§ 7408–7410, or the 'hazardous air pollutants' program, § 7412." *AEP*, 564 U.S. at 424 n.7. That footnote comports with the EPA's harmonized reading of the House and Senate Amendments because it says that Section 7411(d) does not apply when "the pollutant in question" is already regulated under one of the other two programs. *See* EPA Br. 189 (pointing out that the footnote's "use of the phrase 'of the

pollutant in question' suggests that [the Court] understood the regulatory bar to be pollutant-specific, consistent with EPA's interpretation").

The footnote could not mean otherwise. At the time of *AEP*, electricity-generating power plants as sources of different pollutants were already regulated under the NAAQS provisions. *See, e.g., American Trucking Ass'ns, Inc. v. EPA*, 283 F.3d 355, 359 (D.C. Cir. 2002) (considering NAAQS for particulate matter and ozone). So if the footnote did anything more than generally flag a statutory exclusion for already-regulated emissions—if it instead embraced the Coal Petitioners' and separate opinion's claim that Section 7411(d) excludes sources, rather than already-regulated emissions—then the Court could not have ruled as it did. Specifically, it could not have relied on Section 7411(d) to hold that the Clean Air Act displaced the common law by "speak[ing] directly" to the EPA's authority to regulate power plants' emission of greenhouse gases. *See AEP*, 564 U.S. at 424. The footnote certainly did not purport to unravel the central rationale for *AEP*'s holding.

* * *

For all of those reasons, we hold that Section 7411(d) allows the EPA to regulate carbon dioxide emissions from power plants, even though mercury emitted from those same power plants is regulated as a hazardous air pollutant under Section 7412.

B. THE ROBINSON PETITIONERS' CHALLENGES

Another group of petitioners—including the Texas Public Policy Foundation, the Competitive Enterprise Institute, and various businesses that petitioned jointly with a forest-services firm named Robinson Enterprises, Inc. (together, the Robinson

Petitioners)—challenge the ACE Rule as overstepping the EPA's authority. The Robinson Petitioners are the only parties that claim that the ACE Rule impermissibly regulates carbon dioxide emissions using Section 7411 of the Clean Air Act rather than Sections 7408 through 7410, under which the EPA sets NAAQS. Our ability to consider that claim fails due to the Robinson Petitioners' lack of standing.

The Robinson Petitioners assert the organizational standing of the Texas Public Policy Foundation and the Competitive Enterprise Institute, both nonprofit, nonpartisan organizations. Because the Foundation and the Institute seek the same relief on the same claim, only one needs to demonstrate standing. *See American Anti-Vivisection Soc'y v. United States Dep't of Agric.*, 946 F.3d 615, 619–620 (D.C. Cir. 2020). The two organizations argue standing based on harm to their own activities; neither appears to be a membership organization, and they claim no associational, or representational, standing based on harm to members.

To establish standing, an organization, like an individual, must show an actual or imminent injury in fact that is fairly traceable to the challenged action and likely to be redressed by a favorable decision. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378–379 (1982); *see also American Anti-Vivisection Soc'y*, 946 F.3d at 618. Because neither organization is directly subject to the challenged rule, their "standing is 'substantially more difficult to establish[.]'" *Public Citizen, Inc. v. National Highway Traffic Safety Admin.*, 489 F.3d 1279, 1289 (D.C. Cir. 2007) (Kavanaugh, J.) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562 (1992)).

Each organization proffers a distinct ground and theory of standing, so we analyze them in turn. The standing of both the Texas Public Policy Foundation and the Competitive

Enterprise Institute falters on the first factor, injury in fact, so we need not consider the remaining two factors.

The Texas Public Policy Foundation states that its mission is to provide legal counseling and services on a broad swath of matters, including promoting "a balanced approach to environmental regulation" by providing "legal counseling, referral, and advocacy services to individuals and businesses injured by federal, state, or local government overreach[.]" Decl. of Greg Sindelar ¶¶ 5, 7 ("[Its] mission is to promote, defend, and ensure liberty, personal responsibility, property rights, criminal justice reform, greater educational opportunities for all, a balanced approach to environmental regulation, free speech, state's rights under the 10th Amendment, energy sufficiency, and free enterprise[.]"). The Foundation's attorneys litigate cases on a wide range of issues on behalf of clients and refer clients to private counsel when necessary. *Id.* ¶ 8. The Foundation claims that the challenged rule has "caused a drain on [its] resources because [it] has had to divert significant time, effort, and resources from [its] activities in the area of property rights and wetlands regulation, for example," in order to represent clients "who are forced to deal with" the federal regulation of greenhouse gases. *Id.* ¶ 9.

It is well established that injury to an organization's advocacy activities does not establish standing. *See, e.g.*, *Center for Law & Educ. v. Department of Educ.*, 396 F.3d 1152, 1162 n.4 (D.C. Cir. 2005) (citing *Sierra Club v. Morton*, 405 U.S. 727, 739–740 (1972)). That is because "the expenditure of resources on advocacy is not a cognizable Article III injury." *Turlock Irrigation Dist. v. FERC*, 786 F.3d 18, 24 (D.C. Cir. 2015). To hold otherwise "would eviscerate standing doctrine's actual injury requirement" by permitting an interest group to generate its own standing merely by putting an issue in its lawyers' crosshairs. *Id.* (quoting *Center for Law*

& Educ., 396 F.3d at 1162 n.4); *see also National Taxpayers Union, Inc. v. United States*, 68 F.3d 1428, 1434 (D.C. Cir. 1995). The Texas Public Policy Foundation declares only that, since the EPA issued the ACE Rule, it has increased its legal counseling, referral, and advocacy on behalf of clients affected by the regulation of greenhouse gases rather than other clients. That is precisely the kind of injury to advocacy—and expenditure of resources on such efforts—that we have held does not amount to injury in fact.

The Foundation does not show the kind of perceptible impairment to its mission that sufficed for standing in a case like *American Anti-Vivisection Society*. There, we found injury because the agency's inaction—specifically, its failure to promulgate standards regarding the humane treatment of birds—deprived the organization of key information on which its public educational activities depended. *See* 946 F.3d at 619. That inaction compelled the organization to develop guidance for the public that otherwise would have been provided by the agency's standards. *Id.* By contrast, the Foundation fails to allege impairment of any similarly "discrete programmatic concerns" aside from its non-cognizable advocacy activities. *National Taxpayers Union*, 68 F.3d at 1433 (quoting *American Legal Found. v. FCC*, 808 F.2d 84, 92 (D.C. Cir. 1987)).

The Foundation points to *Abigail Alliance for Better Access to Developmental Drugs v. Eschenbach*, 469 F.3d 129 (D.C. Cir. 2006), in arguing that the cost associated with more legal counseling, referral, and advocacy services is a source of injury. But the "counseling, referral, advocacy, and educational services" at issue in *Abigail Alliance* were *medical* services, not legal services, and they directly furthered the plaintiff's mission of providing access to potentially life-saving medical drugs and treatments. *See id.* at 132–133. The Foundation's transplantation of *Abigail Alliance*'s words into

the context of legal representation and counseling cannot change the outcome: the costs of litigation are not a cognizable Article III organizational injury. *See Turlock*, 786 F.3d at 24.

The Competitive Enterprise Institute claims a different injury, which also falls short: the risk that it will face higher electricity bills. The Institute works to counter "economic overregulation in areas ranging from technology and finance to energy and the environment," Decl. of Kent Lassman ¶ 3, and avers that it relies on electricity to power its headquarters in Washington, D.C., *id.* ¶¶ 2, 4. It says that the Regulatory Impact Analysis for the ACE Rule shows that the Rule could increase its electricity costs. That analysis estimated a 0.0% to 0.1% increase in average retail electricity prices nationwide attributable to the Rule between 2025 and 2035. *See* S.A. 220 (projecting baseline prices, in cents per kilowatt-hour, of 10.49 and 10.71 in 2025 and 2030, respectively, as compared to 10.50 and 10.72 under the ACE Rule, and estimating no increase attributable to the ACE Rule by 2035).

The Regulatory Impact Analysis that the Institute cites modeled one "illustrative policy scenario on retail electricity prices[,]" S.A. 220, and included the caveat that the estimates were based on "inadequate and incomplete information[,]" meaning that "costs could be lower[,]" S.A. 222. The analysis acknowledged that "the EPA has not analyzed or modeled a specific standard of performance," and recognized that costs could vary depending on "how states might apply the [best system of emission reduction] taking account of source-specific factors in setting standards of performance, and how sources might comply with those standards." S.A. 221–222. It also identified "several key areas of uncertainty related to the electric power sector[,]" including electricity demand, natural gas supply and demand, and longer-term planning by utilities. S.A. 222.

Even a small injury may suffice to support standing, *see, e.g.*, *Competitive Enter. Inst. v. FCC* (*CEI*), 970 F.3d 372, 384 (D.C. Cir. 2020), but it must be "concrete and particularized and actual or imminent, not conjectural or hypothetical," *id.* at 381 (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016)). "Were all purely speculative increased risks deemed injurious, the entire requirement of actual or imminent injury would be rendered moot, because all hypothesized, nonimminent injuries could be dressed up as increased risk of future injury." *Public Citizen*, 489 F.3d at 1294 (quoting *Natural Res. Def. Council v. EPA*, 464 F.3d 1, 6 (D.C. Cir. 2006)).

In recognition that standing must rest on a concrete injury that is at least imminent, "we have repeatedly held that litigants cannot establish an Article III injury based on the independent actions of some third party not before this court." *Turlock*, 786 F.3d at 25 (formatting modified) (quoting *Florida Audubon Soc'y v. Bentsen*, 94 F.3d 658, 670 (D.C. Cir. 1996) (en banc)). "This is because 'predictions of future events (especially future actions taken by third parties)' are too speculative to support a claim of standing." *Id.* (quoting *United Transp. Union v. ICC*, 891 F.2d 908, 912 (D.C. Cir. 1989)).

The remoteness and contingency of the prospect that the Competitive Enterprise Institute will in the future actually face even the tiny rate increase *tentatively* projected as possibly arising from the challenged ACE Rule renders its claimed injury speculative and thus defeats its standing. In particular, the effect the Institute anticipates on its future electricity rates depends on how third parties—such as electricity generators, electricity providers, public utility commissions, and state pollution control agencies—might react to the ACE Rule. *See* EPA Br. 192. It also turns on the nature of standards that States decide to set, and on the compliance choices of regulated

sources. *Id.* It remains entirely unclear what standards States would develop in response to the "best system of emission reduction," how and whether those standards would have any effect on the costs of generation and transmission of energy, and whether rates will be affected by any offsetting savings through state or federal support for different generation mixes. A theory that "stacks speculation upon hypothetical upon speculation * * * does not establish an 'actual or imminent' injury." *Turlock*, 786 F.3d at 24 (quoting *New York Reg'l Interconnect, Inc. v. FERC*, 634 F.3d 581, 587 (D.C. Cir. 2011)); *see Arpaio v. Obama*, 797 F.3d 11, 20–23 (D.C. Cir. 2015). In asking us to anticipate the future actions of various third parties that are not before us, the Institute does just that.

At oral argument, the Competitive Enterprise Institute identified as its strongest support our decision in *Competitive Enterprise Institute v. FCC*. But the concrete and actual injury claimed there was traceable through "a relatively simple causal chain[,]" 970 F.3d at 383, unlike the harm asserted here, which is based on "inadequate and incomplete information[,]" S.A. 222, and dependent on third parties' unpredictable responses to the ACE Rule. Critically, the plaintiffs there demonstrated that their internet prices in fact had increased since the agency took its challenged action. *CEI*, 970 F.3d at 382–383. This record lacks any such evidence.

Because neither the Texas Public Policy Foundation nor the Competitive Enterprise Institute shows injury in fact to support the Robinson Petitioners' standing, we cannot address the merits of their NAAQS-related challenge to the ACE Rule.

IV. AMENDMENTS TO THE IMPLEMENTING REGULATIONS

When the EPA repealed the Clean Power Plan and finalized the ACE Rule, it also changed the longstanding implementing regulations generally applicable to emission

guidelines promulgated under Section 7411(d) of the Clean Air Act. *See* ACE Rule, 84 Fed. Reg. at 32,564–32,571. The Public Health and Environmental Organization Petitioners (the Public Health Petitioners) challenge the implementing regulations insofar as they adopt new timing requirements that substantially extend the preexisting schedules for state and federal actions and sources' compliance under Section 7411(d). *See* 40 C.F.R. §§ 60.23a(a)(1), 60.27a(b), 60.27a(c), 60.24a(d); *see also* ACE Rule, 84 Fed. Reg. at 32,567. Because the challenged regulations lack reasoned support, they cannot stand.

The new implementing regulations extend the time allowed for States to submit their plans, for the EPA to review those plans, for the Agency to promulgate federal plans where state plans fall short, and for legally enforceable consequences to attach to sources that are slow to comply. Those extended timeframes apply unless the EPA otherwise specifies with respect to particular emission guidelines. *See* ACE Rule, 84 Fed. Reg. at 32,568. The Public Health Petitioners argue that the amendments are arbitrary and capricious because the Agency altogether failed to address the urgency of controlling harmful emissions—especially the greenhouse gas emissions accelerating climate change.

At the threshold, the EPA asserts that the Public Health Petitioners forfeited any challenge to the amended implementing regulations, but we conclude the claim was preserved. The EPA contends that Petitioners "barely mention" this claim in their opening brief, EPA Br. 268–269 (citing *CTS Corp. v. EPA*, 759 F.3d 52, 60 (D.C. Cir. 2014)), but it was adequately, if concisely, set forth, *see* Pub. Health & Env't Orgs. Br. 11–13. The issue is neither particularly complex nor as momentous as others in the case; Petitioners nonetheless clearly stated and supported the claim with

citations to the record and sources of legal authority. *Id.* That relatively abbreviated treatment suffices. *See, e.g.*, *Tribune Co. v. FCC*, 133 F.3d 61, 69 n.8 (D.C. Cir. 1998) (noting one paragraph in a fifty-eight-page brief arguing that the agency's action was arbitrary and capricious sufficed to preserve the claim).

Petitioners' joint comment on this amendment as the EPA proposed it in the rulemaking process, which Petitioners cite in their brief, provides more detail. *See* Pub. Health & Env't Orgs. Br. 13 (citing Comments of Environmental and Public Health Organizations on Proposed Revisions to Emission Guideline Implementing Regulations 26–27, J.A. 973–974). The EPA well understands the nature of the claim, *see* EPA Br. 268–269, and there is no indication the brevity of the discussion in Petitioners' opening brief prejudiced the Agency at all. *Cf. Avia Dynamics, Inc. v. Federal Aviation Admin.*, 641 F.3d 515, 521 (D.C. Cir. 2011) (forfeiture excused where federal agency was placed on notice of arguments by extensive substantive motion practice).

On the merits, the EPA failed to justify substantially extending established compliance timeframes, including deadlines that it has had in place since 1975. *See* State Plans for the Control of Certain Pollutants from Existing Facilities, 40 Fed. Reg. 53,340, 53,345, 53,346–53,348 (Nov. 17, 1975). Before we can sustain agency action as nonarbitrary under the APA, "the agency must * * * articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)). Petitioners' comments took issue with the tepid justifications the Agency offered, but the heart of their challenge is the EPA's complete failure to say

anything at all about the public health and welfare implications of the extended timeframes.

The Agency principally relied on reviving an argument it had considered and rejected when it first adopted the schedule it now displaces: that timeframes for the regulation of existing sources under Section 7411(d) should necessarily mimic or exceed timeframes for adoption of National Ambient Air Quality Standards (NAAQS) under Section 7410 of the Clean Air Act. *Compare* ACE Rule, 84 Fed. Reg. at 32,568, *with* State Plans for the Control of Certain Pollutants from Existing Facilities, 40 Fed. Reg. at 53,345. Section 7411(d) calls for regulations that "establish a procedure similar to that provided by [S]ection 7410[,]" which, like Section 7411, requires States to submit plans for the EPA's approval and, if those plans are either not submitted or fall short, requires the EPA to itself prescribe a plan. *See* 42 U.S.C. § 7410(a)(1), (c)(1); *id.* § 7411(d)(1)–(2). The two sets of rules accordingly reflect generally similar state-federal interactions.

But it is not evident that the statement that Section 7411(d) would use "a procedure similar" to that employed under Section 7410 even speaks to timing rules. As the Agency recognized when it promulgated the 1975 rule, faster compliance was appropriate under Section 7411(d) because plans under this provision are far simpler. They apply only to a single category of source, whereas state plans for NAAQS under Section 7410 cover multiple types of sources. *See* 40 Fed. Reg. at 53,345 (commenting that "Section [7411](d) plans will be much less complex than the [state implementation plans]" required under Section 7410). The Public Health Petitioners' comment on the 2018 proposed amendments to the implementing regulations explained that "a section [7410 state implementation plan] must ensure that ambient air concentrations of a given pollutant in the state will stay below

the EPA-designated standard." J.A. 971. That goal is "far more complicated to both achieve and demonstrate" than limiting source emissions under Section 7411(d), because "meeting the ambient air quality standards involves air quality monitoring, complex modeling procedures, close attention to such factors as topography, wind patterns, cross-[border] transport of air pollution, and many other considerations." J.A. 971. By the same token, Petitioners commented that the EPA failed to justify giving itself as much time to review the simpler Section 7411(d) plans as it has to review state plans under Section 7410. J.A. 971–972. The EPA failed to engage meaningfully with the different scale of the two types of plans, dismissing Petitioners' comment with the conclusory assertion that Section 7411(d) plans "have their own complexities and realities that take time to address." ACE Rule, 84 Fed. Reg. at 32,568.

The EPA's proposed rule also relied on more general claims that the amended timelines are appropriate because of the amount of work involved in States' plan development and in the EPA's review of those plans. *See* Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program: Proposed Rule, 83 Fed. Reg. 44,746, 44,771 (Aug. 31, 2018). In response, Petitioners commented that the EPA did not document any problems during the decades that the existing timelines had been in place. J.A. 972 ("If the agency is truly concerned that the timing provision[s] in the framework regulations are unworkable, it must provide actual evidence of this—which it has not done thus far—and must propose amended provisions that correspond to the actual workload involved in section [7411(d)] rulemakings[.]"). The Final Rule failed to fill that gap. *See, e.g.*, ACE Rule, 84 Fed. Reg. at 32,568. Indeed, the Agency at one point seemed to forget that

it even had a burden of justification under the APA, going so far as to suggest that the obligation was somehow on the *commenters* to show that the various actors do *not* need any additional time. *Id.*

It might be a close call whether, viewed in isolation, the analogy to Section 7410 and the general claim of need for more processing time could supply the "rational connection" the APA requires. *State Farm*, 463 U.S. at 43. But we do not view those reasons in isolation.

The EPA's weak grounds for routinizing additional compliance delays in the amended implementing regulations are overwhelmed by its total disregard of the added environmental and public health damage likely to result from slowing down the entire Section 7411(d) regulatory process. "Normally, an agency rule would be arbitrary and capricious if the agency * * * entirely failed to consider an important aspect of the problem[.]" *State Farm*, 463 U.S. at 43. The extensions of implementation deadlines here give no consideration to the need for speed. Control of emissions from existing sources before they harm people and the environment is the central purpose of Section 7411(d) of the Clean Air Act. Yet when it deferred the compliance deadlines, the EPA did not even mention the need for prompt reduction of those emissions or the human and environmental costs of its substantial new delay.

In their comments, Petitioners emphasized the gravity and urgency of impending harms from unlawfully uncontrolled emissions as a reason the EPA must retain the tighter timeframes in the existing rule, not promulgate a new rule to build in additional years of delay. *See* Comments of Environmental and Public Health Organizations on Proposed Revisions to Emission Guideline Implementing Regulations 26–27, J.A. 973–974. They stressed in particular the broad and

longstanding scientific consensus on the role of carbon dioxide emissions in accelerating climate change, and insisted that "deep emission reductions are needed immediately" in order to avoid "the worst effects of climate change," making time "of the utmost essence." *Id.* They explained how the timing amendments stymie effective control of carbon dioxide emissions:

> [T]he amendments in question would permit up to 60 months to elapse between the time an EPA emission guideline is finalized and the time that affected sources must, at a minimum, begin reducing their emissions through enforceable increments of progress. Assuming EPA issues a final emission guideline for power plant [carbon dioxide] emissions in mid-2019, designated sources can be expected to start reducing emissions in mid-2024. * * * [T]he world has surpassed not only the 350 ppm threshold—that atmospheric concentration of [carbon dioxide] that is considered the maximum safe level—but the 400 ppm threshold as well. If we are to avoid the worst effects of climate change, deep emission reductions are needed immediately: time is simply of the utmost essence. For EPA to inject even *further* delay into the process * * * flouts the agency's Clean Air Act obligation to require emission reductions to prevent this endangerment to public health and welfare.

Comments of Environmental and Public Health Organizations 27, J.A. 974.

Not all source categories or types of emissions subject to Section 7411(d) present problems of the magnitude and urgency of those posed by unregulated carbon dioxide

emissions from power plants. But the Public Health Petitioners' comments on the Agency's proposed amendments to the implementing regulations squarely called on the EPA to explain how slowing the regulatory timeframe with respect to *any* covered emissions or source category might be justified and consistent with the Act's objective. *See* Comments of Environmental and Public Health Organizations 23, J.A. 970.

In response to Petitioners' concrete objections, the final rule neither changed nor better justified the timing provisions. In fact, upon reading the rule's explanation of the deadline extensions, one would have no idea that the EPA actually recognized that greenhouse gas pollution was causing a global climate crisis requiring urgent remediation. In finalizing the proposed extensions to key deadlines, the EPA tersely reiterated its stated interest in giving itself, States, and regulated parties more time to comply—despite no showing of need—and, contrary to its explanation of the rule it displaced, stated that it was important after all to align the timing of the Section 7411(d) state-plan process with the compliance schedule under Section 7410. *See* ACE Rule, 84 Fed. Reg. at 32,564, 32,568.

The EPA did not even hint at how or whether it determined that prolonging public exposure to ongoing harms from pollutants emitted by existing source categories could be justified consistent with the core objectives of the Clean Air Act. That failure is irrational, especially in the face of the EPA's continued adherence to its 2015 finding of an urgent need to counteract the threats posed by unregulated carbon dioxide emissions from coal-fired power plants. The EPA made no mention whatsoever of the harms that Petitioners warned would result if the Agency slackened the pace of state and federal action to mitigate the harms Section 7411(d) targets. In relation to the timing amendments, pollution

control—whether in the context of carbon dioxide and the ACE Rule or air pollution more generally—was simply not on the EPA's agenda. In short, Petitioners called the EPA's attention to an important aspect of the regulatory problem, and the EPA looked away.

The EPA offered what is at best a radically incomplete explanation for extending the compliance timeline. It offered undeveloped reasons of administrative convenience and regulatory symmetry, even as it ignored the environmental and public health effects of the Rule's compliance slowdown. The EPA thus "failed to consider an important aspect of the problem," *State Farm*, 463 U.S. at 43—indeed, arguably the most important aspect. We accordingly vacate the implementing regulations' extensions of the Section 7411(d) compliance periods.

V. VACATUR AND REMAND

The ACE Rule expressly rests on the incorrect conclusion that the plain statutory text clearly foreclosed the Clean Power Plan, so that complete repeal was "the only permissible interpretation of the scope of the EPA's authority under [Section 7411]." ACE Rule, 84 Fed. Reg. at 32,534; *see also id.* at 32,532. "[T]hat error prevented it from a full consideration of the statutory question here presented." *Negusie v. Holder*, 555 U.S. 511, 521 (2009). "Where a statute grants an agency discretion but the agency erroneously believes it is bound to a specific decision, we [cannot] uphold the result as an exercise of the discretion that the agency disavows," *United States v. Ross*, 848 F.3d 1129, 1134 (D.C. Cir. 2017), and the "regulation must be declared invalid, even though the agency might be able to adopt the regulation in the exercise of its discretion," *Prill v. NLRB*, 755 F.2d 941, 948 (D.C. Cir. 1985) (quoting *Planned Parenthood Federation of America,*

Inc. v. Heckler, 712 F.2d 650, 666 (D.C. Cir. 1983) (Bork, J., concurring in part and dissenting in part)); *accord Arizona v. Thompson*, 281 F.3d 248, 259 (D.C. Cir. 2002) (quoting *Prill*, 755 F.2d at 948).

Because the ACE Rule rests squarely on the erroneous legal premise that the statutory text expressly foreclosed consideration of measures other than those that apply at and to the individual source, we conclude that the EPA fundamentally "has misconceived the law," such that its conclusion "may not stand." *SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943). Accordingly, we hold that the ACE Rule must be vacated and remanded to the EPA so that the Agency may "consider the question afresh in light of the ambiguity we see." *Negusie*, 555 U.S. at 523 (quoting *Cajun Elec. Power Coop., Inc. v. FERC*, 924 F.2d 1132, 1136 (D.C. Cir. 1991)); *accord Peter Pan Bus Lines, Inc. v. Federal Motor Carrier Safety Admin.*, 471 F.3d 1350, 1354 (D.C. Cir. 2006); *Prill*, 755 F.2d at 948.

VI. CONCLUSION

Because promulgation of the ACE Rule and its embedded repeal of the Clean Power Plan rested critically on a mistaken reading of the Clean Air Act, we vacate the ACE Rule and remand to the Agency. We also vacate the amendments to the implementing regulations that extend the compliance timeline. Because the objections of the Coal Petitioners are without merit, we deny their petitions. And because the Robinson Petitioners lack standing, their petition is dismissed.

So Ordered.

WALKER, *Circuit Judge*, concurring in part, concurring in the judgment in part, and dissenting in part: This case concerns two rules related to climate change. The EPA promulgated both rules under § 111 of the Clean Air Act.[1]

A major milestone in climate regulation, the first rule set caps for carbon emissions. Those caps would have likely forced shifts in power generation from higher-polluting energy sources (such as coal-fired power plants) to lower-emitting

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[1] When this opinion refers to § 111, it is specifically referring to § 111(d). The codified version of § 111(d) is titled "Standards of performance for existing sources; remaining useful life of source." 42 U.S.C. § 7411(d). The first part reads:

> (1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 7410 of this title under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or emitted from a source category which is regulated under section 7412 of this title but (ii) to which a standard of performance under this section would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance. Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

Id.

sources (such as natural gas or renewable energy sources).[2] That policy is called generation shifting.

Hardly any party in this case makes a serious and sustained argument that § 111 includes a clear statement unambiguously authorizing the EPA to consider off-site solutions like generation shifting. And because the rule implicates "decisions of vast economic and political significance," Congress's failure to clearly authorize the rule means the EPA lacked the authority to promulgate it.[3]

The second rule repealed the first and partially replaced it with different regulations of coal-fired power plants. Dozens of parties have challenged both the repeal and the provisions replacing it.

In my view, the EPA was required to repeal the first rule and wrong to replace it with provisions promulgated under § 111. That's because coal-fired power plants are already regulated under § 112, and § 111 excludes from its scope any power plants regulated under § 112. Thus, the EPA has no authority to regulate coal-fired power plants under § 111.

I.

When the Constitution's ratifiers empowered Congress to legislate on certain matters of national importance,[4] they understood that federal regulation came with risks. For example, Congress might impose widely disbursed costs to

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[2] For ease of reading, this opinion refers to the technical term "coal-fired electric utility generating units" by the slightly less precise but lay-friendlier term "coal-fired power plants."

[3] *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000)).

[4] U.S. CONST. art. I, § 8.

benefit insular groups in a nation of diverse economic and political interests. The framers called those groups factions.[5]

To guard against factions, legislation requires something approaching a national consensus. While a single state's simple majority can often subject that state to "novel social and economic experiments,"[6] federal legislation must survive bicameralism and presentment.[7] Only through that process can ideologically aligned states use federal power to impose their will on the unwilling.[8] So too for ideologically aligned environmentalists. Or polluters. Or big tech. Or big labor. Or free traders. Or fair traders. Or farmers. Or fishers. Or butchers. Or bakers.

In that process, each political institution probes legislative proposals from the perspective of different constituencies.[9] The House speaks for the people. The Senate, among other roles, guards the interests of small states. The Electoral College, with representation just short of proportional, strikes a balance between the two. And by staggering elections over two-, four-, and six-year cycles, we further impede fleeting factions from ganging up on small states and unpopular political minorities. The point is: It's difficult to pass laws — on purpose.

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[5] *See* The FEDERALIST No. 10, at 56-65 (J. Madison) (J. Cooke ed., 1961).

[6] *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

[7] U.S. CONST. art. I, §§ 1, 7; *see INS v. Chadha*, 462 U.S. 919, 951 (1983).

[8] Of course, even then, a legislative coalition cannot regulate outside Congress's enumerated powers. *See* U.S. CONST. art. I, § 8.

[9] *See Department of Transportation v. Association of American Railroads*, 575 U.S. 43, 61 (2015) (Alito, J., concurring) ("Our Constitution, by careful design, prescribes a process for making law, and within that process there are many accountability checkpoints.").

This legislative gauntlet sometimes produces unfortunate, even tragic, consequences. Between the 1870s and 1960s, it foreclosed desperately needed civil rights laws. For budget hawks who predict a fiscal crisis, it has blocked entitlement reform. And for those who fear a climate crisis, it has prevented clear congressional guidance on how to cool the planet and who will foot the bill.[10]

That, however, is the price we pay for bicameralism and presentment. Major regulations and reforms either reflect a broad political consensus, or they do not become law.

In its clearest provisions, the Clean Air Act evinces a political consensus. For example, according to *Massachusetts v. EPA*, carbon dioxide is clearly a pollutant, and the Act's § 202 unambiguously directs the EPA to curb pollution from new cars.[11]

But for every carbon question answered in that case, many more were not even presented.[12] For example, does the Clean Air Act force the electric-power industry to shift from fossil fuels to renewable resources? If so, by how much? And who will pay for it? Even if Congress could delegate those decisions, *Massachusetts v. EPA* does not say where in the Clean Air Act Congress clearly did so.

In 2009, Congress tried to supply that clarity through new legislation.

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[10] *Cf. Bowsher v. Synar*, 478 U.S. 714, 722 (1986) ("That this system of division and separation of powers produces conflicts, confusion, and discordance at times is inherent, but it was deliberately so structured to assure full, vigorous, and open debate on the great issues affecting the people and to provide avenues for the operation of checks on the exercise of governmental power.").

[11] 549 U.S. 497, 532-35 (2007).

[12] In this opinion, "carbon" is used as shorthand for carbon dioxide and other greenhouse gases.

The House succeeded.[13]

The President supported it.[14]

But that effort stalled in the Senate.[15]

Since climate change is real, man-made, and important, Congress's failure to act was, to many, a disappointment. But the *process* worked as it was designed.[16] In general, Senators from small states blocked legislation they viewed as adverse to their voters.[17] And because small states have outsized influence in the Senate,[18] no bill arrived on the President's

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[13] American Clean Energy and Security Act, H.R. 2454, 111th Cong. (2009).

[14] *See Interview with President Obama on Climate Bill*, N.Y. TIMES (June 28, 2009), https://www.nytimes.com/2009/06/29/us/politics/29climate-text.html.

[15] *See* Richard Cowan & Thomas Ferraro, *Senator Graham Calls Cap-and-Trade Plan Dead*, REUTERS (Mar. 2, 2010, 2:26 PM), https://www.reuters.com/article/us-climate-usa-congress/senator-graham-calls-cap-and-trade-plan-dead-idUKTRE62142T20100302.

[16] *Cf. Association of American Railroads*, 575 U.S. at 61 (Alito, J., concurring) ("Bicameralism and presentment make lawmaking difficult *by design*[.]") (cleaned up).

[17] Due to opposition to the 2009 climate bill, it never received a Senate vote. The closest analogue is the 2008 climate bill, which received a cloture vote. And of the states with no Senator voting for the 2008 bill, most of those states have populations smaller than 1/50 of the nation. *Roll Call Vote 110th Congress – 2nd Session,* U.S. SENATE, https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=110&session=2&vote=00145#state (all internet materials last visited Jan. 10, 2021).

[18] In 2008, *see supra*, for twenty-four state delegations, there was no Senate opposition to the climate bill. That's short of a majority of state delegations, and well short of the 3/5 necessary to break a

desk. Nor have dozens of other climate-related bills introduced since then.[19]

So President Obama ordered the EPA to do what Congress wouldn't.[20] In 2015, after "years of unprecedented outreach

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filibuster. But those twenty-four states equal 60% of the population. So the Senate's equal-state representation was critical. If representation were proportional to population, the climate bill would have been more likely to pass. *Roll Call Vote 110th Congress – 2nd Session,* U.S. SENATE, https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=110&session=2&vote=00145#state.

[19] *See, e.g.*, American Clean Energy and Security Act, H.R. 2454, 111th Cong. (2009); Integrated Energy Systems Act, S. 2702, 116th Cong. (2019); Clean Industrial Technology Act, S. 2300, 116th Cong. (2019); Advancing Grid Storage Act, H.R. 7313, 115th Cong. (2018); Climate Risk Disclosure Act, S. 3481, 115th Cong. (2018); American Energy and Conservation Act, S. 3110, 114th Cong. (2016); Climate Solutions Commission Act, H.R. 6240, 114th Cong. (2016); Super Pollutants Act, S. 2911, 113th Cong. (2014); American Renewable Energy and Efficiency Act, H.R. 5301, 113th Cong. (2014); End Polluter Welfare Act, S. 3080, 112th Cong. (2012); Save Our Climate Act, H.R. 3242, 112th Cong. (2011); Carbon Dioxide Capture Technology Prize Act, S. 757, 112th Cong. (2011); Clean Energy Standard Act, S. 20, 111th Cong. (2010).

[20] Evan Lehmann & Nathanael Massey, *Obama Warns Congress to Act on Climate Change, or He Will*, SCIENTIFIC AMERICAN (Feb. 13, 2013), https://www.scientificamerican.com/article/obama-warns-congress-to-act-on-climate-change-or-he-will/ ("'But if Congress won't act soon to protect future generations, I will,' Obama said. 'I will direct my Cabinet to come up with executive actions we can take, now and in the future, to reduce pollution, prepare our communities for the consequences of climate change, and speed the transition to more sustainable sources of energy.'").

and public engagement"[21] — including 4.3 million public comments[22] (about 4.25 million more than in *Massachusetts v. EPA*)[23] — the EPA promulgated a rule aimed at "leading global efforts to address climate change."[24]

Entitled the Clean Power Plan, the EPA's rule used the Clean Air Act's § 111 to set limits for carbon emissions that would likely be impossible to achieve at individual coal-fired power plants because of costs, unavailable technologies, or a need to severely reduce usage.[25] In that sense, the limits required generation shifting: shifting production from coal-fired power plants to facilities that use natural gas or renewable resources.

To be clear, the 2015 Rule did not expressly say, "Power plants must adopt off-site solutions." But it did set strict emission limits in part by considering off-site solutions. And those emission limits would likely have been unachievable or too costly to meet if off-site solutions were off the table.

A political faction opposed generation shifting. It challenged the 2015 Rule in this Court, arguing that § 111 does not allow the EPA to consider off-site solutions when determining the best system of emission reduction. The faction included about twenty-four states, represented by many

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[21] *FACT SHEET: Overview of the Clean Power Plan*, EPA, https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-overview-clean-power-plan.html.
[22] *Id.*
[23] 549 U.S. at 511.
[24] *FACT SHEET: Overview of the Clean Power Plan*, EPA, https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-overview-clean-power-plan.html.
[25] Respondents' Br. at 32-37. For the codified text of § 111(d), see the first footnote of this opinion.

Senators who opposed the 2009 legislation.[26] Conversely, a political faction of about eighteen states defended the rule. Many of their Senators had supported the stymied legislation.[27]

At that litigation's outset, our Court refused to stay the rule's implementation.[28] But in an unprecedented intervention, the Supreme Court did what this Court would not.[29] And through its stay, the Supreme Court implied that the challengers would likely succeed on the case's merits.[30]

Taking the Supreme Court's not-so-subtle hint, in 2019 President Trump's EPA repealed the 2015 Rule and issued the Affordable Clean Energy Rule. Like the rule it replaced, the 2019 Rule relies on the Clean Air Act's § 111 to reduce carbon emissions. But unlike its predecessor, the 2019 Rule did not include generation shifting in its final determination of the best system of emission reduction.

A new faction then challenged the 2019 Rule. It looked a lot like the faction that had defended the 2015 Rule. Arrayed against that faction were many states and groups that had opposed the old rule. And so once again, politically diverse

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[26] *See* Legislative Hearing on S. 1733, Clean Energy Jobs and American Power Act Before the Committee on Environment and Public Works, 111th Cong. (2009) (For example, Senators from Oklahoma, Ohio, Wyoming, and Louisiana expressed opposition or concern about the legislation.).

[27] *See id.* (For example, Senators from California, Massachusetts, Minnesota, New Mexico, Oregon, Rhode Island, Vermont, and Maryland expressed support for the legislation.).

[28] *West Virginia v. EPA*, No. 15-1363 (D.C. Cir. Jan. 21, 2016) (per curiam) (order).

[29] *West Virginia v. EPA*, 136 S. Ct. 1000 (2016) (mem.).

[30] *See Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20 (2008).

states and politically adverse special interest groups brought their political brawl into a judiciary designed to be apolitical.

In this latest round, the briefing's word count exceeded a quarter of a million words. The oral argument lasted roughly nine hours. The case's caption alone runs beyond a dozen pages. And yet, in all that analysis, hardly any of the dozens of petitioners or intervenors defending the 2015 Rule make a serious and sustained argument that § 111 includes a clear statement unambiguously authorizing the EPA to consider a system of emission reduction that includes off-site solutions or that § 111 otherwise satisfies the major-rules doctrine's clear-statement requirement. Neither does the EPA.

In light of that,[31] I doubt § 111 authorizes the 2015 Rule — arguably one of the most consequential rules ever proposed by an administrative agency:

- It required a "more aggressive transformation in the domestic energy industry," marking for President Obama a "major milestone for his presidency."[32]
- It aspired to reduce that industry's carbon emissions by 32 percent — "equal to the annual emissions from more than 166 million cars."[33]

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[31] *Cf.* ARTHUR CONAN DOYLE, *Silver Blaze*, *in* THE COMPLETE SHERLOCK HOLMES 312, 325 (2009) ("Before deciding that question I had grasped the significance of the silence of the dog, for one true inference invariably suggests others.").

[32] J.A. 2076 (White House Fact Sheet).

[33] *FACT SHEET: Clean Power Plan By The Numbers*, EPA, https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-clean-power-plan-numbers.html; *What Is the Clean Power Plan?*, NATIONAL RESOURCES DEFENSE COUNCIL, INC. (Sept. 29, 2017), https://www.nrdc.org/stories/how-clean-power-plan-works-and-why-it-

- Leaders of the environmental movement considered the rule "groundbreaking,"[34] called its announcement "historic,"[35] and labeled it a "critically important catalyst."[36]

The potential costs and benefits of the 2015 Rule are almost unfathomable. Industry analysts expected wholesale electricity's cost to rise by $214 billion.[37] The cost to replace shuttered capacity? Another $64 billion.[38] ("A billion here, a billion there, and pretty soon you're talking real money."[39])

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matters#:~:text=According%20to%20EPA%20projections%2C%20by,nationally%2C%20relative%20to%202005%20levels.&text=The%20shift%20to%20energy%20efficiency,its%20electricity%20bills%20in%202030 ("According to EPA projections, by 2030, the Clean Power Plan would cut the electric sector's carbon pollution by 32 percent nationally, relative to 2005 levels.").

[34] *Save the Clean Power Plan*, NATIONAL RESOURCES DEFENSE COUNCIL, INC., https://www.nrdc.org/save-clean-power-plan.

[35] *The Clean Power Plan*, ENVIRONMENTAL DEFENSE FUND, https://www.edf.org/clean-power-plan-resources.

[36] Press Release, Michael Brune, Sierra Club Executive Director, *Repealing the Clean Power Plan Will Threaten Thousands of Lives* (Oct. 9, 2017), https://www.sierraclub.org/press-releases/2017/10/repealing-clean-power-plan-will-threaten-thousands-lives.

[37] *EPA's Clean Power Plan An Economic Impact Analysis*, NMA, 2, http://nma.org/attachments/article/2368/11.13.15%20NMA_EPAs%20Clean%20Power%20Plan%20%20An%20Economic%20Impact%20Analysis.pdf.

[38] *Id.*

[39] *Senator Everett McKinley Dirksen Dies*, U.S. SENATE (Sept. 7, 1969), https://www.senate.gov/artandhistory/history/minute/Senator_Everett_Mckinley_Dirksen_Dies.htm; *cf. id.* ("Researchers have been unable to track down the quotation most commonly associated with

True, you can dismiss that research as industry-funded. But the EPA itself predicted its rule would cost billions of dollars and eliminate thousands of jobs.[40]

On the benefits side of the ledger, the White House labeled the 2015 Rule a "Landmark,"[41] and the President called it "the single most important step America has ever taken in the fight against global climate change."[42] With that in mind, calculating the rule's benefits requires a sober appraisal of that fight's high stakes. According to the rule's advocates, victory over climate change will lower ocean levels; preserve glaciers; reduce asthma; make hearts healthier; slow tropical diseases; abate hurricanes; temper wildfires; reduce droughts; stop many floods; rescue whole ecosystems; and save from extinction up to "half the species on earth."[43]

Dirksen. Perhaps he never said it, but the comment would have been entirely in character.").

[40] J.A. 336; *see, e.g.*, *Regulatory Impact Analysis for the Clean Power Plan Final Rule*, EPA, 6-25 (Oct. 23, 2015), https://19january2017snapshot.epa.gov/sites/production/files/2015-08/documents/cpp-final-rule-ria.pdf.

[41] Fact Sheet: President Obama to Announce Historic Carbon Pollution Standards for Power Plants, THE WHITE HOUSE (Aug. 3, 2015), https://obamawhitehouse.archives.gov/the-press-office/2015/08/03/fact-sheet-president-obama-announce-historic-carbon-pollution-standards.

[42] Andrew Rafferty, *Obama Unveils Ambitious Plan to Combat Climate Change*, NBC NEWS (Aug. 3, 2015, 3:05 PM), https://www.nbcnews.com/politics/barack-obama/obama-unveils-ambitious-plan-combat-climate-change-n403296.

[43] *FACT SHEET: Overview of the Clean Power Plan*, EPA, https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-overview-clean-power-plan.html; Al Gore, *Al Gore: The Climate Crisis Is the Battle of Our Time, and We Can Win*, N.Y. TIMES (Sept. 20, 2019), https://www.nytimes.com/2019/09/20/opinion/al-gore-

These are, to put it mildly, serious issues. Lives are at stake. And even though it's hard to put a dollar figure on the net value on what many understandably consider invaluable, the EPA tried: $36 billion, it said, give or take about a $10-billion margin of error.[44]

So say what you will about the cost-benefit analysis behind generation shifting, it's hardly a minor question. Minor questions do not forestall consequences comparable to "the extinction event that wiped out the dinosaurs 65 million years ago."[45] Minor questions are not analogous to "Thermopylae, Agincourt, Trafalgar, Lexington and Concord, Dunkirk, Pearl Harbor, the Battle of the Bulge, Midway and Sept. 11."[46] Minor rules do not inspire "years of unprecedented outreach and public engagement."[47] Minor rules are not "the single most

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climate-change.html; *Effects of Climate Change*, WORLD WILDLIFE FUND, https://www.worldwildlife.org/threats/effects-of-climate-change.

[44] *FACT SHEET: Overview of the Clean Power Plan*, EPA, https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-overview-clean-power-plan.html.

[45] AN INCONVENIENT TRUTH (Lawrence Bender Productions, 2006) ("Global warming, along with the cutting and burning of forests and other critical habitats, is causing the loss of living species at a level comparable to the extinction event that wiped out the dinosaurs 65 million years ago. That event was believed to have been caused by a giant asteroid. This time it is not an asteroid colliding with the Earth and wreaking havoc: it is us.").

[46] Al Gore, *Al Gore: The Climate Crisis Is the Battle of Our Time, and We Can Win*, N.Y. TIMES (Sept. 20, 2019), https://www.nytimes.com/2019/09/20/opinion/al-gore-climate-change.html; *see id.* ("This is our generation's life-or-death challenge.").

[47] *FACT SHEET: Overview of the Clean Power Plan*, EPA, https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-overview-clean-power-plan.html.

important step America has ever taken in the fight against global climate change."[48] Minor rules do not put thousands of men and women out of work.[49] And minor rules do not calculate $10 billion in net benefits as their margin of error.[50]

Rather, the question of how to make this "the moment when the rise of the oceans began to slow and our planet began to heal"[51] — and who should pay for it — requires a "decision[] of vast economic and political significance."[52] That standard is not mine. It is the Supreme Court's. And no cocktail of factors informing the major-rules doctrine can obscure its ultimate inquiry: Does the rule implicate a "decision[] of vast economic and political significance"?

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[48] Andrew Rafferty, *Obama Unveils Ambitious Plan to Combat Climate Change*, NBC NEWS (Aug. 3, 2015, 3:05 PM), https://www.nbcnews.com/politics/barack-obama/obama-unveils-ambitious-plan-combat-climate-change-n403296.

[49] *See, e.g.*, *Regulatory Impact Analysis for the Clean Power Plan Final Rule*, EPA, 6-25 (Oct. 23, 2015), https://19january2017snapshot.epa.gov/sites/production/files/2015-08/documents/cpp-final-rule-ria.pdf.

[50] *FACT SHEET: Overview of the Clean Power Plan*, EPA, https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-overview-clean-power-plan.html.

[51] Barack Obama, *Barack Obama's Remarks in St. Paul*, N.Y. TIMES (June 3, 2008), https://www.nytimes.com/2008/06/03/us/politics/03text-obama.html.

[52] *Utility Air Regulatory Group*, 573 U.S. at 324 (quoting *Brown & Williamson Tobacco*, 529 U.S. at 160) (cleaned up); *see Gonzales v. Oregon*, 546 U.S. 243, 267 (2006) (quoting *Brown & Williamson Tobacco*, 529 U.S. at 160) (cleaned up).

Proponents of the 2015 Rule say it doesn't.[53] They have to. If it did, it's invalid — because a clear statement is missing.[54] And according to the Supreme Court, that is exactly what a major rule requires.

To be sure, if we frame a question broadly enough, Congress will have always answered it. Does the Clean Air Act direct the EPA to make our air cleaner? Clearly yes. Does it require at least some carbon reduction? According to *Massachusetts v. EPA*, again yes.

But *how* should the EPA reduce carbon emissions from power plants? And *who* should pay for it? To those major questions, the Clean Air Act's answers are far from clear.

I admit the Supreme Court has proceeded with baby steps toward a standard for its major-rules doctrine. But "big things have small beginnings."[55] And even though its guidance has been neither sweeping nor precise, the Supreme Court has at least drawn this line in the sand: Either a statute clearly endorses a major rule, or there can be no major rule.[56]

Moreover, if Congress merely *allowed* generation shifting (it didn't), but did not clearly *require* it, I doubt doing so was constitutional. For example, imagine a Congress that says, "The EPA *may* choose to consider off-site solutions for its best system of emission reduction, but the EPA may choose *not* to consider off-site solutions." In that instance, Congress has

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[53] *See* Oral Arg. Tr. at 23 (Counsel for State and Municipal Petitioners on the 2015 Rule: "We do not think it implicates the Major Questions Doctrine here for a couple of reasons.").

[54] *See supra* p. 9.

[55] LAWRENCE OF ARABIA (Columbia Pictures, 1962).

[56] *MCI Telecommunications Corp. v. American Telephone & Telegraph Co.*, 512 U.S. 218, 230-31 (1994); *Brown & Williamson Tobacco*, 529 U.S. at 126-27, 133; *Gonzales*, 546 U.S. at 267; *Utility Air Regulatory Group*, 573 U.S. at 322-25.

clearly delegated to the EPA its legislative power to determine whether generation shifting should be part of the best system of emission reduction — a "decision[] of vast economic and political significance."[57]

Such delegation might pass muster under a constitution amended by "moments" rather than the "reflection and choice" prescribed by Article V.[58] But if ever there was an era when an agency's good sense was alone enough to make its rules good law, that era is over.[59]

Congress decides what major rules make good sense. The Constitution's First Article begins, "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."[60] And every "law" must "pass[] the House of Representatives and the Senate" and "be presented to the President."[61] Thus, whatever multi-billion-dollar regulatory

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[57] *Utility Air Regulatory Group*, 573 U.S. at 324 (2014) (quoting *Brown & Williamson Tobacco*, 529 U.S. at 160) (cleaned up); *see also Gonzales*, 546 U.S. at 267 (quoting *Brown & Williamson Tobacco*, 529 U.S. at 160).

[58] *See* U.S. CONST. art. V; *compare* BRUCE ACKERMAN, *We the People: Foundations* 22 (1991) ("moments") *with* MICHAEL S. GREVE, *The Upside-Down Constitution* 13 (2012) ("reflection and choice") (quoting The FEDERALIST No. 1, at 3-7 (A. Hamilton) (J. Cooke ed., 1961)).

[59] *See, e.g.*, *SAS Institute, Inc. v. Iancu*, 138 S. Ct. 1348, 1358-59 (2018) ("The Director may (today) think his approach makes for better policy, but policy considerations cannot create an ambiguity when the words on the page are clear. Neither may we defer to an agency official's preferences because we imagine some hypothetical reasonable legislator would have favored that approach. Our duty is to give effect to the text that *actual* legislators (plus one President) enacted into law.") (cleaned up).

[60] U.S. CONST. art. I, § 1.

[61] *Id.* § 7.

power the federal government might enjoy, it's found on the open floor of an accountable Congress, not in the impenetrable halls of an administrative agency — even if that agency is an overflowing font of good sense.[62]

Over time, the Supreme Court will further illuminate the nature of major questions and the limits of delegation. And under that caselaw, federal regulation will undoubtedly endure. So will federal regulators. Administrative agencies are constitutional, and they're here to stay.[63]

Beyond that, I leave it for others to predict what the Supreme Court's emerging jurisprudence may imply for those agencies' profiles. Here, regardless of deference and delegation doctrines, the regulation of coal-fired power plants under § 111 is invalid for a more mundane reason: A 1990 amendment to the Clean Air Act forbids it.

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[62] *See id.*; *id.* § 1; *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935); *Marshall Field & Co. v. Clark*, 143 U.S. 649, 692 (1892); *Gundy v. United States*, 139 S. Ct. 2116, 2130-31 (2019) (Alito, J., concurring in the judgment); *see generally* MIKE LEE, *Our Lost Constitution* (2015); PHILIP HAMBURGER, *Is Administrative Law Unlawful?* (2014); Cody Ray Milner, Comment, *Into the Multiverse: Replacing the Intelligible Principle Standard With a Modern Multi-Theory of Nondelegation*, 28 GEO. MASON L. REV. 395 (2020); *cf. Talk America, Inc. v. Michigan Bell Telephone Co.*, 564 U.S. 50, 68 (2011) (Scalia, J., concurring) ("When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty . . . .") (quoting MONTESQUIEU, *Spirit of the Laws* bk. XI, ch. 6, pp. 151-52 (O. Piest ed., T. Nugent transl. 1949)); *In re Aiken County*, 725 F.3d 255, 264 (D.C. Cir. 2013) (same).

[63] *Gundy*, 139 S. Ct. at 2145 (Gorsuch, J., dissenting) ("Nor would enforcing the Constitution's demands spell doom for what some call the administrative state.") (cleaned up).

II.

The Clean Air Act Amendments of 1990 prohibit the EPA from subjecting power plants to regulation under § 111 if they are already regulated under § 112. The 2015 Rule and the 2019 Rule rely on § 111 for the authority to regulate coal-fired power plants. Because the EPA already regulates those coal-fired power plants under § 112, the rules are invalid.

A.

Before 1990, the Clean Air Act's § 112 told the EPA to create a list of hazardous air pollutants. Section 112 directed the EPA to regulate the pollutants on that list. And § 111 provided authorization to regulate pollutants *not* on that list.

Carbon is not on the § 112 list. So, under the pre-1990 scheme, the EPA could regulate carbon under § 111.

But Congress amended § 112 in 1990. Rather than just telling the EPA to make a § 112 list of pollutants, Congress created its own § 112 list.

That same year, Congress also amended § 111. As a result, the codified version of § 111 prohibits the regulation of pollutants "emitted from a *source category* which is regulated under [§ 112]."[64]

Coal-fired power plants are a source regulated under § 112.[65] Therefore, under the codified version of the Clean Air Act, coal plants cannot be regulated under § 111. And since the 2015 Rule and the 2019 Rule use § 111 to regulate carbon emitted from coal plants, those rules purport to do what the codified version of § 111 says the EPA cannot.

But that is not the whole story. Congress's Office of the Law Revision Counsel codifies statutes. And when it

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[64] 42 U.S.C. § 7411(d) (emphasis added).

[65] Their mercury emissions are regulated under § 112.

mistakenly codifies text different from the Statutes at Large, the Statutes at Large controls.[66] And the Statutes at Large differs from the codified text here.

The question concerns two amendments, one from each house of Congress, which both ended up in the final bill.[67]

Under the House Amendment:

> *The Administrator shall prescribe regulations . . . under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or* ***emitted from a source category which is regulated under section 112*** *[of the Clean Air Act.]*[68]

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[66] *Cheney Railroad Co. v. Railroad Retirement Board*, 50 F.3d 1071, 1076 (D.C. Cir. 1995); *see also United States National Bank of Oregon v. Independent Insurance Agents of America, Inc.*, 508 U.S. 439, 448 & n.3 (1993).

[67] The section, before the 1990 Amendments, read:

> The Administrator shall prescribe regulations which shall establish a procedure . . . under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) or *7412(b)(1)(A) of this title . . . .*

42 U.S.C. § 7411(d)(1) (1988) (emphasis added).

[68] Pub. L. No. 101-549, § 108(g), 104 Stat. 2399, 2467 (1990) (emphasis added); 42 U.S.C. § 7411(d)(1).

Under the Senate Amendment:

> *The Administrator shall prescribe regulations . . . under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or* ***112(b)*** *[of the Clean Air Act.]*[69]

Let's compare those two versions with the most relevant text bolded, the divergent text underlined, and the other text struck through.

House Version:

> ***The Administrator shall prescribe regulations***~~*. . . under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source*~~ ***for any air pollutant*** ~~*(i) for which air quality criteria have not been issued or*~~ ***which is not*** ~~*included on a list published under section 7408(a) of this title or*~~ ***emitted from a source category which is regulated under section 112*** . . . .

Senate Version:

> ***The Administrator shall prescribe regulations***~~*. . . under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source*~~ ***for any air pollutant*** ~~*(i) for*~~

[69] Pub. L. No. 101-549, § 302(a), 104 Stat. 2399, 2574 (1990) (emphasis added).

> ~~*which air quality criteria have not been issued or*~~ ***which is not included on a list published under*** ~~*section 7408(a) of this title or*~~ ***112(b)*** . . . .

Finally, let's look at only the most relevant text.

House:

> ***The Administrator shall prescribe regulations for any air pollutant which is not emitted from a source category which is regulated under section 112.***

Senate:

> ***The Administrator shall prescribe regulations for any air pollutant which is not included on a list published under 112(b).***

To sum up so far, in my view:

- **The House** said the EPA can't use § 111 to regulate pollutants emitted from a source category regulated under § 112.[70]
    - **Coal-fired power plants** are a source category regulated under § 112.
- **The Senate** said the EPA can't use § 111 to regulate pollutants published under § 112.
    - **Carbon** is not a pollutant published under § 112.

Some parties argue the House and Senate Amendments conflict with each other or otherwise produce an absurd result. Others say they don't. In my view, it doesn't matter. If there's

[70] The EPA adopts a different interpretation of the House Amendment. That interpretation is addressed below in Part II.C.

a conflict, the House Amendment controls. And if there's no conflict, the Senate Amendment takes nothing away from the House Amendment. In *either* scenario — conflict or no conflict — regulation of coal-fired power plants under § 111 is invalid.

B.

Let's start with the first scenario: Assume the two amendments conflict.[71] If that creates an absurd result, "a mistake of expression (rather than of legislative wisdom) [may have] been made."[72] Such a mistake of expression — a "scrivener's error" — is typically viewed as a typo.[73] Where the reading "makes entire sense grammatically but produces a disposition that makes no substantive sense," a "drafter's error" may exist.[74] That said, the distinction between a scrivener's error and a drafter's error "is generally not a principled one."[75] Here, the Senate and House Amendments do not have obvious typos or mistakes, but some may think that including both in the statute "makes no substantive sense" — in the same way

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[71] *Cf.* 70 Fed. Reg. 15,994, 16,030-32 (Mar. 29, 2005) ("EPA is therefore confronted with the highly unusual situation of an enacted bill signed by the President that contains two different and inconsistent amendments to the same statutory provision.").

[72] Antonin Scalia, *Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws, in* A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 3, 20 (Amy Gutmann ed., 1997); *see also West Virginia v. EPA*, No. 15-1363, Oral Arg. Tr. at 111 (Kavanaugh, J.) ("When [a conflict] happens[,] you [may] have a scrivener's error.").

[73] *See* ANTONIN SCALIA & BRYAN A. GARNER, *Reading Law: The Interpretation of Legal Texts* 234 (2012) (quoting Daniel A. Farber, *Statutory Interpretation and Legislative Supremacy*, 78 Geo. L.J. 281, 289 (1989)).

[74] *Id.* at 235.

[75] *Id.*

that a single order to "always drive fast" and "never drive fast" makes no substantive sense.

In these rare circumstances, judges may read the text in a way that accounts for these errors. In doing so, "we are not revising the apparent meaning of the text."[76] Instead, we give the text "the meaning that it would convey to a reasonable person, who would understand that misprints had occurred."[77] But the "meaning genuinely intended but inadequately expressed must be absolutely clear; otherwise we might be rewriting the statute rather than correcting a technical mistake."[78]

How then to discover the "meaning genuinely intended"?

Some might say "defer to the EPA" because of the text's ambiguity. But unintentional ambiguity from a drafter's error is nothing like the intentional ambiguity that typically receives *Chevron* deference. *Chevron* applies to deliberate gaps for an

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[76] *Id.*; *see also id.* at 234 (quoting *Grey v. Pearson*, [1857] 6 H.L. Cas. 61, 106 (per Lord Wensleydale)) (cleaned up).
[77] *Id.* at 235.
[78] *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 82 (1994) (Scalia, J., dissenting).

agency to fill.[79] So deference is arguably faithful to a statute's meaning — at least in theory.[80]

In contrast, drafter's errors are accidents. So there's no reason to believe deference was "genuinely intended." And to the extent an office or agency with expertise is entitled to deference here — none is[81] — Congress's Office of the Law Revision Counsel is the leading candidate. Its whole job is to produce the United States Code, and it dismissed the Senate Amendment as a drafter's error.

Others might say the default should be freedom from regulation when a drafter's error creates ambiguity over an agency's authority to promulgate a major rule. After all, if Congress doesn't clearly endorse a major regulation, there can be no major regulation.[82]

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[79] *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 862 (1984); *cf. Pereira v. Sessions*, 138 S. Ct. 2105, 2121 (2018) (Kennedy, J., concurring) ("Given the concerns raised by some Members of this Court it seems necessary and appropriate to reconsider, in an appropriate case, the premises that underlie *Chevron* and how courts have implemented that decision. The proper rules for interpreting statutes and determining agency jurisdiction and substantive agency powers should accord with constitutional separation-of-powers principles and the function and province of the Judiciary.") (cleaned up).

[80] *But see Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142, 1153 (10th Cir. 2016) (Gorsuch, J., concurring) ("The fact is, *Chevron*'s claim about legislative intentions is no more than a fiction — and one that requires a pretty hefty suspension of disbelief at that.").

[81] *Ganem v. Heckler*, 746 F.2d 844, 851 (D.C. Cir. 1984) ("[T]he changes made by the codifiers, whose choice, made without the approval of Congress[,] should be given no weight, are of no substantive moment.") (cleaned up).

[82] *See MCI Telecommunications*, 512 U.S. at 230-31; *Brown & Williamson Tobacco*, 529 U.S. at 126-27, 133; *Gonzales*, 546 U.S. at 267; *Utility Air Regulatory Group*, 573 U.S. at 322-25.

But as with *Chevron*, the major-rules doctrine draws *meaning* from ambiguity: Because Congress does not hide elephants in mouseholes, we presume the absence of clarity means Congress intentionally chose not to endorse a major regulation. So as with *Chevron*'s premise, the premise of the major-rules doctrine is inapplicable to a drafter's error. Here, to the extent an elephant's in a mousehole, we don't know whether the misprint is the mousehole or the elephant.

That leaves us with a third option: inquiring into legislative history. True, as a general matter, courts should reject any significant reliance on legislative history. Hamilton did.[83] So did Marshall.[84] And Madison.[85] And Story.[86] "From the beginnings of the republic, American law followed what is known as the 'no-recourse doctrine' — that in the interpretation of a text, no recourse may be had to legislative history."[87] And although many judges abandoned the no-recourse doctrine by the second half of the twentieth century,[88] leading textualists like Justice Scalia have made important progress in reviving it.

But "[w]hen you have a scrivener's error[,] everyone, including Justice Scalia, would look at the legislative history."[89] Indeed, he "believed that the *only* time it was

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[83] ANTONIN SCALIA & BRYAN A. GARNER, *Reading Law: The Interpretation of Legal Texts* 370 (2012).
[84] *Id.* at 370-71.
[85] *Id.* at 371.
[86] *Id.* at 371-72.
[87] *Id.* at 369.
[88] *Id.* at 388.
[89] *West Virginia v. EPA*, No. 15-1363, Oral Arg. Tr. at 111 (Kavanaugh, J.); *see also* John Copeland Nagle, *CERCLA's Mistakes*, 38 WM. & MARY L. REV. 1405, 1414 (1997) ("[E]ven textualists like Justice Scalia acknowledge that the courts can remedy a 'scrivener's error' notwithstanding plain statutory language.").

appropriate for a court to use legislative history was when there was a credible claim of scrivener's error."[90] For example, concurring in the judgment in *Green v. Bock Laundry Machine Co.*, Justice Scalia considered "it entirely appropriate to consult . . . legislative history . . . to verify that what seems . . . an unthinkable disposition . . . was indeed unthought of, and thus to justify a departure from the ordinary meaning of the word" at issue.[91]

So, to recap: (1) The House and Senate Amendments may conflict; (2) if they do, there may have been a drafter's error; and (3) legislative history can illuminate a drafter's error.

What then, if anything, does the legislative history tell us? (Buckle up.)

In 1990, the House passed a bill with many amendments to the Clean Air Act. The Senate passed a different bill. A Conference Committee reconciled them. But it made (at least) *two* drafter's errors — assuming again our two amendments conflict.

First, the Conference Committee put both the House and Senate Amendments in the Conference Report, which became the final bill.[92]

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[90] Megan McDermott, *Justice Scalia's Bankruptcy Jurisprudence: The Right Judicial Philosophy for the Modern Bankruptcy Code?*, 2017 UTAH L. REV. 939, 974 (2017) (emphasis added).

[91] 490 U.S. 504, 527 (1989) (Scalia, J., concurring in the judgment).

[92] The Conference Report says "[t]hat the Senate recede[s] from its disagreement to the amendment of the House to the text of the bill and agree[s] to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following: . . . Sec. 108. Miscellaneous provisions." H.R. Rep. No. 101-952, 101st Cong., at 1 (1990) (cleaned up). Section 108(g) under "Miscellaneous provisions" was the House Amendment that

Second, the Conference Committee botched the "Joint Explanatory Statement of the Committee of Conference."[93]

The Joint Statement said, "The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text."[94] That "amendment" refers to the House's entire set of amendments to the Clean Air Act. Clear enough so far.

The Joint Statement then said, "The Senate recedes from its disagreement to the amendment of the House . . . ."[95] Again, that seems straightforward.

But the Joint Statement didn't stop there. The full sentence excerpted just above says:

> *The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment.*[96]

That is drivel. The Senate recedes with an amendment? What amendment? And how is that receding? And did the House recede to the Senate's amendment to the House's amendment that the Senate receded to?

The next day, the bill's Senate Managers issued a statement attempting to clarify the previous day's materials.

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struck "or 112(b)(1)(A)" and inserted "or emitted from a source category which is regulated under section 112." *Id.* at 73. But later in the report we find the Senate's original proposed amendment — replacing "112(b)(1)(A)" with "112(b)." *Id.* at 183. So the Senate says it receded to the House, and yet we still see the Senate's original language in the document.

[93] *Id.* at 335-55.

[94] *Id.* at 335.

[95] *Id.*

[96] *Id.*

The statement notes that for two unrelated portions of the § 111 amendments, the House receded to the Senate.[97] But it said the Senate receded to the House regarding all other § 111 changes, including the change at issue in this case.[98]

To the extent a statement by Senate Managers can ever clear up a question of statutory meaning — count me skeptical[99] — theirs did.

Here's where that leaves me. I'm frankly *not* convinced the House and Senate Amendments are the product of a drafter's error. But *if* they are, the most lucid piece of legislative history says the Senate intended to recede to the House.

That would leave the House Amendment as the last man standing. And under the House Amendment, the EPA can't regulate air pollutants from coal-fired power plants under § 111 when the plants are already regulated under § 112. Therefore, if the House and Senate Amendments conflict, the 2015 Rule and the 2019 Rule are invalid.[100]

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[97] *Chafee-Baucus Statement of Senate Managers, S. 1630, the Clean Air Act Amendments of 1990*, 136 Cong. Rec. 36007, 36067 (Oct. 27, 1990).

[98] *Id.* The full sentence about the two amendments at issue here reads: "*Conference agreement*. The Senate recedes to the House except that with respect to the requirement regarding judicial review of reports, the House recedes to the Senate and with respect to transportation planning, the House recedes to the Senate with certain modifications." In other words, except for judicial review of reports (immaterial here) and transportation planning (immaterial here), the Senate receded to the House.

[99] *Environmental Defense Fund, Inc. v. EPA*, 82 F.3d 451, 460 n.11 (D.C. Cir. 1996).

[100] The EPA doesn't like that result. For thirty years it has either ignored or misconstrued the House Amendment. But the EPA's

C.

As for the second (and more likely) of the two scenarios: Assume the House and Senate Amendments do *not* conflict. In that case, we don't strike the Senate Amendment as a drafter's error.[101] But even then, the House Amendment retains its full effect.

Recall that each amendment does two things. First, it creates a category of air pollutants. And second, it excludes that category from regulations authorized under § 111.

For the House Amendment, that category covers any pollutant "emitted from a source category which is regulated under section 112." And for the Senate Amendment, that category covers any pollutant "published under section . . . 112(b)."

So to see what's in the House Amendment's category, you'd start by making a list of every source regulated under § 112. As far as § 111 regulation goes, any air pollutants from those sources — including coal-fired power plants — are forbidden fruit under the House Amendment.

To create the Senate Amendment's list, you'd simply pull the 180 or so pollutants from § 112(b), as modified by the EPA since 1990. As far as § 111 regulation goes, those pollutants

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long-running error is no reason to ignore plain text. To the extent I glean anything from the EPA's thirty-year mistake, it's that the EPA might be entitled to less deference than it thinks it deserves.

[101] For the reader's convenience, here again is the codified version of § 111(d): "The Administrator shall prescribe regulations which shall establish a procedure . . . under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for **any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under [§ 108(a)] or emitted from a source category which is regulated under [§ 112]** . . . ." (emphasis added).

— mercury compounds, asbestos, and more than 180 others — are forbidden fruit under the Senate Amendment.[102]

In general, the House Amendment sweeps more broadly than the Senate Amendment. For example, the House Amendment's list includes pollution from coal-fired power plants, since they are regulated for mercury. So under the House Amendment, § 111 cannot be used to regulate coal-fired power plants at all.

In contrast, the Senate Amendment's list includes mercury, but it does not include *all* other pollution from sources that emit mercury. So under the Senate Amendment, § 111 cannot be used to regulate coal-fired power plants' emissions of mercury. But the Senate Amendment does not by itself stop the EPA from using § 111 to regulate coal-fired power plants' emissions of pollutants like carbon, since carbon isn't on the Senate Amendment's list.

That the House Amendment generally sweeps more broadly than the Senate Amendment, however, does not mean that fidelity to the House Amendment fails to give full effect to the Senate Amendment. For example, imagine two parents choosing a name for their child. The father says, "There's no way we're naming our baby after a president from Virginia." And the mother says, "There's no way we're naming our baby after *any* president."

Just like the House and the Senate each took certain regulations off § 111's table, the mother and father have each taken certain names off the table. And just as the House Amendment excludes from § 111 every regulation excluded by

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[102] *Initial List of Hazardous Air Pollutants with Modifications*, EPA, https://www.epa.gov/haps/initial-list-hazardous-air-pollutants-modifications.

the Senate Amendment (and then some), the mother has said no way to every name excluded by the father (and then some).

When you give full effect to the mother's no-way list, you are not ignoring the father's no-way list — because the father's list only *excludes* names and thus does not require the *inclusion* of any names. And for the same reason, when you give full effect to the father's list, you are not ignoring the mother's — because the mother's no-way list does not require the inclusion of names excluded by the father.

Like the father's list, the Senate Amendment has a lot to say about what's *excluded* from § 111. But like the father's list, the Senate Amendment says nothing about what's *included*. So when the House Amendment excludes coal-fired power plants from § 111's scope, it doesn't ignore the Senate Amendment. It supplements it — by excluding from § 111's scope a category of regulations not already excluded by the Senate Amendment.

That's the situation that will occur most often — air pollutants excluded from § 111 regulation because they're on the Senate Amendment's list will also be excluded from § 111 regulation because they're on the House Amendment's list.

But there may exist situations, at least in theory, when only the Senate Amendment does any work.

For example, consider a hazardous air pollutant listed under § 112 but "emitted by sources that Section [112] does not reach."[103] That pollutant is barred from § 111 regulation by the Senate Amendment (because it's a *pollutant* listed under § 112), but it is arguably not barred by the House Amendment (because it's emitted from a *source* not regulated under § 112).

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[103] Majority Op. at 119-20 n.19.

In that scenario, it's possible only the Senate Amendment would bar § 111 regulation.[104]

In other words, these § 111 exclusions might form a Venn diagram: Some air pollutants are excluded from § 111 regulation only because of the House Amendment (like carbon from coal-fired power plants), some pollutants are only excluded because of the Senate Amendment (as in the hypothetical I just described), and some pollutants are excluded because of both amendments (like mercury from coal-fired power plants). Recognizing *both* amendments as operative gives "maximum possible effect" to each.[105]

The EPA says *Chevron* applies to this question. Even so, the outcome is the same. At *Chevron* step one, the plain text of the Senate Amendment takes nothing away from the plain text of the House Amendment and vice versa. And because the House Amendment expressly precludes the regulation of coal-fired power plants under § 111, the plain text precludes the 2015 Rule and the 2019 Rule — both of which depended on § 111 to regulate coal-fired power plants.

In *American Electric Power Co. v. Connecticut*, the Supreme Court agreed with this reading. It said the "EPA may not employ § [111(d)] if existing stationary sources of the pollutant in question are regulated under the national ambient

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[104] As another theoretical example, consider a source that emits a pollutant on § 112's list and assume the EPA is *required* to regulate that source based on § 112's parameters. But now imagine that, notwithstanding that requirement, the EPA has not *yet* regulated the source. After all, sometimes these things take time. In that situation too, the Senate Amendment might exclude from § 111 regulation pollutants that the House Amendment might not (yet).

[105] *Citizens to Save Spencer County v. EPA*, 600 F.2d 844, 870 (D.C. Cir. 1979).

air quality standard program . . . or the 'hazardous air pollutants' program, § [112]."[106]

The EPA adopts a different approach to the House Amendment. In "any air pollutant . . . emitted from a source category which is regulated under section 112," the EPA reads the phrase "which is regulated under section 112" to modify "air pollutant," rather than "source category." So it would exclude from § 111's scope only an "air pollutant . . . which is regulated under § 112":

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[106] *American Electric Power Co. v. Connecticut*, 564 U.S. 410, 424 n.7 (2011) (citing § 7411(d)(1)). The EPA notes that this footnote was dicta and that it conflicted with national ambient air quality standard regulations at the time. But the EPA can't have it both ways: It can't dismiss an inconvenient part of *American Electric Power* that is directly on point and then *rely* on other parts of that case where the precise meaning and contours of § 111(d) were not at issue.

As for *American Electric Power*'s holding, it depended on the Supreme Court's understanding that § 111(d) "speaks directly" to carbon emissions from fossil-fuel plants. *Id.* at 424. I agree that § 111(d) "speaks directly" to whether the EPA can or cannot regulate carbon from coal-fired power plants: The provision directly says that the EPA can regulate pollutants from existing sources *unless* the EPA already regulates those sources under § 112. *Compare id. with id.* at 424 n.7.

> ***The Administrator shall prescribe regulations*** ~~*. . . under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source*~~ ***for any air pollutant*** ~~*(i) for which air quality criteria have not been issued or which is not included on a list published under section 108(a) or emitted from a source category*~~ ***which is regulated under section 112*** *. . . .*

To get to the EPA's preferred reading — to make "which is regulated by section 112" modify "air pollutant" — the EPA needs to read into § 111(d)(1)(A)(i) a triplet of three whiches:[107]

> *The Administrator shall prescribe regulations . . . under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for* <u>*any air pollutant*</u> *[1]* ***for which*** *air quality criteria have not been issued* ***or*** *[2]* ***which*** *is not included on a list published under § 108(a) or emitted from a source category [3]* ***which*** *is [not] regulated under § 112 . . . .*

My alterations — including [1], [2], [3], and [not] — reflect the tripartite division implied by the EPA. But of course the alterations were not in the original. If they were, the EPA's grammatically unconventional reading might work. They're not, so it doesn't.

For four reasons, the EPA's approach is not persuasive.

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[107] *Cf.* WILLIAM SHAKESPEARE, MACBETH act 1, sc. 1.

First, "ordinarily, and within reason, modifiers and qualifying phrases attach to the terms that are nearest."[108] Under that canon, a modifying phrase, such as "which is regulated under section 112," should apply to the closest noun possible — "source category," not "air pollutant."

Second, the EPA all but reads out of § 111 the following words: "emitted from a source category." To be sure, Congress will sometimes "include words that add nothing of substance," so the canon against surplusage has limits.[109] That's why "a court may well prefer ordinary meaning to an unusual meaning that will avoid surplusage."[110] But amputating the words "emitted from a source category" does not clarify § 111's "ordinary meaning." Instead, doing so transforms that meaning.

Third, and most importantly, Congress put a conjunction (**"or"**) between parts one and two of the imagined triplet, but not between parts two and three. If the EPA's triplet exists, Congress's approach to English was, to put it kindly, novel.

In formal English, you usually separate a triplet with a conjunction between the second and third parts. (Life, liberty, **or** property.) Informal English sometimes puts a conjunction between the first and second, *and* between the second and third. (Life **or** liberty **or** property.) Sometimes you see a triplet with no conjunction. (Life, liberty, property.) But you rarely if ever see a triplet's conjunction separate the first and second parts

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[108] *Grecian Magnesite Mining, Industrial & Shipping Co., SA v. Commissioner*, 926 F.3d 819, 824 (D.C. Cir. 2019); *see also Lockhart v. United States*, 136 S. Ct. 958, 962 (2016); ANTONIN SCALIA & BRYAN A. GARNER, *Reading Law: The Interpretation of Legal Texts* 144-46 (2012).

[109] ANTONIN SCALIA & BRYAN A. GARNER, *Reading Law: The Interpretation of Legal Texts* 176 (2012).

[110] *Id.*

without also separating the second and third parts. (Life **or** liberty property). That's why it's not:

- Stop and drop roll; or
- Red and white blue; or
- Reduce and reuse recycle; or
- Blood and sweat tears; or
- Huey and Dewey Louie.

Thus, the EPA would require us to read into § 111 a triplet written in a way no one writes.[111]

Fourth and finally, the EPA says a plain-text reading of the House Amendment would leave § 111 almost no work to do.

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[111] Whatever else the savings clause in § 112(d)(7) might save, it can't save *that*. *Cf.* 42 U.S.C. § 7412(d)(7) ("No emission standard or other requirement promulgated under this section shall be interpreted, construed or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to section 7411 of this title, part C or D, or other authority of this chapter or a standard issued under State authority.").

Note that § 112(d)(7) applies only to requirements "established pursuant to" § 111. And even the EPA says regulations cannot be established pursuant to § 111 if they target pollutants already regulated under § 112. *See also American Electric Power*, 564 U.S. at 424 n.7. So everyone agrees the § 111 amendments exclude *something* from § 111 based on § 112. And § 112(d)(7) does not cover whatever is excluded.

What's more, § 111(d)'s exclusion is more specific than § 112(d)(7)'s generalities, and the specific usually controls the general. *See* ANTONIN SCALIA & BRYAN A. GARNER, *Reading Law: The Interpretation of Legal Texts* 183 (2012).

But if so, that was a choice for Congress. After all, the 1990 Clean Air Act Amendments added more than one hundred pollutants to § 112's scope, with a mechanism for the EPA to add even more later.[112] Maybe Congress thought § 111(d) shouldn't be much more than a rarely used gap-filler in light of a beefed up § 112 — at least until Congress passed another law saying otherwise.

Of course, in the end, it doesn't matter what Congress was *thinking*.[113] "It is the *law* that governs, not the intent of the lawgiver."[114] That's because, among other reasons, "it is simply incompatible with democratic government, or indeed, even with fair government, to have the meaning of a law determined by what the lawgiver meant, rather than by what the lawgiver promulgated."[115]

Thus, an oddity of timing doesn't trigger *Chevron* deference.[116] Nor does ambiguity arise every time an agency wishes a statutory provision did more work than it does. When statutory text informed by structure and context is clear, "that is the end of the matter."[117]

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[112] Pub. L. No. 101-549, § 301, 104 Stat. 2399, 2532-37 (1990).

[113] *Cf. Gutierrez-Brizuela*, 834 F.3d at 1153 (Gorsuch, J., concurring) ("Trying to infer the intentions of an institution composed of 535 members is a notoriously doubtful business under the best of circumstances.").

[114] Antonin Scalia, *Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws, in* A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 3, 17 (Amy Gutmann ed., 1997).

[115] *Id.*

[116] *Cf.* Public Health & Environmental Respondent-Intervenors' Br. at 10-11.

[117] *Chevron*, 467 U.S. at 842.

* * *

This case touches on some of administrative law's most consequential, unresolved issues. What is the reach of *Massachusetts v. EPA*? What is the meaning of a major question? What are the limits of congressional delegation?

Each of those issues — and a dozen or two more — might have mattered if the EPA had relied on a section of the Clean Air Act other than § 111 to promulgate both rules at issue in this case. But a 1990 amendment to § 111 excluded a category of regulations from § 111's scope. And because that category covers the regulations challenged today, those other legal questions are academic.

Both houses of Congress voted that amendment — the House Amendment — into law. And as explained above, if it conflicts with the Senate-proposed amendment to § 111, the Senate Amendment was a drafter's error.

On the other hand, if the House and Senate Amendments can coexist, the House Amendment simply excludes from § 111's scope a category of regulations in addition to the regulations excluded by the Senate Amendment.

Either way, the law precludes what the House Amendment precludes. And the House Amendment precludes § 111 regulations of coal-fired power plants already covered by § 112.

Therefore, the EPA correctly repealed the 2015 Rule, but its replacement rule improperly applied § 111 to coal-fired power plants already regulated under § 112.

Those conclusions lead to this respectful concurrence in part, concurrence in the judgment in part, and dissent in part.[118]

[118] The majority's thoughtful opinion (I) describes this case's regulatory and procedural history; (II) vacates the 2019 Rule; (III.A) rejects most of the Coal Petitioners' arguments, including their contention that the EPA cannot use § 111 to regulate carbon emissions from power plants already regulated under § 112; (III.B) dismisses the Robinson Petitioners' challenge for lack of standing; (IV) vacates the EPA's implementing regulations for emission guidelines promulgated under § 111(d); (V) describes the remedy; and (VI) concludes. I concur in part of the judgment with respect to Part II, concur with respect to Part III.B, and concur in the judgment with respect to Part IV.

Message

From: Dunham, Sarah [Dunham.Sarah@epa.gov]
Sent: 1/29/2021 8:31:15 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]; Edwards, Jonathan [Edwards.Jonathan@epa.gov]
CC: Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Shaw, Betsy [Shaw.Betsy@epa.gov]; Campbell, Ann [Campbell.Ann@epa.gov]
Subject: RE: Jobs Package Transportation Ideas
Attachments: Jobs Package_Transportation.docx

Sure, highlighted in yellow are the additional suggestions, as well as the additional details we are suggesting for ideas that were specified in the WH power point (for example on rebates). Still however in the format of the WH categories

Ex. 5 Deliberative Process (DP)

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Friday, January 29, 2021 3:17 PM
To: Dunham, Sarah <Dunham.Sarah@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Edwards, Jonathan <Edwards.Jonathan@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: RE: Jobs Package Transportation Ideas

Thanks, Sarah. Would you able to highlight in yellow the changes OTAQ added? Thanks.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Dunham, Sarah <Dunham.Sarah@epa.gov>
Sent: Friday, January 29, 2021 2:47 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Edwards, Jonathan <Edwards.Jonathan@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Jobs Package Transportation Ideas

Ex. 5 Deliberative Process (DP)

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Thursday, January 28, 2021 9:14 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Grundler, Christopher

<grundler.christopher@epa.gov>; Edwards, Jonathan <Edwards.Jonathan@epa.gov>
Subject: FW: docs CLOSE HOLD

For discussion at our 9:15 AM, for a quick day-of deliverable. Thanks.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Utech, Dan <Utech.Dan@epa.gov>
Sent: Thursday, January 28, 2021 8:32 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Garbow, Avi <Garbow.Avi@epa.gov>; Fox, Radhika <Fox.Radhika@epa.gov>
Cc: Cassady, Alison <Cassady.Alison@epa.gov>
Subject: docs

Joe and Avi – docs attached. Radhika, I should explain what these are so let me know if you have any time this evening.
Best, Dan

Message

From: Campbell, Ann [Campbell.Ann@epa.gov]
Sent: 1/25/2021 8:18:52 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: RE: OAR briefing for Regan

Great, let me know when you have a few moments an I can give you a call.

Ann (Campbell) Ferrio
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 566 1370

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Monday, January 25, 2021 3:18 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: RE: OAR briefing for Regan

Yes. Of course. We probably need some specificity from Alison and Team Regan.

From: Campbell, Ann <Campbell.Ann@epa.gov>
Sent: Monday, January 25, 2021 3:10 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: RE: OAR briefing for Regan

Could we connect on this?

Ann (Campbell) Ferrio
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 566 1370

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Monday, January 25, 2021 1:16 PM
To: Cassady, Alison <Cassady.Alison@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: RE: OAR briefing for Regan

Ann is the OAR chief of staff and Delaney is the chief of scheduling. We will confirm back to you.

From: Cassady, Alison <Cassady.Alison@epa.gov>
Sent: Monday, January 25, 2021 1:14 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: RE: OAR briefing for Regan

I don't see why not! Is there someone in your office who could serve as the point person for scheduling for all relevant air folks—someone that Kathleen could contact to help herd the cats?

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Monday, January 25, 2021 1:13 PM
To: Cassady, Alison <Cassady.Alison@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: RE: OAR briefing for Regan

Tomas Carbonell. Can we consider career staff as well? Thanks, Alison.

From: Cassady, Alison <Cassady.Alison@epa.gov>
Sent: Monday, January 25, 2021 1:11 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: OAR briefing for Regan

Hi Joe,

I am working with Kathleen, Secretary Regan's scheduler, to find slots of time for him to receive the program briefings he wants. Who do you want to participate in the air/climate briefing from OAR—anyone besides you?

Thanks,

Alison

Alison L. Cassady
Deputy Chief of Staff for Policy
U.S. Environmental Protection Agency
Cell: (202) 941-6036

Message

From: Adhar, Radha [Adhar.Radha@epa.gov]
Sent: 1/21/2021 9:31:22 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]
CC: Hoffer, Melissa [Hoffer.Melissa@epa.gov]; Utech, Dan [Utech.Dan@epa.gov]; Cassady, Alison [Cassady.Alison@epa.gov]
Subject: RE: CRA -- Oil and Gas Methane Repeal

Can I get a call for us on the books?

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Thursday, January 21, 2021 4:17 PM
To: Adhar, Radha <Adhar.Radha@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Utech, Dan <Utech.Dan@epa.gov>; Cassady, Alison <Cassady.Alison@epa.gov>
Subject: RE: CRA -- Oil and Gas Methane Repeal

Ex. 5 Deliberative Process (DP)

From: Adhar, Radha <Adhar.Radha@epa.gov>
Sent: Thursday, January 21, 2021 4:06 PM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Utech, Dan <Utech.Dan@epa.gov>; Cassady, Alison <Cassady.Alison@epa.gov>
Subject: RE: CRA -- Oil and Gas Methane Repeal

Hey y'all,

Ex. 5 Deliberative Process (DP)

Radha

From: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Thursday, January 21, 2021 1:42 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Utech, Dan <Utech.Dan@epa.gov>; Adhar, Radha <Adhar.Radha@epa.gov>; Cassady, Alison <Cassady.Alison@epa.gov>
Subject: Re: CRA -- Oil and Gas Methane Repeal

Ex. 5 Deliberative Process (DP)

Tomás

Sent from my iPhone

On Jan 21, 2021, at 1:09 PM, Goffman, Joseph <Goffman.Joseph@epa.gov> wrote:

Ex. 5 Deliberative Process (DP)

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Thursday, January 21, 2021 1:06 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Utech, Dan <Utech.Dan@epa.gov>; Adhar, Radha <Adhar.Radha@epa.gov>; Cassady, Alison <Cassady.Alison@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: Re: CRA -- Oil and Gas Methane Repeal

Ex. 5 Deliberative Process (DP)

Melissa

Sent from my iPhone

On Jan 21, 2021, at 1:00 PM, Goffman, Joseph <Goffman.Joseph@epa.gov> wrote:

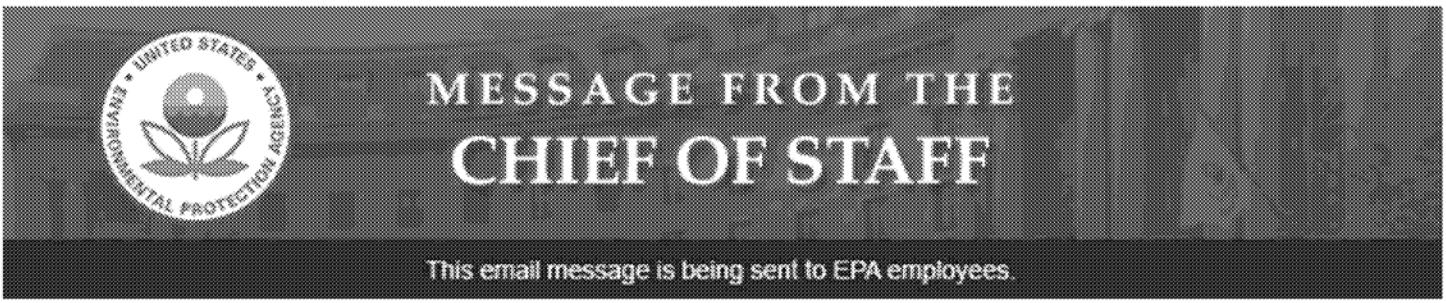
Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thanks.

Message

From: Message from the Chief of Staff [messagefromthechiefofstaff@epa.gov]
Sent: 1/28/2021 8:16:53 PM
To: Message from the Chief of Staff [messagefromthechiefofstaff@epa.gov]
Subject: Information on yesterday's Executive Orders and the latest political appointees to join EPA



Dear Colleagues,

Yesterday, President Biden took executive action to tackle the climate crisis at home and abroad while creating good-paying union jobs and equitable clean energy future, building modern and sustainable infrastructure, restoring scientific integrity and evidence-based policymaking across the federal government, and re-establishing the President's Council of Advisors on Science and Technology.

Yesterday's Executive Order on Tackling the Climate Crisis at Home and Abroad takes bold steps to combat the climate crisis and directs the Biden-Harris Administration to:

- Center the Climate Crisis in U.S. Foreign Policy and National Security Considerations
- Take a Whole-of-Government Approach to the Climate Crisis
- Secure Environmental Justice and Spur Economic Opportunity
- Leverage the Federal Government's Footprint and Buying Power to Lead by Example
- Rebuild Our Infrastructure for a Sustainable Economy
- Advance Conservation, Agriculture, and Reforestation
- Revitalize Energy Communities

The new order formalizes President Biden's commitment to make environmental justice a part of the mission of every agency by directing federal agencies to develop programs, policies, and activities to address the disproportionate health, environmental, economic, and climate impacts on disadvantaged communities.

President Biden also signed an important Presidential Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking to send 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. The memorandum directs agencies to "make evidence-based decisions guided by the best available science and data."

Through another new Executive Order also signed yesterday, President Biden also established the President's Council of Advisors on Science and Technology. Leaders from across the Biden-Harris Administration, including the President and his senior advisors, will seek input, advice and the best-available science, data, and scientific and technological information from scientists, engineers and other experts in these areas.

These actions are at the heart of the work we do at the EPA. Our work in every program office and region will be grounded and guided by science as we work together to achieve these goals and to protect public health and the environment on behalf of all Americans.

I continue to be impressed by the team of dedicated professionals who we have had the privilege of getting to know over the past week.

As we continue to build out our leadership team and continue to work with all of you, I want to direct you to a new transition resource on the EPA intranet site. The site provides employees with transition-related information and introduces members of the new administration. We will be updating the site on an as-needed basis to share all relevant transition related information with you.

Finally, I want to take this opportunity to introduce additional members of our leadership team who have joined the agency this week. A list of these new personnel is provided at the end of this email.

Thank you again for your support and patience as we work through this transition. We are truly honored to be working alongside you.

Sincerely,

Dan Utech
Chief of Staff

Members of the incoming EPA leadership team who onboarded this week:

Dorien Paul Blythers, Deputy Chief of Staff for Operations
Dorien comes to EPA with over 10 years of experience in electoral and issue campaigns. Most recently he was the Political Director for End Citizens United & Let America Vote. He also served as a Regional Political Director for Kamala Harris For The People, maintaining national, state, and local relationships on behalf of the candidate. Dorien previously served as Public Engagement Program Manager for Climate Action Campaign, serving as chief relationship manager with external partners for African American, Faith, and Millennial constituencies. Dorien credits his commitment to social and environmental justice to Howard University- where he studied political science and was elected Student Body President for the College of Arts & Sciences.

Avi Garbow, Senior Counselor to the Administrator
Avi Garbow is a nationally-recognized environmental leader, lawyer, and advocate with decades of experience tackling the most critical threats to our air, water, and lands. Honored by the National Law Journal as an Energy and Environmental Trailblazer, Avi has most recently been serving as Patagonia's Environmental Advocate. Avi served as General Counsel at EPA from 2013-2017 - the longest to hold that position - and prior to that served as the Agency's Deputy General Counsel. Avi also helped lead the environmental practice of a major international law firm, was a distinguished federal environmental crimes prosecutor in the U.S. Department of Justice, and began his environmental law career nearly three decades ago in EPA's enforcement office. Avi received the Robert F. Kennedy Award for Public Service from the University of Virginia School of Law, obtained a master's degree in marine affairs, and has served on the Boards of non-profits and the Organic Trade Association.

Kathleen Lance, Director of Scheduling and Advance, Office of the Administrator

Kathleen Lance joins the EPA from the North Carolina Department of Environmental Quality where she served as special assistant to Secretary Michael Regan. In that role, she managed executive level support for the department leadership, playing a central role in the operations of a $2 billion, 1,600-person department. She has held multiple roles within the department and previously worked for the Arc of Hunterdon County, a non-profit organization. She is a graduate of Elon University where she studied political science.

Fernando Mercado-Violand, Deputy White House Liaison
Fernando graduated from the University of Virginia in 2014 with degrees in history and government. He began his career as an organizer for Senator Mark Warner's first re-election campaign, then served as a community organizer in Northern Virginia with the Legal Aid Justice Center working on health care and immigration issues. In 2016, he worked for Hilary Clinton's campaign in Iowa, Texas and Virginia. In 2017, he was the political director for Virginia Attorney General Mark Herring's campaign. In 2018, he took the role of policy coordinator for the Virginia House Democratic Caucus and later went on to serve as the first Director of Latino Outreach for Governor Ralph Northam. Most recently, he was the Deputy State and Political Director for the Biden-Harris campaign in Virginia. Fernando was born in Bolivia, immigrated to the U.S. with his family when he was 5 years old, and is a die-hard UVA basketball fan.

Appointment

From: Adhar, Radha [Adhar.Radha@epa.gov]
Sent: 1/28/2021 8:16:17 PM
To: Utech, Dan [Utech.Dan@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]; Eiler, Brian (EPW) [Brian_Eiler@epw.senate.gov]; Repko, Mary Frances (EPW) [MaryFrances_Repko@epw.senate.gov]; Gillam, Laura Haynes (EPW) [Laura_Gillam@epw.senate.gov]

Subject: To Discuss CRA
Location: Microsoft Teams Meeting

Start: 1/29/2021 9:30:00 PM
End: 1/29/2021 10:00:00 PM
Show Time As: Tentative

Required Attendees: Utech, Dan; Goffman, Joseph; Eiler, Brian (EPW); Repko, Mary Frances (EPW); Gillam, Laura Haynes (EPW)

Microsoft Teams meeting

Join on your computer or mobile app
Click here to join the meeting

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Learn More | Meeting options

Message

From: Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]
Sent: 1/27/2021 10:20:20 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Hoffer, Melissa [Hoffer.Melissa@epa.gov]
CC: Holden, Allison [Holden.Allison@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Subject: draft language for 5:30pm call re appropriations
Attachments: appropriations language to MH JG draft.docx

Joe and Melissa – Attached is a short memo Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Dimple

Message

From: Bowles, Jack [Bowles.Jack@epa.gov]
Sent: 1/29/2021 6:58:43 PM
Subject: State & Local Weekly Report for January 29, 2021

State & Local Weekly

January 29, 2021

CURRENT and UPCOMING

Introductory Meetings with Intergovernmental Associations

The Office of Congressional and Intergovernmental Relations is pleased to welcome Casey Katims as the new Deputy Associate Administrator of Intergovernmental Relations. Casey comes to EPA from the office of Gov. Jay Inslee of Washington, where he served as the Director of Federal and Inter-state Affairs. During the next few weeks, Casey and OIR staff will hold introductory meetings with numerous intergovernmental associations. This week, meetings were held with the National Governors Association, the Coalition of Northeastern Governors, and the Environmental Council of States. On the schedule for next week so far are the Western Governors Association, the U.S. Climate Alliance, the African-American Mayors Association, the U.S. Conference of Mayors, and the National League of Cities.

Upcoming Conferences and Events

- National Association of State Energy Officials - Energy Policy Outlook Virtual Conference (Feb. 2-5, 2021)
- National Association of Regional Councils Virtual Conference of Regions, Feb. 8-12, 2021
- African American Mayors Association Virtual Board Meeting, Feb. 9, 2021
- National Governors Association Winter Meeting (late Feb./TBD). Regional Governors Associations may also convene at this time. All are likely virtual.
- National Association of Clean Water Agencies Virtual Event, Feb. 24-25, 2021
- National League of Cities Virtual Congressional City Conference, March 7-10, 2021
- Environmental Council of States Spring Virtual Meeting, March 16-17, 2021
- National Association of Counties Virtual Legislative Conference, March 8-26, 2021

Municipal Ombudsman Clean Water Act Corner

Meetings:

- January 23 – USCM Winter Meeting
- January 28 – National Water Program Resilience Workgroup Meeting (internal)
- March 2 (new date)– EPA's CWA Integrated Planning Roundtable for State NPDES Permit Writers (OW)

Resources:

- Five Star and Urban Waters Restoration Grant Program 2021 Request for Proposals Full Proposal Due Date: **January 28, 2021**
- National Municipal Stormwater Alliance's Community-Based Public-Private Partnership (CBP3) Tech Support: **February 10, 2021** [External opportunity]
- EPA's NEW Innovative Water Infrastructure Workforce Development Grant Program applications due **March 26, 2021**

- Newly posted Wastewater Technology Clearinghouse - helping communities make informed choices about innovative, alternative, and reuse wastewater technologies
- Enhanced Clearinghouse for Environmental Finance – expanded resources from air and land programs added to OW's Water Finance Clearinghouse platform
- Technical Assistance for CWA Integrated Planning available until **August 2021**: For state NPDES permitting authorities reviewing a CWA integrated plan or municipalities in the process of alternatives analysis. See flyer for more details

Webcasts:

- February 2, 2-3 pm ET: USACE Call for FY22 Interagency Nonstructural Flood Risk Management Proposals (Floodplain Management Services Program): Join by using this link during meeting time: Join the webinar
- February 3, 2-3pm ET: FHWA/EPA present - EPA's Transportation Stormwater Permit (MS4) Compendium
- February 3, 2-4pm : WateReuse hosts Stormwater Capture Drivers, Impediments, and Future Visions
- February 9, 1:30-2:30 ET: Intro to ECHO(Enforcement and Compliance History Online) : How Do I Search For...?
- February 23, 2-3:30 pm ET: WIFIA Eligibility Webinar

(Contact: Jamie Piziali, Municipal Ombudsman)

Other Events & Training Opportunities for State & Local Officials

- On Tuesday, February 2, the Office of RD will host the second of two State & Local Listening Sessions on EPA Wildland Fire Research. ORD will provide an overview of their wildland fire research, resources, and tools. The bulk of the session will consist of representatives from state, regional, and local agencies/organizations providing remarks on their top challenges and science needs related to wildland fires and smoke and how EPA research can better align to meet their needs. 15 organizations from Western states (Regions 8, 9 and 10) have signed up to make remarks.

- On Thursday, February 4, ORD will host the bimonthly EPA Science Models & Tools Training Webinar on the ECOTOXicology Knowledgebase (ECOTOX). ECOTOX is a publicly available web-based database providing curated single-chemical toxicity data for aquatic life, terrestrial plants and wildlife. This webinar will provide an overview of ECOTOX including a summary of the literature search, review and data curation procedures, and detailed examples of querying/downloading data using the interactive 'Explore' module to investigate and visualize the data available, the 'Search' module to directly query specific species, chemicals or effects, and the 'Help' page to access documentation on processes, controlled vocabularies and definitions. Register and join the ECOTOX Training webinar.

- EPA/OLEM's RE-Powering America's Land Initiative: **Energy + Land = Resilience** is co-hosting a webinar on February 3 for interested state and local officials This webinar will be presented in partnership with Boulder County's Office of Sustainability; Climate Action and Resilience and the National Renewable Energy Lab (NREL). The webinar will discuss how renewable energy on contaminated lands can contribute to community climate and energy resiliency strategies. You can register for the webinar at Eventbrite: https://www.eventbrite.com/e/us-epa-energy-land-resiliency-webinar-tickets-136970908675

The Local Government Advisory Committee (LGAC) and the Small Communities Advisory Subcommittee (SCAS) held successful joint public meetings on Wednesday, December 9, 2020. More than 25 elected and appointed officials from states, local governments, tribes, and territories participated. At the meeting, committee members finalized and approved letters of advice/recommendation to the EPA on the following topics: 1) Air and Radiation 2022-2023 National Program Guidance; 2) 2020 Financial Capability Assessment for Clean Water Act compliance; 3) Food Waste Management; and 4) Community-Based Environmentalism. All letters have since been submitted to EPA for responses. The letters are posted on the LGAC website, and a meeting summary will be posted shortly.

The 2021 solicitation process for new members and reappointments to LGAC and SCAS will begin soon. Watch the LGAC website for more details.

More information on the LGAC is available here: https://www.epa.gov/ocir/local-government-advisory-committee-lgac.

OCIR would like to thank Victoria Ludwig for her service as the LGAC's and SCAS's Acting Designated Federal Official for the past six months. She made her mark with a very successful December 2020 full LGAC meeting, four letters of recommendation to the Administrator containing numerous recommendations, and steady management of three LGAC workgroups, the Executive Committee, and the SCAS. Victoria is returning to OAR's Climate Change Division, where she will continue to work with state and local governments on addressing the climate crisis. Thank you Victoria, and you will be missed.

RECAP

USCM Winter Meeting

The United States Conference of Mayors hosted its 89th Winter Meeting virtually from January 21-23. This meeting is usually held in Washington, DC. Mayors representing cities with populations of 30,000 or greater convened in sessions throughout the conference to engage with and hear from Federal Agency representatives, Administration officials, and private partners. Mayor Greg Fischer (Louisville, KY) serves as USCM President. Mayor Nan Whaley (Dayton, OH) and Mayor Francis X. Suarez (Miami, FL), serve as Vice President and Second Vice President, respectively.

The Environment Committee (Mayor Rick Kriseman, St. Petersburg, FL, Chair; Mayor David J. Berger, Vice Chair for Water), Energy Committee (Mayor Jon Mitchell, New Bedford, MA, Chair; Mayor Kirk Caldwell, Honolulu, HI, Vice Chair; Mayor Chris Watts, Denton, TX, Vice Chair for Public Power), and the Mayors Water Council (Mayor David J. Berger, Lima, OH, Chair), met jointly on Saturday, January 23rd. The "City Environmental Priorities" session focused on climate, water , and recycling, and how programs and efforts in these areas can be improved with the assistance of Congress, EPA, and the private sector.

Casey Katims, Deputy Associate Administrator for Intergovernmental Relations (OCIR) was introduced to the mayors and, in brief remarks, emphasized his commitment to working closely with USCM and supporting strong partnerships between EPA and the communities represented by the Association. In the "New EPA Tools to Help Cities: EPA Assessment of Integrated Planning and Action on Affordability Guidance" presentation, Andrew Sawyers, Director, Office of Wastewater Management (Office of Water), and Jamie Piziali, Municipal Ombudsman, brought remarks and engaged in dialogue on EPA's Report to Congress on Integrated Planning that is anticipated this year. They also receive positive and supportive messages from the mayors on the 2021 Financial Capability (FCA) Guidance Update.

US Representative Greg Stanton (AZ), former Mayor of Phoenix, and former Chair of USCM's Environment Committee, is confirmed addressed the session. He reiterated his pledge to continue as an advocate for the many priorities of municipalities as Congress considers legislation addressing such critical areas as Water Infrastructure, Climate Change, and Revitalizing Communities.

The session also featured a panel moderated by former EPA Administrator Carol Browner. The " Reducing Our Plastic Footprint Through Innovative Partnerships" panel highlighted the importance of public-private partnerships, especially when it comes to reducing plastic in the environment. Mayors heard about the *Every Bottle Back* initiative, which is a comprehensive plan to reduce the beverage industry's plastic footprint by creating a more circular economy for bottle collection, and for remaking their 100% recyclable plastic bottles. Katherine Lugar, President and CEO, American Beverage Association, and Sheila Bonini, Senior Vice President, Private Sector Engagement, World Wildlife Fund, were the panelists, and they entertained questions and engaged in dialogue.

Resolutions are not considered during the Winter Meeting. However, Policy Committee and Task Force Chairs generally convene meetings that feature presenters from Federal Agencies, the Administration, and Capitol Hill. Among the meetings that featured Administration officials was a "Climate Conversation with Special Envoy John Kerry and Climate Advisor [former EPA Administrator] Gina McCarthy" that also took place on Saturday, January 23, and that also provided a forum for extensive dialogue. Transportation Secretary-designate and former South Bend, IN Mayor Pete Buttigieg spoke to the Transportation Committee on Saturday as well. Buttigieg spoke of the imperativeness of sound investment and the employment of innovations to address the nation's transportation infrastructure. "Mayor Pete" noted, among other things, the important role that effective and comprehensive planning for transportation infrastructure upgrades and expansion should also include protecting the environment and public health as well. USCM is scheduled to convene its Annual Meeting June 19-22 in Austin, TX. Resolutions are considered at the annual summer meeting. *(Contact: M. Arnita Hannon Christmon)*

Jack Bowles
Director of State & Local Relations
U.S. Environmental Protection Agency
202-564-3657 (office) | 202-306-5196 (mobile)

Message

From: Harris, Sincere [Harris.Sincere@epa.gov]
Sent: 2/1/2021 12:48:20 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
CC: Mercado Violand, Fernando [MercadoViland.Fernando@epa.gov]
Subject: Incoming OAR Appointees
Attachments: Nunez, Alejandra - Ale Núñez-Luna.pdf; Kim Eunjung - Eunjung Kim.pdf

Good morning Joe,

Alejandra Nuñez and Eunjung Kim are joining your office today as Deputy Assistant Administrator for Mobile Sources and Special Assistant, respectively. Attached are their resumes. Their orientation is at 8:30AM and they will likely spend much of the morning getting set up with their technology. I will also connect you on their EPA email accounts.

Nunez, Alejandra - Ale Núñez-Luna....

Kim Eunjung - Eunjung Kim.pdf

Sinceré A. Harris
White House Liaison
Environmental Protection Agency
(202) 570-5675

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Message

From: Katims, Casey [Katims.Casey@epa.gov]
Sent: 3/12/2021 2:19:24 PM
To: Lance, Kathleen [Lance.Kathleen@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Nunez, Alejandra [Nunez.Alejandra@epa.gov]
Subject: FW: Ozone Transport Commission Welcome Letter and Request for a Meeting
Attachments: 20210312-OTC-Welcome-Letter-Administrator-Regan.pdf

Flag: Follow up

See attached invite for Administrator Regan.

Ex. 5 Deliberative Process (DP)

From: Szaro, Deb <Szaro.Deb@epa.gov>
Sent: Friday, March 12, 2021 8:03 AM
To: Katims, Casey <Katims.Casey@epa.gov>
Cc: Gutro, Doug <Gutro.Doug@epa.gov>; Hamjian, Lynne <Hamjian.Lynne@epa.gov>
Subject: Fwd: Ozone Transport Commission Welcome Letter and Request for a Meeting

Fyi

Sent from my iPhone

Begin forwarded message:

> **From:** Paul Miller <pmiller@nescaum.org>
> **Date:** March 12, 2021 at 7:23:12 AM EST
> **To:** "Regan, Michael" <Regan.Michael@epa.gov>
> **Cc:** "Szaro, Deb" <Szaro.Deb@epa.gov>, "Mugdan, Walter" <Mugdan.Walter@epa.gov>, "Esher, Diana" <Esher.Diana@epa.gov>, "Goffman, Joseph" <Goffman.Joseph@epa.gov>, Ben Grumbles <ben.grumbles@maryland.gov>, betsey.wingfield@ct.gov, Chris LaLone <christopher.lalone@dec.ny.gov>, Christine Kirby <Christine.Kirby@state.ma.us>, collin.burrell@dc.gov, Craig Wright <Craig.Wright@des.nh.gov>, "David.Fees" <David.Fees@delaware.gov>, david.paylor@deq.virginia.gov, "Steitz, Francis" <francis.steitz@dep.nj.gov>, Glenn Keith <glenn.keith@state.ma.us>, Heidi.Hales@vermont.gov, Jared Snyder <Jared.Snyder@dec.ny.gov>, Jeff Crawford <Jeff.S.Crawford@maine.gov>, Jeffrey.Underhill@des.nh.gov, karen slattery <karen.slattery@dem.ri.gov>, Katie Dykes <Katie.dykes@ct.gov>, kelly.crawford@dc.gov, "Kenneth.Ratzman" <Kenneth.Ratzman@dep.nj.gov>, "Ramamurthy, Krishnan" <kramamurth@pa.gov>, "Grandchamp, Laurie (DEM)" <laurie.grandchamp@dem.ri.gov>, mahammond <mahammond@pa.gov>, martin.suuberg@state.ma.us, melanie.loyzim@maine.gov, Michael Dowd <MGDowd@deq.virginia.gov>, Patrick McDonnell <pmcdonnell@pa.gov>, Paul Baldauf <paul.baldauf@dep.nj.gov>, Peter Walke <Peter.Walke@vermont.gov>, Ric Pirolli <Ric.Pirolli@ct.gov>, Shawn Garvin <Shawn.Garvin@delaware.gov>, Stephanie Cooper <stephanie.cooper@mass.gov>, "george.aburn" <george.aburn@maryland.gov>, Tamera Thompson <Tamera.Thompson@deq.virginia.gov>, terry.gray@dem.ri.gov, Tommy Wells <tommy.wells@dc.gov>, "Babbidge, Tracy" <tracy.babbidge@ct.gov>, "Trivedi, Viren" <vtrivedi@pa.gov>, Tamera Thompson <tmthompson@deq.virginia.gov>
> **Subject: Ozone Transport Commission Welcome Letter and Request for a Meeting**
>
> Dear Administrator Regan:

Please find attached a letter from the Ozone Transport Commission (OTC) congratulating you on your arrival at EPA, and welcoming you as EPA's lead member to the OTC. The OTC commissioners would like the opportunity to meet with you in the near future, and look forward to working with you on the priorities outlined in the letter.

Sincerely,

Paul J. Miller, Executive Director
Ozone Transport Commission
89 South Street, Suite 602
Boston, MA 02111
Ph: 617-259-2016

Message

From: Adhar, Radha [Adhar.Radha@epa.gov]
Sent: 2/1/2021 3:52:39 AM
To: Michael Regan Ex. 6 Personal Privacy (PP) ; Utech, Dan [Utech.Dan@epa.gov]
CC: Lance, Kathleen [Lance.Kathleen@epa.gov]; Hamilton, Lindsay [Hamilton.Lindsay@epa.gov]; Cassady, Alison [Cassady.Alison@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: RE: Hearing Materials

Secretary Regan,

Can you please let us know if you would like us to include anyone from your navigator team tomorrow?

Have a great night,
Radha

From: Michael Regan Ex. 6 Personal Privacy (PP)
Sent: Sunday, January 31, 2021 10:37 PM
To: Utech, Dan <Utech.Dan@epa.gov>
Cc: Lance, Kathleen <Lance.Kathleen@epa.gov>; Adhar, Radha <Adhar.Radha@epa.gov>; Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Cassady, Alison <Cassady.Alison@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: Re: Hearing Materials

Thank you Dan and Team, looking forward to it ...

Sent from my iPhone

On Jan 31, 2021, at 8:36 PM, Utech, Dan <Utech.Dan@epa.gov> wrote:

Secretary Regan –

Attached please find:

1) A document with background on the EOs and a few key Q and A.
2) WH fact sheet and Q and A on this week's climate EO. These are FYI – rather than documents that I suggest you study closely.

See you online tomorrow.

Best, Dan

<Hearing materials 1-31.docx>
<FACT SHEET - Climate and Science EOs 01.27.21.pdf>
<Jan 27 EOs Climate and Science TPs.pdf>

Message

From: Utech, Dan [Utech.Dan@epa.gov]
Sent: 2/1/2021 1:36:43 AM
To: Ex. 6 Personal Privacy (PP)
CC: Lance, Kathleen [Lance.Kathleen@epa.gov]; Adhar, Radha [Adhar.Radha@epa.gov]; Hamilton, Lindsay [Hamilton.Lindsay@epa.gov]; Cassady, Alison [Cassady.Alison@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Hearing Materials
Attachments: Hearing materials 1-31.docx; FACT SHEET - Climate and Science EOs 01.27.21.pdf; Jan 27 EOs Climate and Science TPs.pdf

Secretary Regan –

Attached please find:

1) A document with background on the EOs and a few key Q and A.
2) WH fact sheet and Q and A on this week's climate EO. These are FYI – rather than documents that I suggest you study closely.

See you online tomorrow.

Best, Dan

Message

From: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
Sent: 1/21/2021 8:16:15 PM
To: Nishida, Jane [Nishida.Jane@epa.gov]; Utech, Dan [Utech.Dan@epa.gov]; Cassady, Alison [Cassady.Alison@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]; Garbow, Avi [Garbow.Avi@epa.gov]
CC: Payne, James (Jim) [payne.james@epa.gov]
Subject: Ex. 5 Deliberative Process (DP)
Attachments:

Importance: High

Privileged and Confidential—ACP/WP

Hi all,

Ex. 5 Deliberative Process (DP)

Thanks,
Melissa

Message

From: Cassady, Alison [Cassady.Alison@epa.gov]
Sent: 1/22/2021 7:28:44 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: FW: As described. This needs quick attention.

Importance: High

Joe,

Is this the case you and Melissa were discussing today (regarding Vickie Patton), or is this a different case?

From: Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>
Sent: Friday, January 22, 2021 2:16 PM
To: Cassady, Alison <Cassady.Alison@epa.gov>
Cc: Simons, Andrew <Simons.Andrew@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>
Subject: FW: As described. This needs quick attention.
Importance: High

Hi Alison, we haven't had a chance to meet yet. I received this from Michal (whom I've known for a few years) who wanted to alert new leadership on this issue. She asked that I share with you. Its my understanding that Melissa H is recused from this matter. Copying Andy Simons and Jim Payne in OGC who are familiar with this issue.

Thanks for your help

Jennifer

Jennifer Orme-Zavaleta, PhD
Acting Assistant Administrator, and
Principal Deputy Assistant Administrator
Office of Research and Development
US Environmental Protection Agency

DC
Ce Ex. 6 Personal Privacy (PP)

From: Jennifer Orme-Zavaleta <jormezavaleta@att.net>
Sent: Friday, January 22, 2021 2:05 PM
To: Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>
Subject: Fwd: As described. This needs quick attention.

Sent from my iPhone

Begin forwarded message:

> **From:** "Freedhoff, Michal (EPW)" <Michal_Freedhoff@epw.senate.gov>
> **Date:** January 22, 2021 at 1:37:37 PM EST
> **To:** Jennifer Orme-Zavaleta <jormezavaleta@att.net>
> **Subject: As described. This needs quick attention.**

We understand that EPA's Acting General Counsel has requested that USDOJ immediately seek to hold in abeyance any litigation concerning EPA rules listed in President Biden's *Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, including EPA's recent rule entitled*Strengthening Transparency in Regulatory Science*, 86 Fed. Reg. 469 (Jan. 6, 2021). That rule is presently subject to challenge in federal district court in Montana, *see Environmental Defense Fund v. EPA*, Case No. 21-cv-00003-BMM. Plaintiffs in that case have moved that the district court enter judgment on or before January 28, 2021, invalidating ex-Administrator Wheeler's decision to make this rule immediately effective upon publication in the Federal Register. On January 19, 2021, EPA filed a response in opposition to plaintiffs' motion, and that motion is now fully briefed. If the district court sides with plaintiffs, the rule will not take effect until Friday, February 5, 2021. In that event, EPA will have the option to postpone the effective date under Section 705 of the APA, and/or freeze the rule's effective date pursuant to President Biden's memorandum*Regulatory Freeze Pending Review*. Further, the legal issue at the heart of the pending motion before the district court--whether this rule is a "substantive rule"--bears on the question whether the rule is subject to the Congressional Review Act, and whether the rule itself is valid. However the district court disposes of the pending motion next week, it will provide needed clarity and likely expand the options available to EPA in complying with the recent Executive Order. Conversely, an abeyance in the Montana litigation would permanently foreclose EPA from postponing the rule because it will be allowed to take effect without challenge. Under these unique circumstances, we urge EPA to allow this litigation to proceed to disposition of plaintiffs' motion, after which time the agency can assess the appropriate path forward.

Sent from my iPhone

Message

From: Adhar, Radha [Adhar.Radha@epa.gov]
Sent: 1/31/2021 10:00:07 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Re: Heads Up on Moot

Hooray! That's great news. Thanks for letting me know Joe.

Sent from my iPhone

On Jan 31, 2021, at 4:29 PM, Goffman, Joseph <Goffman.Joseph@epa.gov> wrote:

Seems that they've moved the conflicting meeting, so I can attend the Moot for the full hour. Thanks.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Goffman, Joseph
Sent: Sunday, January 31, 2021 1:18 PM
To: Adhar, Radha <Adhar.Radha@epa.gov>
Subject: RE: Heads Up on Moot

You should sell tickets! Happy to join if you think it would help.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Adhar, Radha <Adhar.Radha@epa.gov>
Sent: Sunday, January 31, 2021 1:10 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: Re: Heads Up on Moot

Thank you Joe! I appreciate the heads up. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Sent from my iPhone

On Jan 31, 2021, at 1:08 PM, Goffman, Joseph <Goffman.Joseph@epa.gov> wrote:

Sorry to bother you on a Sunday, but I wanted to let you know that I have a conflict with the second 30 minutes of our Moot with Secretary Regan on Monday. So, if there is

anything in particular you need me to do, it would be great if we could get it into the first half of the session. Thanks.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

Message

From: Grundler, Christopher [grundler.christopher@epa.gov]
Sent: 1/22/2021 6:43:56 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
CC: Carbonell, Tomas [Carbonell.Tomas@epa.gov]
Subject: Draft Note on SCC

Joe—see if this is something you can work with. Let me know if you have questions or need anything else:

Vicki-

Ex. 5 Deliberative Process (DP)

I look forward to maintaining this critical collaboration between OP and OAR **Ex. 5 Deliberative Process (DP)**

Christopher Grundler, Director
Office of Atmospheric Programs
U.S. Environmental Protection Agency
202.343.9140 (o)
734.645.5221 (m)

Message

From: Elizabeth A Reicherts [elizabeth.reicherts@gm.com]
Sent: 3/15/2021 4:44:50 PM
To: utech.daniel@epa.gov; Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: GM congratulatory letter to Administrator Regan
Attachments: The Honorable Michael Regan 031521.pdf

Hi Dan and Joe,
Please find attached a congratulatory letter from Mary Barra to Administrator Regan. Mary would very much like to find 10-15 minutes to do an introductory meet and greet call if possible as well.
Best
Liz

P.S.
Dan – Look forward to working with you again! As you can obviously see I'm at GM now. And Joe, great to talk with you and the team last week. Appreciated the discussion.

Liz Reicherts

Vice President, External Affairs
Elizabeth.Reicherts@gm.com tel: 202.774.4897

Nothing in this message is intended to constitute an electronic signature unless a specific statement to the contrary is included in this message.

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March 15, 2021

The Honorable Michael Regan
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW,
Washington, DC 20004

Dear Administrator Regan,

On behalf of the entire General Motors team, I want to congratulate you on your confirmation as administrator of the U.S. EPA. As you take the helm, I hope you will consider General Motors both a resource and a strong partner.

We appreciate the Administration's leadership to address climate change and its commitment to put policies in place that help us transition to an all-electric future. We believe there are many strong alignments between the Administration's vision and GM's EV vision, which includes putting everyone into an electric vehicle while maintaining good-paying U.S. jobs.

To do that, between 2020 and 2025, GM will invest more than $27 billion in electric and autonomous vehicles. These investments will support transitioning our manufacturing facilities, such as Factory Zero in Michigan, that is entirely dedicated to EVs; battery testing lab in Warren, Michigan; and constructing a facility in Ohio with LG Energy Solution, our joint venture partner, to mass produce battery cells for our vehicles. We plan to introduce 30 EV models globally by 2025, and two thirds of them will be available in the U.S. This includes the new Chevrolet Bolt EV and Bolt EUV built in Orion, Michigan and the Cadillac Lyriq in Springhill, Tennessee.

I look forward to connecting with you to discuss the ongoing work between General Motors and the EPA to develop a strong single national standard. When it is appropriate, I would appreciate the opportunity to host you at General Motors to show you all the innovative work we are doing.

Again, congratulations on this important leadership position. I look forward to connecting soon.

Sincerely,

general motors
313.667.3520 / 300 Renaissance Center, Mail Code: 482-C39-B20 / Detroit, MI 48265

Message

From: Campbell, Ann [Campbell.Ann@epa.gov]
Sent: 1/29/2021 4:04:30 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Edwards, Jonathan [Edwards.Jonathan@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]; Shaw, Betsy [Shaw.Betsy@epa.gov]
Subject: RE: docs

Adding Betsy

Ann (Campbell) Ferrio
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 566 1370

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Friday, January 29, 2021 11:01 AM
To: Edwards, Jonathan <Edwards.Jonathan@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Fwd: docs

See below on timing. Sorry. Let's try to assemble our material by 3:30. Thanks

Sent from my iPhone

Begin forwarded message:

> **From:** "Utech, Dan" <Utech.Dan@epa.gov>
> **Date:** January 29, 2021 at 10:34:59 AM EST
> **To:** "Goffman, Joseph" <Goffman.Joseph@epa.gov>, "Garbow, Avi" <Garbow.Avi@epa.gov>, "Fox, Radhika" <Fox.Radhika@epa.gov>
> **Cc:** "Cassady, Alison" <Cassady.Alison@epa.gov>
> **Subject: RE: docs**

Ex. 5 Deliberative Process (DP)

> **From:** Utech, Dan
> **Sent:** Thursday, January 28, 2021 8:32 PM
> **To:** Goffman, Joseph <Goffman.Joseph@epa.gov>; Garbow, Avi <Garbow.Avi@epa.gov>; Fox, Radhika <Fox.Radhika@epa.gov>
> **Cc:** Cassady, Alison <Cassady.Alison@epa.gov>
> **Subject:** docs
>
> Joe and Avi – docs attached. Radhika, I should explain what these are so let me know if you have any time this evening. Best, Dan

Message

From: Katims, Casey [Katims.Casey@epa.gov]
Sent: 3/15/2021 4:39:14 PM
To: Bowles, Jack [Bowles.Jack@epa.gov]; Saddler, Melissa [Saddler.Melissa@epa.gov]; Richardson, RobinH [Richardson.RobinH@epa.gov]; Lee, Charles [Lee.Charles@epa.gov]; Tejada, Matthew [Tejada.Matthew@epa.gov]; Arroyo, Victoria [Arroyo.Victoria@epa.gov]; Nunez, Alejandra [Nunez.Alejandra@epa.gov]; Wayland, Richard [Wayland.Richard@epa.gov]; Sasser, Erika [Sasser.Erika@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Battin, Andrew [Battin.Andrew@epa.gov]; Robinson, Angel [robinson.angel@epa.gov]; OBrien, Kathy [Obrien.Kathy@epa.gov]; Kadeli, Lek [Kadeli.Lek@epa.gov]; Harbour, Shana [Harbour.Shana@epa.gov]; Knopes, Christopher [Knopes.Christopher@epa.gov]; Dombrowski, John [Dombrowski.John@epa.gov]; Leff, Karin [Leff.Karin@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Denton, Loren [Denton.Loren@epa.gov]; Breen, Barry [Breen.Barry@epa.gov]; Waterhouse, Carlton [Waterhouse.Carlton@epa.gov]; Hoskinson, Carolyn [Hoskinson.Carolyn@epa.gov]; Nicholas, David [Nicholas.David@epa.gov]; Manges, Ellen [Manges.Ellen@epa.gov]; Noga, Vaughn [Noga.Vaughn@EPA.GOV]; Frey, Christopher [Frey.Christopher@epa.gov]; Robbins, Chris [Robbins.Chris@epa.gov]; Orme-Zavaleta, Jennifer [Orme-Zavaleta.Jennifer@epa.gov]; Matthews, Lisa [Matthews.Lisa@epa.gov]; Watkins, Tim [Watkins.Tim@epa.gov]; Barbery, Andrea [Barbery.Andrea@epa.gov]; Sawyers, Andrew [Sawyers.Andrew@epa.gov]; Thompkins, Anita [Thompkins.Anita@epa.gov]; Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Nagle, Deborah [Nagle.Deborah@epa.gov]; McLain, Jennifer L. [McLain.Jennifer@epa.gov]; Tiago, Joseph [Tiago.Joseph@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Sabater, Juan [Sabater.Juan@epa.gov]; Fox, Radhika [Fox.Radhika@epa.gov]; Guilaran, Yu-Ting [Guilaran.Yu-Ting@epa.gov]; Szaro, Deb [Szaro.Deb@epa.gov]; Williamson, Anahita [Williamson.Anahita@epa.gov]; Esher, Diana [Esher.Diana@epa.gov]; Leonard, Paul [leonard.paul@epa.gov]; Monell, Carol [Monell.Carol@epa.gov]; Blevins, John [Blevins.John@epa.gov]; Newton, Cheryl [Newton.Cheryl@epa.gov]; Gray, David [gray.david@epa.gov]; Chu, Ed [Chu.Ed@epa.gov]; Tapp, Joshua [Tapp.Joshua@epa.gov]; O'Connor, Darcy [oconnor.darcy@epa.gov]; Thomas, Deb [thomas.debrah@epa.gov]; Jordan, Deborah [Jordan.Deborah@epa.gov]; Pirzadeh, Michelle [Pirzadeh.Michelle@epa.gov]; Pfeiffer, Tricia [Pfeiffer.Tricia@epa.gov]; Garbow, Avi [Garbow.Avi@epa.gov]; Douchand, Larry [Douchand.Larry@epa.gov]; Clark, Amy [Clark.Amy@epa.gov]; Freedhoff, Michal [Freedhoff.Michal@epa.gov]; Hanley, Mary [Hanley.Mary@epa.gov]; Engelman-Lado, Marianne [EngelmanLado.Marianne@epa.gov]; Fine, Philip [Fine.Philip@epa.gov]; Schaaf, Eric [Schaaf.Eric@epa.gov]; Mears, Mary [Mears.Mary@epa.gov]; Edmondson, Lucy [Edmondson.Lucy@epa.gov]; Kabanda, Thierry [Kabanda.Thierry@epa.gov]; Kasman, Mark [Kasman.Mark@epa.gov]; Dalzell, Sally [Dalzell.Sally@epa.gov]; Nishida, Jane [Nishida.Jane@epa.gov]
CC: Klasen, Matthew [Klasen.Matthew@epa.gov]; Conger, Nick [Conger.Nick@epa.gov]
Subject: ECOS Details & Reminders
Attachments: ECOS Spring Meeting Full Agenda.pdf

Folks:

The ECOS Spring Meeting is finally upon us!

Thanks to all who were able to join our ECOS prep meeting last Thursday. For those who weren't able to join, and as a reminder for everyone else we look ahead to the meeting kickoff tomorrow, here are a few key items we flagged for EPA participants — as well as a couple updates we want you to be aware of.

- Current agenda from ECOS is available online here. For reference I've attached the most recent version. We expect ECOS to post an attendee list and other supporting materials between now and the meeting.
- **ECOS plans to send a Zoom link to all attendees <u>later today or early tomorrow</u> to access the meeting.** If you have questions about using the Zoom platform, please contact your office's Information Management Official (IMO) or Regional Information Resources Management Branch Chief (IRM BC).
- Please keep in mind that the ECOS meeting is open press.
    - Most of us are participating as observers. While the ECOS platform will have a chat box for attendees to interact, we ask that you be mindful of the open-press context as you interact in the chat.

    - For a handful of sessions where EPA policy issues may come up, we are making ECOS aware that specified EPA policy officials will be in attendance and, if appropriate, could be available to answer policy questions that may arise. This is being coordinated directly with those officials.
- Administrator Regan will be delivering keynote remarks in one of his first public appearances. This is very exciting and a great early opportunity for states to hear from him directly.
- Finally, and most importantly, thank you all for lending your time and energies toward this important forum with our state co-regulator partners. And big thanks to EPA panelists who will be speaking at the meeting — Vaughn, Robin, Kathy, Jennifer, Tim, and Vicki.

Please let Matt Klasen or me know if you have any questions. We so appreciate your participation and engagement!

Thanks,
Casey

Casey Katims
Deputy Associate Administrator for Intergovernmental Relations
U.S. Environmental Protection Agency
Cell: (202) 494-4609
Pronouns: he/him/his

ECOS

2021 ECOS Virtual Spring Meeting Agenda
Navigating Change
March 16 at 12:00-5:30 p.m. Eastern
March 17 at 12:00-5:15 p.m. Eastern
#ECOSSpring21

In a time of mounting environmental and budgetary challenges and transition to a new federal Administration, the ECOS platform for partnership and innovation is more critical than ever. ECOS member agencies are successfully navigating change through strategic alliances; creative use of technology; and the sharing of policies and best practices in air, water, land, compliance, PFAS and other emerging contaminants, pandemic adaptation, environmental justice, and more. The 2021 ECOS Spring Meeting will showcase many of these initiatives while marking the start of cooperative work with new U.S. EPA and congressional leaders.

Notes: 1) To promote full audience participation during work hours in all U.S. time zones, ECOS will conduct separate webinars on other days for states-only business.
2) Except where otherwise indicated, all sessions are open to all registrants.
3) Dress is business casual. Wear green on March 17 in honor of St. Patrick's Day – and the environment.

Tuesday, March 16 ECOS Workgroups, Partnering with U.S. EPA & State Agencies, Water, Compliance, & Contaminants	
12:00 – 1:15 p.m. Eastern	**Breakout Option #1: ECOS Oil & Gas Caucus (OGC) on Considerations for Produced Water Permitting (open to all)** *States are undertaking a variety of innovative activities on produced water discharge and reuse in order to promote sound permitting practices. Hear from ECOS, NGO, and industry voices on rulemakings, research, and other efforts.* ❖ ECOS OGC Co-Chair Dave Glatt, Director, North Dakota Department of Environmental Quality (moderator) ❖ Joe de Almeida, Director of Water Strategy & Technology, Occidental Oil & Gas Corporation ❖ Shellie Chard, Director, Water Quality Division, Oklahoma Department of Environmental Quality ❖ Jim Rizk, Senior Advisor, Texas Commission on Environmental Quality ❖ Rebecca Roose, Director, Water Protection Division, New Mexico Environment Department ❖ Nichole Saunders, Senior Attorney, Environmental Defense Fund ❖ Matthias Sayer, Vice President, Legal – Regulatory Compliance, Policy, ❖ & Environment, NGL Energy Partners
12:00 – 1:15 p.m. Eastern	**Breakout Option #2: ECOS Digital Business Workgroup (DBWG) on State and U.S. EPA Priorities & Virtual Lean Boards (open to states and U.S. EPA)** *This breakout will feature updates from workgroup chairs on key DBWG issues for 2021. It will also include presentations on Arizona's virtual Lean boards and top priorities for U.S. EPA's Chief Information Officer.* ❖ ECOS DBWG Chair Victoria Phillips, Director, Enterprise Information Office, Massachusetts Department of Environmental Protection (co-moderator) ❖ ECOS DBWG Vice Chair Neil Chakrabarty, Chief Information Officer, West Virginia Department of Environmental Protection (co-moderator) ❖ Mike Keyack, Deputy Director, Arizona Department of Environmental Quality ❖ Vaughn Noga, Chief Information Officer, U.S. EPA

12:00 – 1:15 p.m. Eastern	**Breakout Option #3: ECOS-U.S. EPA Partnership & Performance (P&P) Workgroup on Connecting the Dots among Workplans, Strategic Plans, & Performance Reporting (open to states and U.S. EPA)** *This breakout will include a discussion with U.S. EPA on the Evidence Act and the agency's Learning Agenda for Grant Commitments, and on "connecting the dots" between state grant workplans and U.S. EPA's performance reporting to Congress.* ❖ P&P Workgroup ECOS Co-Chair Elaine Boyd, Senior Advisor, Tennessee Department of Environment & Conservation (co-moderator) ❖ P&P Workgroup ECOS Co-Chair Lloyd Kirk, Director, Office of External Affairs, Oklahoma Department of Environmental Quality (co-moderator) ❖ P&P Workgroup U.S. EPA Co-Chair Robin Richardson, Acting Associate Administrator, U.S. EPA Office of Congressional & Intergovernmental Relations ❖ P&P Workgroup U.S. EPA Co-Chair Kathy O'Brien, Director, Office of Planning, Analysis, & Accountability, U.S. EPA Office of the Chief Financial Officer
1:15 – 1:30 p.m. Eastern	**Break**
1:30 – 1:55 p.m. Eastern	**Welcome & Introductions** ❖ Welcome, ECOS President Patrick McDonnell, Secretary, Pennsylvania Department of Environmental Protection ❖ Roll Call & Self-Introductions, ECOS Deputy Director Carolyn Hanson & ECOS members ❖ Update on ECOS Activities with the New Administration and Congress, ECOS Executive Director Don Welsh ❖ Agenda Preview, Patrick McDonnell
1:55 – 2:25 p.m. Eastern	**Keynote Presentation followed by Q&A: The Honorable Michael Regan, Administrator, U.S. EPA, on Federal Priorities & Partnering with ECOS, moderated by ECOS President Patrick McDonnell, Secretary, Pennsylvania Department of Environmental Protection**
2:25 – 2:40 p.m.	**Discussion of MOA Extension among ECOS, the Association of State & Territorial Health Officials (ASTHO), and U.S. EPA** ❖ ECOS President Patrick McDonnell, Secretary, Pennsylvania Department of Environmental Protection ❖ Jennifer Orme-Zavaleta, Acting Assistant Administrator, U.S. EPA Office of Research & Development ❖ ASTHO President-Elect Anne Zink, Chief Medical Officer, State of Alaska

2:40 – 3:25 p.m. Eastern	**Roundtable & Open Discussion: Complex Challenges – Tackling PFAS, Harmful Algal Blooms, & 1,4-Dioxane** *This session will showcase the latest policy and research surrounding three contaminants presenting unique challenges for state and federal regulators– PFAS, Harmful Algal Blooms, and 1.4-Dioxane. Presenters will also offer insight on regulatory best practices and risk communication.* ❖ ECOS Cross-Media Committee Chair Richard Whitman, Director, Oregon Department of Environmental Quality (moderator) ❖ Jennifer Orme-Zavaleta, Acting Assistant Administrator, U.S. EPA Office of Research & Development ❖ Mitch Olson, PE, Environmental Engineer, Trihydro
3:25 – 3:40 p.m. Eastern	**Break**
3:40 – 4:20 p.m. Eastern	**Roundtable & Open Discussion: Advances in Air & Water Monitoring – Augmenting Data while Conserving Resources** *The past decade has seen significant advances in the development and use of environmental monitoring technology. Join speakers from states, U.S. EPA, and a technology firm as they explore innovative ways that low-cost sensors and monitors are being put to good use.* ❖ ECOS Region 5 Executive Committee Representative Liesl Eichler Clark, Director, Michigan Department of Environment, Great Lakes, & Energy (moderator) ❖ ECOS Cross-Media Chair Richard Whitman, Director, Oregon Department of Environmental Quality ❖ Meghan Smart, Lead Environmental Scientist and Citizen Science Coordinator, Arizona Department of Environmental Quality ❖ Tim Watkins, Director, Center for Environmental Measurement & Modeling, U.S. EPA Office of Research & Development ❖ Meena Sankaran, Founder & CEO, KETOS Inc.
4:20 – 4:45 p.m. Eastern	**Keynote Presentation followed by Q&A: ECOS Missouri Alum Sara Parker Pauley, Director, Missouri Department of Conservation, and President, Association of Fish & Wildlife Agencies, on Partnering with Your State Natural Resources or Conservation Agency and Navigating Change, moderated by ECOS Region 7 Executive Committee Representative Carol Comer, Director, Missouri Department of Natural Resources**

4:45 – 5:25 p.m. Eastern	**Roundtable & Open Discussion: New Directions for Inspections – Prioritizing Inspections via Predictive Analytics & Leveraging Remote Inspections to Assess Compliance** *The inspection job of many state environmental agencies has been enhanced through new predictive analytics tools that can prioritize inspections and remote technologies that are being further refined during the COVID pandemic. These recent advances are helping regulators to determine which facilities to visit and to more efficiently confirm that violations have been addressed.* ❖ ECOS Past President and E-Enterprise for the Environment Leadership Council Member Jim Macy, Director, Nebraska Department of Environment & Energy (moderator) ❖ ECOS Vice President and E-Enterprise for the Environment Leadership Council State Co-Chair Ben Grumbles, Secretary, Maryland Department of the Environment ❖ Daniel E. Ho, Professor of Law, Stanford University, Director, Regulation, Evaluation, & Governance Lab (RegLab), and Associate Director, Stanford Institute for Human-Centered Artificial Intelligence
5:25 – 5:30 p.m. Eastern	**Announcements & Wrap-up, ECOS President Patrick McDonnell, Secretary, Pennsylvania Department of Environmental Protection**
Wednesday, March 17 **Agency Management, Partnering with Congress, GHG Reduction, & Environmental Equity**	
12:00 – 1:00 p.m. Eastern	**Workshop Option #1: Podcasting to Promote Environmental Awareness, led by John Bernard, Host, *The New Bureaucrat* Podcast** *With podcasts an increasingly popular tool for news and entertainment, they are now making their way into the governmental realm. This discussion will offer tips on how state environmental agencies and other interested parties can use podcasting to spread their message and promote environmental awareness.*
12:00 – 1:00 p.m. Eastern	**Workshop Option #2: Thriving in the Virtual Environment, led by Laura Watson, Director, Washington State Department of Ecology** *Despite the indisputable negative impacts of the COVID crisis, the disruption also presents a chance for organizations to improve our pre-COVID habits and processes. This conversation will build on previous ECOS discussions of remote operations and explore opportunities to thrive, not just survive, in the post-COVID environment. It will also feature a presentation on Washington's Remote Inspections Workgroup.*

12:00 – 1:00 p.m. Eastern	**Workshop Option #3: Moving Ahead on ECOS Results, led by ECOS Secretary-Treasurer & Planning Committee Chair Myra Reece, Director of Environmental Affairs, South Carolina Department of Health & Environmental Control, and Partnership & Performance Workgroup ECOS Co-Chair Chair Elaine Boyd, Senior Advisor, Tennessee Department of Environment & Conservation** *ECOSResults.org is a state-led performance dashboard that highlights the outcomes of state efforts to protect human health and the environment. Now in their fourth year, the ECOS Results team is thinking ahead about how the site can evolve. This workshop will feature a review of the site and an open discussion on how members can further leverage the tool.*
1:00 – 1:10 p.m. Eastern	**Break**
1:10 – 1:15 p.m. Eastern	**Call to Order & Announcements, ECOS President Patrick McDonnell, Secretary, Pennsylvania Department of Environmental Protection**
1:15 – 2:00 p.m. Eastern	**Open Discussion: Best Practice Sharing – Boosting Agency Productivity to Get the Job Done, led by ECOS Waste Committee Chair Darsi Foss, Environmental Management Division Administrator, Wisconsin Department of Natural Resources** *State environmental agencies are leaders in implementing new approaches to promote more efficient and effective use of fiscal and staff resources. While ECOS spotlights state innovations at each Fall Meeting, this session will provide an open forum for states and our partners to share ways big and small in which we are working to boost productivity in the workplace.*
2:00 – 2:40 p.m. Eastern	**Roundtable & Open Discussion: Innovative Policy Approaches to Greenhouse Gas Reduction** *As climate moves to center stage at the federal level, states will continue to play a key role in driving reductions of greenhouse gas (GHG) emissions. Join this panel of state and federal policymakers as they explore strategies for GHG reduction in various sectors.* ❖ Dionne Delli-Gatti, Secretary, North Carolina Department of Environmental Quality (moderator) ❖ Janet Coit, Director, Rhode Island Department of Environmental Management ❖ Trisha Oeth, Acting Environmental Programs Policy Advisor, Colorado Department of Public Health & Environment ❖ Vicki Arroyo, Associate Administrator for Policy, U.S. EPA

2:40 – 3:20 p.m. Eastern	**Roundtable & Open Discussion: Groundbreaking Partnerships for Methane Reduction** *Many industries are pioneering voluntary approaches to reducing their carbon footprint. This session will provide an overview of some creative partnerships surrounding methane, including a record-setting carbon capture project involving livestock lagoons and a joint effort by the gas and utility industries to enhance reporting.* ❖ ECOS Air Committee Vice Chair and Region 6 Executive Committee Representative Jon Niermann, Chairman, Texas Commission on Environmental Quality (moderator) ❖ Mandy Tornabene, Vice President, Environmental Services, Dominion Energy ❖ Stewart Leeth, Chief Sustainability Officer, Smithfield ❖ Karen Obenshain, Senior Director, Fuels, Technology & Commercial Policy, Edison Electric Institute ❖ Pam Lacey, Chief Regulatory Counsel, American Gas Association
3:20 – 3:35 p.m. Eastern	**Break**
3:35 – 3:55 p.m. Eastern	**Keynote Presentation followed by Q&A: The Honorable South Carolina Representative Harold Mitchell, Jr., Founder, ReGenesis Project of Spartanburg, SC, on Community Revitalization & Collaborative Problem-Solving, moderated by ECOS Secretary-Treasurer & Planning Committee Chair Myra Reece, Director of Environmental Affairs, South Carolina Department of Health & Environmental Control**
3:55 – 4:35 p.m. Eastern	**Roundtable & Open Discussion: Environmental Equity – Getting to Know Our Communities & Recognize Disparities** *To ensure that all Americans have healthy environments in which to live, learn, and work, states are pursuing an array of initiatives to provide fair treatment in delivering favorable environmental outcomes. Hear from three states on their approaches, successes, and lessons learned.* ❖ ECOS President Patrick McDonnell, Secretary, Pennsylvania Department of Environmental Protection (moderator) ❖ Environmental Research Institute of the States President David Paylor, Director, Virginia Department of Environmental Quality ❖ Serena McIlwain, Undersecretary for Environmental Protection, California Environmental Protection Agency ❖ ECOS Secretary-Treasurer and Planning Committee Chair Myra Reece, Director of Environmental Affairs, South Carolina Department of Health & Environmental Control

4:35 – 5:00 p.m. Eastern	**Keynote Presentation followed by Q&A: The Honorable Tom Carper (D-DE), Chairman, Senate Environment & Public Works Committee, on Environmental Priorities for the 117th Congress, moderated by ECOS Vice President and E-Enterprise for the Environment Leadership Council State Co-Chair Ben Grumbles, Secretary, Maryland Department of the Environment**
5:00 – 5:15 p.m. Eastern	**Final Reflections, Announcements, & Wrap-up, ECOS President Patrick McDonnell, Secretary, Pennsylvania Department of Environmental Protection**

Message

From: Nishida, Jane21 [ActAdmJ21Nishida@epa.gov]
Sent: 1/25/2021 5:53:22 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Garbow, Avi [Garbow.Avi@epa.gov]
Subject: FW: R4 calendar item for awareness

FYI

From: Monell, Carol <Monell.Carol@epa.gov>
Sent: Monday, January 25, 2021 12:06 PM
To: Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Blevins, John <Blevins.John@epa.gov>; Nishida, Jane21 <ActAdmJ21Nishida@epa.gov>
Cc: Tyree, Robin <Tyree.Robin@epa.gov>
Subject: RE: R4 calendar item for awareness

Hi Charlotte – I touched based with our Air Director to get more information.

Ex. 5 Deliberative Process (DP)

Let me know if you'd like any more information on this one.

Thank you!

Carol Monell

From: Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>
Sent: Wednesday, January 20, 2021 6:31 PM
To: Blevins, John <Blevins.John@epa.gov>; Monell, Carol <Monell.Carol@epa.gov>
Cc: Tyree, Robin <Tyree.Robin@epa.gov>
Subject: R4 calendar item for awareness

John and Carol – Hope you both are doing well. We noticed a R4 calendar item for immediate attention (see below). I have a couple of question on this, is this something that is signed by an RA or DRA? Also – what are the consequences of missing the deadline. Do we always make these deadlines? Thanks, Charlotte

Awareness	January 31 statutory deadline for a Region 4 final action "Air Plan Approval; Tennessee; 2010 1-Hour SO2 NAAQS Transport Infrastructure"		R4

Message

From: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
Sent: 1/30/2021 7:43:58 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: FW: Quick CRA Question

FYI. Read from bottom up.

From: Talty, Mark <Talty.Mark@epa.gov>
Sent: Saturday, January 30, 2021 2:21 PM
To: Simons, Andrew <Simons.Andrew@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Subject: RE: Quick CRA Question

Nothing additional from me. Andy hit all the important points. Happy to help if you have any additional questions or concerns.

Best regards,

Mark

Mark C. Talty
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-1262
talty.mark@epa.gov

From: Simons, Andrew <Simons.Andrew@epa.gov>
Sent: Saturday, January 30, 2021 1:07 PM
To: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Cc: Talty, Mark <Talty.Mark@epa.gov>
Subject: RE: Quick CRA Question

Melissa:

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Finally, I've also cc'd Mark Talty, who is our SME on the CRA in case he has anything to add (or refine ☺).

Andy

Ex. 5 Attorney Client (AC)

Andrew Simons
Acting Associate General Counsel
Cross-Cutting Issues Law Office
U.S. Environmental Protection Agency
Tel. 202-564-3649
WJC-N 7526E

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Please consider the environment before printing this email.

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Friday, January 29, 2021 9:44 PM
To: Simons, Andrew <Simons.Andrew@epa.gov>
Subject: Quick CRA Question

Hi Andy,

Ex. 5 Attorney Client (AC)

Thoughts?

Thanks,
Melissa

Message

From: Hogan, Stephanie [Hogan.Stephanie@epa.gov]
Sent: 1/28/2021 3:01:41 PM
To: Hoffer, Melissa [Hoffer.Melissa@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]
CC: Marks, Matthew [Marks.Matthew@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Palmer, Karen [Palmer.Karen@epa.gov]; Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]
Subject: RE: Landfills
Attachments: MSW Landfills Ba rule.Litigation.Background - Meeting with Petitioners.docx

Melissa,

Ex. 5 Attorney Client (AC)

(FYI to Joe & Dimple.)

Thanks,
Stephanie

Stephanie L. Hogan | Assistant General Counsel for the NSPS and Visibility Protection Practice Group | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3244 | fax: (202) 564-5603

Pronouns: she/her/hers

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-----Original Message-----
From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Wednesday, January 27, 2021 7:34 PM
To: Hogan, Stephanie <Hogan.Stephanie@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: Landfills

Thank you.

-----Original Message-----
From: Hogan, Stephanie <Hogan.Stephanie@epa.gov>
Sent: Wednesday, January 27, 2021 3:54 PM
To: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: Landfills

Melissa & Joe,

Ex. 5 Attorney Client (AC)

Stephanie L. Hogan | Assistant General Counsel for the NSPS and Visibility Protection Practice Group | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3244 | fax: (202) 564-5603

Pronouns: she/her/hers

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

-----Original Message-----
From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Tuesday, January 26, 2021 9:24 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Hogan, Stephanie <Hogan.Stephanie@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>
Subject: Re: Landfills

Very good and thanks.

Sent from my iPhone

> On Jan 26, 2021, at 6:01 PM, Srinivasan, Gautam <Srinivasan.Gautam@epa.gov> wrote:
>
> Thanks very much to you both.

Ex. 5 Attorney Client (AC)

>
> ++++++++++++++++++++
> (202) 564-5647 (o)
> (202) 695-6287 (c)
>
>> On Jan 26, 2021, at 5:57 PM, Hoffer, Melissa <Hoffer.Melissa@epa.gov> wrote:
>>
>> Gautam/Stephanie,
>>
>> Thanks again for the excellent briefing today.
>>
>> There is agreement to proceed with a meeting with petitioners to discuss argument/MTG and Joe and/or I can make time this week.
>>
>> Who should take the lead on scheduling?
>>
>> Thanks,
>> Melissa
>>
>>
>>
>>
>>
>>
>>
>>
>>
>> Sent from my iPhone

Message

From: Cassady, Alison [Cassady.Alison@epa.gov]
Sent: 1/26/2021 3:02:39 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: RE: OAR briefing for Regan

Joe,

This will now just be a one on one meeting with you and Regan. He just wants to talk to each PDAA and "get to know" each person. This is probably least important for you, since you've spent so much time together already. But be on the look out for an email from Kathleen Lance to set up a time. I will have her copy the COS and scheduler for OAR as well.

Thanks!

AC

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Monday, January 25, 2021 1:16 PM
To: Cassady, Alison <Cassady.Alison@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: RE: OAR briefing for Regan

Ann is the OAR chief of staff and Delaney is the chief of scheduling. We will confirm back to you.

From: Cassady, Alison <Cassady.Alison@epa.gov>
Sent: Monday, January 25, 2021 1:14 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: RE: OAR briefing for Regan

I don't see why not! Is there someone in your office who could serve as the point person for scheduling for all relevant air folks—someone that Kathleen could contact to help herd the cats?

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Monday, January 25, 2021 1:13 PM
To: Cassady, Alison <Cassady.Alison@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: RE: OAR briefing for Regan

Tomas Carbonell. Can we consider career staff as well? Thanks, Alison.

From: Cassady, Alison <Cassady.Alison@epa.gov>
Sent: Monday, January 25, 2021 1:11 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: OAR briefing for Regan

Hi Joe,

I am working with Kathleen, Secretary Regan's scheduler, to find slots of time for him to receive the program briefings he wants. Who do you want to participate in the air/climate briefing from OAR—anyone besides you?

Thanks,

Alison

Alison L. Cassady
Deputy Chief of Staff for Policy
U.S. Environmental Protection Agency
Cell: (202) 941-6036

Message

From: Adhar, Radha [Adhar.Radha@epa.gov]
Sent: 1/30/2021 3:00:44 AM
To: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
CC: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: RE: Methane CRA TPs

Got it. Thank you Melissa!

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Friday, January 29, 2021 9:54 PM
To: Adhar, Radha <Adhar.Radha@epa.gov>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: RE: Methane CRA TPs

Ex. 5 Deliberative Process (DP)

M

From: Adhar, Radha <Adhar.Radha@epa.gov>
Sent: Friday, January 29, 2021 9:43 PM
To: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: RE: Methane CRA TPs

Thank you Melissa, really appreciate it.

Ex. 5 Deliberative Process (DP)

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Friday, January 29, 2021 9:35 PM
To: Adhar, Radha <Adhar.Radha@epa.gov>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: Methane CRA TPs
Importance: High

Hi Radha,

So you have some background, I am forwarding our prior advice to the WH on this (attached).

Here are some high level taking points for your discussions this weekend.

Thanks,
Melissa

***

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Saturday, January 23, 2021 4:40 PM
To: Utech, Dan <Utech.Dan@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Subject: RE: Memo on Methane CRA

From: Goffman, Joseph
Sent: Saturday, January 23, 2021 4:39 PM
To: Utech, Dan <Utech.Dan@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Subject: Memo on Methane CRA

Dan – Here is the memo for transmission to Ali. It reflects the great work of OGC, with some OAR edits. Melissa made the following suggestion as well:

"In your covering note regarding the option to consider pursuing instead CRA resolutions for the science rule and CAA cost-benefit rule, it may be useful to point out those are perhaps better candidates because (1) EPA does not intend to reissue such regulations, so the need to avoid substantially similar future regulation is not presented; and (2) those rules have implications for several of the roll-backs under review, and a CRA would provide a broader tactical benefit. The caveat here is that procedural rules are exempted from the CRA, so a determination would need to be made that those rules are not procedural—an issue for further consideration."

To elaborate a bit, the Trump EPA declared the science and CBA rules to be procedural apparently to claim the CRA exemption and perhaps shield them from DC Circuit jurisdiction, but the GAO, the parliamentarian, and the courts have the authority to adjudicate the claim that the rules are procedural and CRA- and judicial-review-exempt. Also, repealing those two rules, which likely would require notice and comment rulemaking, would be instrumental to promulgating new methane rules among others. So, concentrating the Senate's CRA firepower on those two rules would be a higher-leverage move.

Thanks.

Message

From: Campbell, Ann [Campbell.Ann@epa.gov]
Sent: 1/29/2021 2:20:48 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Edwards, Jonathan [Edwards.Jonathan@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]; Shaw, Betsy [Shaw.Betsy@epa.gov]
Subject: FW: ECOS letter to EPA Agency Review Team
Attachments: ECOS ltr to EPA Review Team_12-21-20.pdf

Ann (Campbell) Ferrio
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 566 1370

From: Barbery, Andrea <Barbery.Andrea@epa.gov>
Sent: Monday, December 21, 2020 4:39 PM
To: Richardson, RobinH <Richardson.RobinH@epa.gov>; Saddler, Melissa <Saddler.Melissa@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; OBrien, Kathy <Obrien.Kathy@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Klasen, Matthew <Klasen.Matthew@epa.gov>; Levine, Carolyn <Levine.Carolyn@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>; Tiago, Joseph <Tiago.Joseph@epa.gov>; Davis, CatherineM <Davis.CatherineM@epa.gov>; Matthews, Lisa <Matthews.Lisa@epa.gov>; Frace, Sheila <Frace.Sheila@epa.gov>; Chumble, Prasad <Chumble.Prasad@epa.gov>; Achstatter, Lauren <achstatter.lauren@epa.gov>; Congdon, Rachel <Congdon.Rachel@epa.gov>; Harbour, Shana <Harbour.Shana@epa.gov>; Battin, Andrew <Battin.Andrew@epa.gov>; Amato, Paul <Amato.Paul@epa.gov>; Knopes, Christopher <Knopes.Christopher@epa.gov>; Cronkhite, Leslie <Cronkhite.Leslie@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Kohn, Jeffrey <Kohn.Jeffrey@epa.gov>; Lee, Charles <Lee.Charles@epa.gov>; Manges, Ellen <Manges.Ellen@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Viswanathan, Krishna <Viswanathan.Krishna@epa.gov>; Bohan, Suzanne <bohan.suzanne@epa.gov>; Piantanida, David <Piantanida.David@epa.gov>; Gargas, Toni <Gargas.Toni@epa.gov>
Subject: ECOS letter to EPA Agency Review Team

Hi and FYI – ECOS' letter to the incoming team. Something in here for everyone, including some of our long-standing issues (federal funding, infrastructure investment needs, state/federal coordination, modernizing business practices, and demonstrating environmental results) as well as some current-day challenges (emerging contaminants, diversity & EJ, risk comms, and emergency prep/response).

ECOS will post this publicly, so feel free to share with your networks.

Thanks and happy holidays ~
Andrea Barbery
202-564-1397

Message

From: Utech, Dan [Utech.Dan@epa.gov]
Sent: 1/21/2021 6:19:41 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: RE: CRA -- Oil and Gas Methane Repeal

Can you give me a quick call on this? Ex. 6 Personal Privacy (PP)

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Thursday, January 21, 2021 12:01 PM
To: Utech, Dan <Utech.Dan@epa.gov>; Adhar, Radha <Adhar.Radha@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Cassady, Alison <Cassady.Alison@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: CRA -- Oil and Gas Methane Repeal

Apologies if I'm making more of this than is merited, but given the stakes I thought sharing information sooner rather than later made sense.

Ex. 5 Deliberative Process (DP)

Thanks.

Message

From: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
Sent: 1/28/2021 1:55:25 PM
To: Mugdan, Walter [Mugdan.Walter@epa.gov]
CC: Goffman, Joseph [Goffman.Joseph@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Subject: Re: Request for authorization to enter into settlement negotiations re: "Our Children's Earth Foundation" lawsuit

Thanks, Joe. I conveyed my approval to Gautam last evening.

Melissa

Sent from my iPhone

On Jan 28, 2021, at 8:25 AM, Mugdan, Walter <Mugdan.Walter@epa.gov> wrote:

Joe – many thanks for your quick reply. And Melissa – welcome! Please let us know if there is any additional information we can provide.

Walter

Walter Mugdan
Acting Regional Administrator
U.S. EPA Region 2
212-637-4390
646-369-0058 (mobile)

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Wednesday, January 27, 2021 11:17 PM
To: Mugdan, Walter <Mugdan.Walter@epa.gov>
Cc: Shaw, Betsy <Shaw.Betsy@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Williamson, Anahita <Williamson.Anahita@epa.gov>; Schaaf, Eric <Schaaf.Eric@epa.gov>; Simon, Paul <Simon.Paul@epa.gov>; Villatora, Liliana <Villatora.Liliana@epa.gov>; Ruvo, Richard <Ruvo.Richard@epa.gov>
Subject: RE: Request for authorization to enter into settlement negotiations re: "Our Children's Earth Foundation" lawsuit

Thank you for this very clear message, Walter. Melissa – OAR asks that you approve EPA and DOJ's entering into the negotiations described below. Many thanks.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Mugdan, Walter <Mugdan.Walter@epa.gov>
Sent: Tuesday, January 26, 2021 1:54 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>

Cc: Shaw, Betsy <Shaw.Betsy@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Williamson, Anahita <Williamson.Anahita@epa.gov>; Schaaf, Eric <Schaaf.Eric@epa.gov>; Simon, Paul <Simon.Paul@epa.gov>; Villatora, Liliana <Villatora.Liliana@epa.gov>; Ruvo, Richard <Ruvo.Richard@epa.gov>
Subject: Request for authorization to enter into settlement negotiations re: "Our Children's Earth Foundation" lawsuit

Dear Joe,

Welcome to your new position, and we very much look forward to working together!

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Please let us know if you have any questions about this or would like any further information. Thanks, and best regards,

Walter

Walter Mugdan
Acting Regional Administrator
U.S. EPA Region 2
212-637-4390
646-369-0058 (mobile)

Message

From: Carbonell, Tomas [Carbonell.Tomas@epa.gov]
Sent: 1/23/2021 8:44:31 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: RE: Methane CRA Memo

Ex. 5 Deliberative Process (DP)

Hope this is helpful!

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Saturday, January 23, 2021 3:20 PM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: RE: Methane CRA Memo

Thanks for pointing this out. I think I knew this, but then totally, totally forgot it as result no doubt of rage-induced incredulity followed by amnesia.

Ex. 5 Deliberative Process (DP)

Thanks, again.

From: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Saturday, January 23, 2021 3:04 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: RE: Methane CRA Memo

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

I recognize this is convoluted so please feel free to give me a call if it's easier to discuss – Ex. 6 Personal Privacy (PP)

Best,

Tomás

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Saturday, January 23, 2021 2:41 PM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: FW: Methane CRA Memo

Ex. 5 Deliberative Process (DP)

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Saturday, January 23, 2021 2:36 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Adhar, Radha <Adhar.Radha@epa.gov>
Subject: Re: Methane CRA Memo

Hi Joe,

Ex. 5 Attorney Client (AC)

Thanks,
Melissa

Sent from my iPhone

On Jan 23, 2021, at 1:22 PM, Goffman, Joseph <Goffman.Joseph@epa.gov> wrote:

In case anyone cares to take another look at this, here is a clean version and a track-changes version of a draft incorporating OAR's revisions. Thanks.
<Methane EPA Recommendation re CRA 1-23-21 TC jg.docx>
<Methane EPA Recommendation re CRA 1-23-21 TC jg.docx CLEAN.docx>

Message

From: Jordan, Scott [Jordan.Scott@epa.gov]
Sent: 1/26/2021 2:46:07 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Koerber, Mike [Koerber.Mike@epa.gov]; Lassiter, Penny [Lassiter.Penny@epa.gov]; Cozzie, David [Cozzie.David@epa.gov]; South, Peter [South.Peter@epa.gov]; French, Chuck [French.Chuck@epa.gov]; Boyd, Rochelle [Boyd.Rochelle@epa.gov]; Johnson, Steffan [johnson.steffan@epa.gov]; Wayland, Richard [Wayland.Richard@epa.gov]; Toney, Mike [Toney.Mike@epa.gov]; Aldridge, Amanda [Aldridge.Amanda@epa.gov]; Brashear, Angelina [Brashear.Angelina@epa.gov]; McLamb, Marguerite [McLamb.Marguerite@epa.gov]; Lowe, Theresa [Lowe.Theresa@epa.gov]; Lessard, Patrick [Lessard.Patrick@epa.gov]; Scinta, Robert [scinta.robert@epa.gov]; Sanchez, Rafael [Sanchez.Rafael@epa.gov]
CC: Hoffer, Melissa [Hoffer.Melissa@epa.gov]; Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]; OGC ARLO [OGC_ARLO@epa.gov]
Subject: Upcoming D.C. Circuit Oral Argument - Wood Heaters NSPS Litigation - Thursday, January 28
Attachments: Wood Heaters.Litigation.Briefing Paper for Oral Argument.ARLO.1.19.21.docx; HPBA final opening brief.pdf; EPA final brief.pdf; HPBA corrected reply brief.pdf; intervenor final brief.pdf; corrected amicus brief.pdf

On Thursday, January 28, 2021, the D.C. Circuit will hear oral argument in *Hearth, Patio & Barbeque Association v EPA*, No. 15-1056 (D.C. Circuit), which is the challenge to the 2015 Wood Heaters NSPS final rule.

Oral argument will cover a single issue: Petitioner HPBA's challenge to the compliance audit provisions, which allow EPA to require a manufacturer to conduct audit testing to confirm that a wood heater model line meets the applicable emission standards. Additional background and detail about this issue and the parties' arguments is provided in the attached briefing paper.

The parties in this case are:
Petitioner – Hearth, Patio & Barbeque Association (trade association representing wood heater manufacturers)
Intervenors supporting EPA – American Lung Association, Clean Air Council, and Environment and Human Health, Inc., represented by EarthJustice
Amicus supporting EPA – Group of States led by New York and including Alaska, Connecticut, Illinois, Maryland, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, and Washington, and the Puget Sound Clean Air Agency

Our panel for this case is Judges Karen LeCraft Henderson, Cornelia Pillard, and Robert Wilkens.

Court convenes at 9:30. Our case is scheduled as the second case and should start about 9:50 am (but note that the sequence and timing are always subject to change).

Simi Bhat of DOJ's Environmental Defense Section will be presenting argument for EPA. David Chung of Crowell & Moring will be presenting argument for Petitioner HPBA. Each side is allocated 10 minutes. The intervenors and amici will not be presenting argument.

A link to the live audio stream of the oral argument and additional information about listening to the oral argument recording afterwards is provided on the D.C. Circuit's website at:

https://www.cadc.uscourts.gov/internet/home.nsf/Content/VL+-+RPP+-+Information+Regarding+Live+Audio+Streaming+of+Arguments

Copies of the parties' briefs are attached.

Scott Jordan
Air and Radiation Law Office
Office of General Counsel

202-564-7508

I am an EPA LGBTQ+ Ally
Pronouns: he/him/his

Message

From: Carbonell, Tomas [Carbonell.Tomas@epa.gov]
Sent: 1/23/2021 8:04:33 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: RE: Methane CRA Memo

Hi Joe, one other tiny nit – the Rescission Rule was published on Sept. 14, not Sept. 15 (which is when the technical rule was published)

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Saturday, January 23, 2021 2:41 PM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: FW: Methane CRA Memo

Ex. 5 Deliberative Process (DP)

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Saturday, January 23, 2021 2:36 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Adhar, Radha <Adhar.Radha@epa.gov>
Subject: Re: Methane CRA Memo

Hi Joe,

This looks great to us a Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thanks,
Melissa

Sent from my iPhone

On Jan 23, 2021, at 1:22 PM, Goffman, Joseph <Goffman.Joseph@epa.gov> wrote:

In case anyone cares to take another look at this, here is a clean version and a track-changes version of a draft incorporating OAR's revisions. Thanks.
<Methane EPA Recommendation re CRA 1-23-21 TC jg.docx>
<Methane EPA Recommendation re CRA 1-23-21 TC jg.docx CLEAN.docx>

Message

From: Utech, Dan [Utech.Dan@epa.gov]
Sent: 1/30/2021 12:17:00 AM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Fox, Radhika [Fox.Radhika@epa.gov]; Garbow, Avi [Garbow.Avi@epa.gov]
CC: Cassady, Alison [Cassady.Alison@epa.gov]
Subject: jobs materials
Attachments: EPA Jobs Package Supplementary Information.docx; EPA Jobs Package 2021-1-29.pptx

Joe, Radhika and Avi – Thanks so much for the incredibly quick turn! Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Message

From: Arroyo, Victoria [Arroyo.Victoria@epa.gov]
Sent: 1/29/2021 10:36:53 PM
To: Utech, Dan [Utech.Dan@epa.gov]; Career Deputy Assistant Administrators [Career_Deputy_Assistant_Administrators@epa.gov]; Leadership_Deputy_Regional_Administrators [Leadership_Deputy_Regional_Administrators@epa.gov]; Nishida, Jane21 [ActAdmJ21Nishida@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]; Hoffer, Melissa [Hoffer.Melissa@epa.gov]; Fox, Radhika [Fox.Radhika@epa.gov]; Freedhoff, Michal [Freedhoff.Michal@epa.gov]; Cassady, Alison [Cassady.Alison@epa.gov]; Blythers, Dorien [Blythers.Dorien@epa.gov]
CC: Fine, Philip [Fine.Philip@epa.gov]; Garbow, Avi [Garbow.Avi@epa.gov]; Nickerson, William [Nickerson.William@epa.gov]; Hamilton, Lindsay [Hamilton.Lindsay@epa.gov]
Subject: RE: Implementation of President Biden's Executive Orders: Draft list of regulatory actions
Attachments: Rules that OMB will review and are projected to be signed this year.xlsx

Dear Current and Acting EPA Leadership,

Following up on the message below from Chief of Staff Dan Utech, please see the attached spreadsheet that provides an initial list of regulatory actions that are intended to be signed this year and that OMB will review. The eight EPA actions explicitly mentioned in the **Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis** have already been added to the spreadsheet. Please review all of your program's or region's actions on the spreadsheet and make a determination about whether they should be reviewed pursuant to the Executive Order. The attached list may not be complete so we encourage each office and region to look comprehensively at all of their actions under development, any new actions planned for this year, and any guidance documents (including those on https://www.epa.gov/guidance) from the last four years that could be reviewed by this December.

The internal deadlines for this as outlined below are:

February 5: Programs/Offices provide draft lists to Office of Policy
February 12: Final lists due to Office of Policy
February 19: EPA List submitted to OMB

Thank you all, and hope you are heading into a good weekend.

Best,
Vicki Arroyo
Associate Administrator, Office of Policy

From: Utech, Dan <Utech.Dan@epa.gov>
Sent: Saturday, January 23, 2021 7:08 PM
To: Career Deputy Assistant Administrators <Career_Deputy_Assistant_Administrators@epa.gov>; Leadership_Deputy_Regional_Administrators <Leadership_Deputy_Regional_Administrators@epa.gov>; Nishida, Jane21 <ActAdmJ21Nishida@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Arroyo, Victoria <Arroyo.Victoria@epa.gov>; Fox, Radhika <Fox.Radhika@epa.gov>; Freedhoff, Michal <Freedhoff.Michal@epa.gov>; Cassady, Alison <Cassady.Alison@epa.gov>; Blythers, Dorien <Blythers.Dorien@epa.gov>
Subject: Implementation of President Biden's Executive Orders

TO: Current and Acting EPA Leadership
FR: Dan Utech, Chief of Staff
RE: Implementation of President Biden's Executive Orders

Ex. 5 Deliberative Process (DP)

Message

From: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
Sent: 1/26/2021 8:11:28 PM
To: Utech, Dan [Utech.Dan@epa.gov]; Adhar, Radha [Adhar.Radha@epa.gov]
CC: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: Model EPA response to Confirmation Qs
Attachments: DRAFT Leopold QFRS KSCPTML 10.10.17.docx

FYI in case helpful.

From: Packard, Elise <Packard.Elise@epa.gov>
Sent: Tuesday, January 26, 2021 1:10 PM
To: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>
Subject: FW: DRAFT Leopold QFRS KSCPTML 10.10.17.docx

An example of QFRs for Matt Leopold's confirmation as General Counsel (so you have a sense of what they look like).

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

From: Minoli, Kevin <Minoli.Kevin@epa.gov>
Sent: Tuesday, October 10, 2017 3:01 PM
To: Trudeau, Shaun <Trudeau.Shaun@epa.gov>; Baptist, Erik <baptist.erik@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: DRAFT Leopold QFRS KSCPTML 10.10.17.docx

Thanks for sending, here are my thoughts. Kevin

Message

From: Garbow, Avi [Garbow.Avi@epa.gov]
Sent: 1/28/2021 3:54:08 AM
To: Hoffer, Melissa [Hoffer.Melissa@epa.gov]; Utech, Dan [Utech.Dan@epa.gov]
CC: Goffman, Joseph [Goffman.Joseph@epa.gov]
Subject: RE: Settlement Directive

Happy to participate in this conversation, as I know the subject matter well.

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Wednesday, January 27, 2021 10:46 PM
To: Utech, Dan <Utech.Dan@epa.gov>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>; Garbow, Avi <Garbow.Avi@epa.gov>
Subject: Settlement Directive

Dan—we will want to flag this for Michael early on. Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP) Happy to provide more detail.

M

From: Hoffer, Melissa
Sent: Wednesday, January 27, 2021 10:39 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>
Cc: Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: RE: Request for authorization to enter into settlement negotiations re: "Our Children's Earth Foundation" lawsuit

Gautam/Matt,

Ex. 5 Attorney Client (AC)

Thanks,
Melissa

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Tuesday, January 26, 2021 8:05 PM
To: Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>
Subject: RE: Request for authorization to enter into settlement negotiations re: "Our Children's Earth Foundation" lawsuit

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Tuesday, January 26, 2021 7:52 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>
Subject: Fwd: Request for authorization to enter into settlement negotiations re: "Our Children's Earth Foundation" lawsuit

Ex. 5 Attorney Client (AC)

Sent from my iPhone

Begin forwarded message:

> **From:** "Mugdan, Walter" <Mugdan.Walter@epa.gov>
> **Date:** January 26, 2021 at 1:54:19 PM EST
> **To:** "Goffman, Joseph" <Goffman.Joseph@epa.gov>
> **Cc:** "Shaw, Betsy" <Shaw.Betsy@epa.gov>, "Hoffer, Melissa" <Hoffer.Melissa@epa.gov>, "Payne, James (Jim)" <payne.james@epa.gov>, "Packard, Elise" <Packard.Elise@epa.gov>, "Williamson, Anahita" <Williamson.Anahita@epa.gov>, "Schaaf, Eric" <Schaaf.Eric@epa.gov>, "Simon, Paul" <Simon.Paul@epa.gov>, "Villatora, Liliana" <Villatora.Liliana@epa.gov>, "Ruvo, Richard" <Ruvo.Richard@epa.gov>
> **Subject: Request for authorization to enter into settlement negotiations re: "Our Children's Earth Foundation" lawsuit**
>
> Dear Joe,
>
> Welcome to your new position, and we very much look forward to working together!

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Please let us know if you have any questions about this or would like any further information. Thanks, and best regards,

Walter

Walter Mugdan
Acting Regional Administrator
U.S. EPA Region 2
212-637-4390
646-369-0058 (mobile)

Message

From: Seidman, Emily [seidman.emily@epa.gov]
Sent: 1/29/2021 10:12:38 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Koerber, Mike [Koerber.Mike@epa.gov]; Mathias, Scott [Mathias.Scott@epa.gov]
CC: Mills, Derek [Mills.Derek@epa.gov]; Conrad, Daniel [conrad.daniel@epa.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Brachtl, Megan [Brachtl.Megan@epa.gov]; Lingard, Robert [Lingard.Robert@epa.gov]; Rao, Raj [Rao.Raj@epa.gov]; Garwood, Ben [Garwood.Ben@epa.gov]
Subject: FW: New CAA Decision - Ozone Implementation Rule for 2015 NAAQS
Attachments: ENV_DEFENSE-#953672-v1-Sierra_Club_v__EPA_Opinion.PDF

All- Please see the attached and brief summary below regarding today's D.C. Circuit decision regarding EPA's implementation rule for the 2015 ozone NAAQS. More to come next week.

Enjoy your weekend.

Emily Seidman | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | WJCN 7426Y | office phone: (202) 564-0906 | cell phone: (202) 794-0051

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Mills, Derek <Mills.Derek@epa.gov>
Sent: Friday, January 29, 2021 2:48 PM
To: OGC Immediate Office MGMT <OGC_Immediate_Office_MGMT@epa.gov>; OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Doster, Brian <Doster.Brian@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Bianco, Karen <Bianco.Karen@epa.gov>
Subject: New CAA Decision - Ozone Implementation Rule for 2015 NAAQS

Hi All,

Ex. 5 Attorney Client (AC)

Derek Mills
Attorney, Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3341

From: Conrad, Daniel <conrad.daniel@epa.gov>
Sent: Thursday, September 17, 2020 4:48 PM
To: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Doster, Brian <Doster.Brian@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Versace, Paul <Versace.Paul@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Mills, Derek <Mills.Derek@epa.gov>
Subject: Upcoming Moot (9/18) and Oral Argument (9/22): Sierra Club v. EPA (Ozone NAAQS Implementation Rule)

Matt, David, and Adam,

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

-- END --

Message

From: Katims, Casey [Katims.Casey@epa.gov]
Sent: 3/12/2021 9:55:26 PM
To: Utech, Dan [Utech.Dan@epa.gov]; Cassady, Alison [Cassady.Alison@epa.gov]; Hamilton, Lindsay [Hamilton.Lindsay@epa.gov]; Enobakhare, Rosemary [Enobakhare.Rosemary@epa.gov]; Lance, Kathleen [Lance.Kathleen@epa.gov]; Adhar, Radha [Adhar.Radha@epa.gov]; Fox, Radhika [Fox.Radhika@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]; Nunez, Alejandra [Nunez.Alejandra@epa.gov]; Hoffer, Melissa [Hoffer.Melissa@epa.gov]
CC: Lucey, John [Lucey.John.D@epa.gov]; Lance, Kathleen [Lance.Kathleen@epa.gov]
Subject: Readout - Regan Calls with Govs & Mayor

All:

Today, Administrator Regan spoke with three governors and the mayor of Jackson, Mississippi, in his initial outreach to EPA's state and local partners. Here is a quick readout from each call.

Ex. 5 Deliberative Process (DP)

Let me know any questions. Thanks to all who helped us prepare the Administrator to make these calls successful.

Casey

Message

From: Cassady, Alison [Cassady.Alison@epa.gov]
Sent: 1/27/2021 4:21:02 PM
To: Freedhoff, Michal [Freedhoff.Michal@epa.gov]; Adhar, Radha [Adhar.Radha@epa.gov]; Fox, Radhika [Fox.Radhika@epa.gov]; Arroyo, Victoria [Arroyo.Victoria@epa.gov]; Hamilton, Lindsay [Hamilton.Lindsay@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]; Garbow, Avi [Garbow.Avi@epa.gov]; Blythers, Dorien [Blythers.Dorien@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Enobakhare, Rosemary [Enobakhare.Rosemary@epa.gov]; Harris, Sincere [Harris.Sincere@epa.gov]; Hoffer, Melissa [Hoffer.Melissa@epa.gov]; Katims, Casey [Katims.Casey@epa.gov]
Subject: Climate EO and Science Memo - fact sheet

Hi all,

The White House posted this summary of the climate EO and scientific integrity memorandum they are releasing today. My understanding is that McCarthy and Kerry will be joining the White House press briefing around 12:15pm. The EO signing will follow.

https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/27/fact-sheet-president-biden-takes-executive-actions-to-tackle-the-climate-crisis-at-home-and-abroad-create-jobs-and-restore-scientific-integrity-across-federal-government/

Alison L. Cassady
Ex. 6 Personal Privacy (PP)

Message

From: Adhar, Radha [Adhar.Radha@epa.gov]
Sent: 1/26/2021 7:39:30 PM
To: Fox, Radhika [Fox.Radhika@epa.gov]; Cassady, Alison [Cassady.Alison@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]; Freedhoff, Michal [Freedhoff.Michal@epa.gov]; Utech, Dan [Utech.Dan@epa.gov]; Hoffer, Melissa [Hoffer.Melissa@epa.gov]
CC: Haman, Patricia [Haman.Patricia@epa.gov]; Kaiser, Sven-Erik [Kaiser.Sven-Erik@epa.gov]; Klasen, Matthew [Klasen.Matthew@epa.gov]; Thundiyil, Karen [Thundiyil.Karen@epa.gov]; Levine, Carolyn [Levine.Carolyn@epa.gov]; Knapp, Kristien [Knapp.Kristien@epa.gov]; Richardson, RobinH [Richardson.RobinH@epa.gov]
Subject: Moot hearing prep for Sec Regan
Attachments: 01.26.21. Issue area prep for Regan Moot.docx

Hey y'all,

I wanted to share the attached document with you and get your feedback. As we discussed this morning, the purpose of this document is to provide Secretary Regan with some background on issues we expect to come up in his nomination/moot hearing. This is a **draft** version prepared by my colleagues in OCIR and I expect it to evolve today and in the coming days into the final document to be sent before the actual hearing. It will get longer and shorter based on Secretary Regan's preparation.

I plan on sending this document tonight, along with a memo that includes a run of show for the hearing and the general questions every nominee is asked. If you can please give me your feedback on your sections, I would be grateful.

And I just want to underscore again, this is not the final document Regan will receive from OCIR on his hearing prep!

Looking forward to hearing from you!
Radha

Ex. 6 Personal Privacy (PP)

Message

From: Carbonell, Tomas [Carbonell.Tomas@epa.gov]
Sent: 1/23/2021 4:55:28 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Hoffer, Melissa [Hoffer.Melissa@epa.gov]; Adhar, Radha [Adhar.Radha@epa.gov]
CC: Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]
Subject: RE: EPA Recommendation re CRA for CH4
Attachments: EPA Recommendation re CRA for CH4 1-22-21 TC.docx

Hi all, agree this is great – thanks very much! I've attached a few minor suggested edits here. Best,

Tomás

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Saturday, January 23, 2021 11:25 AM
To: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Adhar, Radha <Adhar.Radha@epa.gov>
Cc: Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: RE: EPA Recommendation re CRA for CH4

Ex. 5 Deliberative Process (DP)

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Saturday, January 23, 2021 12:50 AM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Adhar, Radha <Adhar.Radha@epa.gov>
Cc: Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>
Subject: EPA Recommendation re CRA for CH4

Joe / Radha,

Ex. 5 Deliberative Process (DP)

Thanks,
Melissa

Message

From: Payne, James (Jim) [payne.james@epa.gov]
Sent: 3/12/2021 12:34:14 AM
To: Garbow, Avi [Garbow.Avi@epa.gov]
CC: Goffman, Joseph [Goffman.Joseph@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Hogan, Stephanie [Hogan.Stephanie@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Hoffman, Howard [hoffman.howard@epa.gov]
Subject: CAA EGU significant contribution rule - motion to vacate and remand, with Declaration for Joe Goffman
Attachments: Goffman decl for SCF_EGU rule_03-10-21.docx; ENV_DEFENSE-#954862-v4-SCF_EGU_-_vacatur_motion_03-10-21.docx; EGU GHG Signific Contrib FRN 01-13-21.pdf

Hi Avi,

Ex. 5 Attorney Client (AC)

Welcome your input. And let me know if you'd like a briefing or discussion, or plan to review?

Including Joe.

Jim

Ex. 6 Personal Privacy (PP)

From: Marks, Matthew <Marks.Matthew@epa.gov>
Sent: Wednesday, March 10, 2021 4:28 PM
To: Payne, James (Jim) <payne.james@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Hogan, Stephanie <Hogan.Stephanie@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>
Subject: Re: Declaration for Joe Goffman to accompany motion to vacate the EGU significant contribution rule

Hi Jim,

Just so you know, Melissa, Dimple, and Marianne are all recused from this matter. Please feel free to share with Avi, as we expect Joe may do so too.

Matt

Sent from my iPhone

On Mar 10, 2021, at 2:51 PM, Hoffman, Howard <hoffman.howard@epa.gov> wrote:

Ex. 5 Attorney Client (AC)

Howard J. Hoffman USEPA-OGC-ARLO (202) 564-5582(O) (240)-401-9721(C) Room 7415 WJC-North
Mailing address: Mail Code 7344A, 1200 Pennsylvania Ave. NW Washington, D.C. 20460

The contents of this message may be subject to the attorney-client, work-product, or deliberative process privileges.

<Goffman decl for SCF_EGU rule_03-10-21.docx>
<ENV_DEFENSE-#954862-v4-SCF_EGU_-_vacatur_motion_03-10-21.docx>
<EGU GHG Signific Contrib FRN 01-13-21.pdf>

Message

From: Nunez, Alejandra [Nunez.Alejandra@epa.gov]
Sent: 3/12/2021 12:12:56 AM
To: Campbell, Ann [Campbell.Ann@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]
Subject: RE: FOR YOUR REVIEW: For Climate Task Force Mtng - Spring OAR announcements

These look great. Thank you, Ann.

From: Campbell, Ann <Campbell.Ann@epa.gov>
Sent: Thursday, March 11, 2021 4:00 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: FOR YOUR REVIEW: For Climate Task Force Mtng - Spring OAR announcements

Ex. 5 Deliberative Process (DP)

Please let me know if you're comfortable with my sending this on to Alison. She was looking for feedback today. As noted in her email below, the list need not be exhaustive; just needs to hit the highlights.

Thank you.

Ann (Campbell) Ferrio
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 566 1370

From: Cassady, Alison <Cassady.Alison@epa.gov>
Sent: Thursday, March 11, 2021 3:49 PM
To: Millett, John <Millett.John@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: RE: Spring OAR announcements

Thanks. If we aren't exhaustive, that's OK. I just want to make sure we share the most important stuff.

Alison L. Cassady
Deputy Chief of Staff for Policy
U.S. Environmental Protection Agency
Cell: (202) 941-6036

From: Millett, John <Millett.John@epa.gov>
Sent: Thursday, March 11, 2021 3:45 PM
To: Cassady, Alison <Cassady.Alison@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: RE: Spring OAR announcements

Hi Alison – an update and looping you with Ann Campbell, OAR Chief of Staff, who took the baton on this one. Joe is looking at what OAR has pulled together, and Ann plans to send it to you later today.

Thanks!

John

From: Cassady, Alison <Cassady.Alison@epa.gov>
Sent: Wednesday, March 10, 2021 3:17 PM
To: Millett, John <Millett.John@epa.gov>
Subject: RE: Spring OAR announcements

That sounds good. Thanks! (I do have the HFC item in one of the documents I shared, FYI, just in case you weren't just using it as an example).

Thank you!

Alison L. Cassady
Deputy Chief of Staff for Policy
U.S. Environmental Protection Agency
Cell: (202) 941-6036

From: Millett, John <Millett.John@epa.gov>
Sent: Wednesday, March 10, 2021 3:15 PM
To: Cassady, Alison <Cassady.Alison@epa.gov>
Subject: Re: Spring OAR announcements

Ex. 5 Deliberative Process (DP)

Let me know if that works, and will follow up w/ you.

Thanks!

On Mar 10, 2021, at 2:49 PM, Cassady, Alison <Cassady.Alison@epa.gov> wrote:

Hi John,

Ex. 5 Deliberative Process (DP)

I need to turn this around by tomorrow.

Many thanks,

Alison

Alison L. Cassady
Deputy Chief of Staff for Policy
U.S. Environmental Protection Agency
Cell: (202) 941-6036

<2021-3-10 EPA Significant Milestones Annoucements Re Climate.docx>
<2021-3-10 EPA Potential Executive Actions Re Climate.docx>

Message

From: Utech, Dan [Utech.Dan@epa.gov]
Sent: 1/29/2021 1:32:06 AM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Garbow, Avi [Garbow.Avi@epa.gov]; Fox, Radhika [Fox.Radhika@epa.gov]
CC: Cassady, Alison [Cassady.Alison@epa.gov]
Subject: docs
Attachments: EPA BBB2.docx; 20210128_ClimateChange+WorkingFamilies-JobsPackage DRAFT 330pm.pptx

Joe and Avi – docs attached. Radhika, I should explain what these are so let me know if you have any time this evening.
Best, Dan

Message

From: Goffman, Joseph [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23474D598E8D4EDFA9214A5991F2935B-GOFFMAN, JO]
Sent: 2/9/2021 10:45:39 PM
To: Grundler, Christopher [grundler.christopher@epa.gov]
Subject: FW: Meeting tomorrow 12pm re: GHG analysis

FYI. Stay tuned.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Goffman, Joseph
Sent: Tuesday, February 9, 2021 5:45 PM
To: Cassady, Alison <Cassady.Alison@epa.gov>; Arroyo, Victoria <Arroyo.Victoria@epa.gov>
Subject: RE: Meeting tomorrow 12pm re: GHG analysis

Can it be a career person?

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Cassady, Alison <Cassady.Alison@epa.gov>
Sent: Tuesday, February 9, 2021 5:43 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Arroyo, Victoria <Arroyo.Victoria@epa.gov>
Subject: Meeting tomorrow 12pm re: GHG analysis

Joe & Vicki,

Today we received an invitation to a White House Climate Policy Office meeting tomorrow at 12pm "to discuss interagency efforts to undertake and coordinate greenhouse gas emissions analyses — on a sectoral and economy-wide basis." This is the kick-off meeting for doing analysis for the NDC.

I will be attending as the deputy, but I need to bring a +1 – "a lead for climate change-related policy analysis."

I know this is short notice, so the person we designate as the +1 now doesn't have to stay the +1. Who do you recommend attend tomorrow as 12pm?

Thanks,

Alison

Alison L. Cassady
Deputy Chief of Staff for Policy
U.S. Environmental Protection Agency
Cell: (202) 941-6036

Message

From: Goffman, Joseph [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23474D598E8D4EDFA9214A5991F2935B-GOFFMAN, JO]
Sent: 2/12/2021 7:27:26 PM
To: Rakosnik, Delaney [rakosnik.delaney@epa.gov]
Subject: Re: NGO Calls

Oh. Now she asks! ; -)

Sent from my iPhone

On Feb 12, 2021, at 2:19 PM, Rakosnik, Delaney <rakosnik.delaney@epa.gov> wrote:

Joe – just talked to Rosemary. Can you offer her 3 or 4 lines (talking points) about what she needs to discuss with the NGOs?

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Friday, February 12, 2021 1:20 PM
To: Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Subject: RE: NGO Calls

Thanks very much, Delaney. I am content to let Rosemary do this. Makes sense.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Sent: Friday, February 12, 2021 1:18 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: FW: NGO Calls

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Sent: Friday, February 12, 2021 1:03 PM
To: Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>
Subject: NGO Calls

Hi Rosemary,

Can you please plan on taking NGO calls for ACE today at 2:30-3:30? We want to 'drop the pen' on this by 4pm.

Many thanks!!

Delaney Rakosnik
Staff Assistant
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
Room 5406A, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-0935
Email: rakosnik.delaney@epa.gov

Message

From: Goffman, Joseph [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23474D598E8D4EDFA9214A5991F2935B-GOFFMAN, JO]
Sent: 3/11/2021 2:11:07 PM
To: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
Subject: RE: BCA CRA pro-con background FYI

Thanks. I'll send the attachment and speak to the schedule.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Thursday, March 11, 2021 9:09 AM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: RE: BCA CRA pro-con background FYI

Ex. 5 Attorney Client (AC)

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Wednesday, March 10, 2021 11:09 PM
To: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Subject: FW: BCA CRA pro-con background FYI

Ex. 5 Attorney Client (AC)

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Goffman, Joseph
Sent: Wednesday, March 10, 2021 11:03 PM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Cc: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: RE: BCA CRA pro-con background FYI

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Wednesday, March 10, 2021 10:58 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: FW: BCA CRA pro-con background FYI

Ex. 5 Deliberative Process (DP)

Tomás

From: Shoaff, John <Shoaff.John@epa.gov>
Sent: Tuesday, March 9, 2021 3:09 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Nunez, Alejandra <Nunez.Alejandra@epa.gov>; Kim, Eun <Kim.Eun@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>; Hockstad, Leif <Hockstad.Leif@epa.gov>
Subject: BCA CRA pro-con background FYI

Joe et al,

For awareness, here's what OGC is pulling together, though it's still working its way thru their chain (so you may get a

Ex. 5 Deliberative Process (DP)

John

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

JOHN SHOAFF (HE/HIM/HIS) | DIRECTOR
OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)
OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-C
1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA
Shoaff.john@epa.gov | **1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE**

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Home > Agenda/Regs > Agency EO Review > EO Package

RIN:	2060-AU84 (202104)	Agency/Sub Agency:	2060 EPA/OAR	Tracking #:	SAN 7811
Stage of Rulemaking:	Final Rule Stage	Submitted By:	Reinero Rivera	Submitted Date:	02/24/2021
Title:	Cross-State Air Pollution Rule (CSAPR) Update Remand for the 2008 Ozone NAAQS				

EO Review Package was successfully submitted at 02/24/2021 06:50:05 AM.

Message

From: Goffman, Joseph [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23474D598E8D4EDFA9214A5991F2935B-GOFFMAN, JO]
Sent: 2/2/2021 12:59:48 AM
To: Campbell, Ann [Campbell.Ann@epa.gov]
Subject: RE: Two things for awareness - Transparency rule & upcoming discussion with Canadian Minister

Thanks, Ann.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Campbell, Ann <Campbell.Ann@epa.gov>
Sent: Monday, February 1, 2021 7:59 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: RE: Two things for awareness - Transparency rule & upcoming discussion with Canadian Minister

No, the materials didn't come through. I have it on my list to check in on in the a.m.

Sending signature items momentarily.

Ann (Campbell) Ferrio
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 566 1370

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Monday, February 1, 2021 7:58 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: FW: Two things for awareness - Transparency rule & upcoming discussion with Canadian Minister

Did I miss the flag on this? I just discovered that if I click on the flag in a certain way all the flagged items drop to the bottom of the inbox queue. Sorry to be such a dope. Thanks.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Shoaff, John <Shoaff.John@epa.gov>
Sent: Monday, February 1, 2021 5:50 PM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Hockstad, Leif <Hockstad.Leif@epa.gov>
Subject: RE: Two things for awareness - Transparency rule & upcoming discussion with Canadian Minister

Yes, thank you Tomás.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

John

JOHN SHOAFF | DIRECTOR
OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)
OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-C
1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA
Shoaff.john@epa.gov | **1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE**

From: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Monday, February 1, 2021 2:32 PM
To: Shoaff, John <Shoaff.John@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Hockstad, Leif <Hockstad.Leif@epa.gov>
Subject: RE: Two things for awareness - Transparency rule & upcoming discussion with Canadian Minister

Thanks John for the heads up on both topics. As you may have seen, it looks like the Montana district court vacated the science transparency rule this morning. Best,

Tomás

From: Shoaff, John <Shoaff.John@epa.gov>
Sent: Monday, February 1, 2021 12:08 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Cc: Hockstad, Leif <Hockstad.Leif@epa.gov>
Subject: Two things for awareness - Transparency rule & upcoming discussion with Canadian Minister

Joe and Tomas,

Ex. 5 Deliberative Process (DP)

Thanks!

John

JOHN SHOAFF | DIRECTOR
OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)
OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-C
1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA
Shoaff.john@epa.gov | **1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE**

Message

From: Goffman, Joseph [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23474D598E8D4EDFA9214A5991F2935B-GOFFMAN, JO]
Sent: 2/26/2021 3:36:58 AM
To: Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Nunez, Alejandra [Nunez.Alejandra@epa.gov]; Millett, John [Millett.John@epa.gov]; Kim, Eun [Kim.Eun@epa.gov]; Campbell, Ann [Campbell.Ann@epa.gov]
CC: Lubetsky, Jonathan [Lubetsky.Jonathan@epa.gov]; Shoaff, John [Shoaff.John@epa.gov]; DeLuca, Isabel [DeLuca.Isabel@epa.gov]
Subject: RE: NGA talking points for Casey, for Monday

Good catches, Tomas. Thanks.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Thursday, February 25, 2021 10:29 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Nunez, Alejandra <Nunez.Alejandra@epa.gov>; Millett, John <Millett.John@epa.gov>; Kim, Eun <Kim.Eun@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Shoaff, John <Shoaff.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Subject: RE: NGA talking points for Casey, for Monday

I think this looks good as well, thanks. I have only a couple of minor additional comments:

Ex. 5 Deliberative Process (DP)

Best,

Tomás

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Thursday, February 25, 2021 10:15 PM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>; Millett, John <Millett.John@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Kim, Eun <Kim.Eun@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Shoaff, John <Shoaff.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Subject: RE: NGA talking points for Casey, for Monday

Agree with Ale's points. Otherwise, this looks good. Thanks.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Thursday, February 25, 2021 5:45 PM
To: Millett, John <Millett.John@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Kim, Eun <Kim.Eun@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Shoaff, John <Shoaff.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Subject: RE: NGA talking points for Casey, for Monday

Thank you, John. These talking points look good to me.

Ex. 5 Deliberative Process (DP)

From: Millett, John <Millett.John@epa.gov>
Sent: Thursday, February 25, 2021 4:51 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Nunez, Alejandra <Nunez.Alejandra@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Kim, Eun <Kim.Eun@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Shoaff, John <Shoaff.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Subject: NGA talking points for Casey, for Monday

Hi All – attached are the talking points requested by OCIR that I mentioned this morning. Thanks for the input on how to

Ex. 5 Deliberative Process (DP)

Thanks –

John

From: Campbell, Ann <Campbell.Ann@epa.gov>
Sent: Wednesday, February 24, 2021 2:11 PM
To: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Cc: Shoaff, John <Shoaff.John@epa.gov>; Millett, John <Millett.John@epa.gov>
Subject: Fwd: Request for Governor-level National Hot Topics

Suggestions on the best way to go about developing the requested information?

Ann (Campbell) Ferrio
Chief of Staff
Office of Air and Radiation
(202) 566-1370

Begin forwarded message:

From: "Bowles, Jack" <Bowles.Jack@epa.gov>
Date: February 24, 2021 at 1:32:15 PM EST
To: "Barbery, Andrea" <Barbery.Andrea@epa.gov>, "Manges, Ellen" <Manges.Ellen@epa.gov>, "Emmerson, Caroline" <Emmerson.Caroline@epa.gov>, "Tyler, Tom" <Tyler.Tom@epa.gov>, "Tyree, Robin" <Tyree.Robin@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>, "Linkins, Samantha" <Linkins.Samantha@epa.gov>, "Matthews, Lisa" <Matthews.Lisa@epa.gov>
Cc: "Katims, Casey" <Katims.Casey@epa.gov>, "Fericelli, Paul" <fericelli.paul@epa.gov>
Subject: Request for Governor-level National Hot Topics

Hello National Program Offices,

I hope this email finds you well. Our DAA for Intergovernmental Affairs, Casey Katims will be speaking at a National Governors Association (NGA) meeting on Monday, March 1, 2021. NGA has asked that he discuss the top "governor-level" major initiatives/issues for the coming year that will significantly impact states. This will be a high-level and relatively brief discussion. We kindly ask that you provide a bullet and a sentence or two for your top few issues that you'd like included in this discussion. Please send us your information by Friday, February 26th at noon.

One of our main interests is to share with governors information about EPA's regulatory review. We'll look to OP to provide any general update/status, but each NPM can include status on any high-priority specific actions if appropriate. EPA is sharing the agenda with the Dept. of Transportation, and NGA would also like to hear about areas of shared interest between EPA and DOT.

I would also like to take this opportunity to introduce our new Intergovernmental Liaison Paul Fericelli. He has been with the Agency almost 10 years and bring a wealth of experience in water and land protection programs. Most recently, he supported local governments and other federal agencies achieve environmental stewardship in disaster recovery efforts in the Caribbean. He will be supporting the Agency's engagements with state elected and appointed officials and is available to help you on this request. Paul will be pulling together all the information you submit.

Please contact us if you have questions. And thank you for your assistance.

Take care,

Jack Bowles
Director of State & Local Relations
U.S. Environmental Protection Agency
202-564-3657 (office) | 202-306-5196 (mobile)

Paul Fericelli
Phone: 202.564.3397

Message

From: Goffman, Joseph [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23474D598E8D4EDFA9214A5991F2935B-GOFFMAN, JO]
Sent: 3/9/2021 11:38:48 PM
To: Utech, Dan [Utech.Dan@epa.gov]
Subject: FW: SO2 NAAQS Nonattainment Designations -- Update
Attachments: Final Post It Final Round 4 SO2 Designations 3-2-21.docx

Topping off your inbox.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Goffman, Joseph
Sent: Friday, March 5, 2021 10:56 AM
To: Utech, Dan <Utech.Dan@epa.gov>
Cc: Cassady, Alison <Cassady.Alison@epa.gov>; Ann Campbell (Campbell.Ann@epa.gov) <Campbell.Ann@epa.gov>
Subject: SO2 NAAQS Nonattainment Designations -- Update

Hi, Dan and Alison. Dan—we talked about this briefly on our Tuesday OAR check-in.

Ex. 5 Deliberative Process (DP)

Thanks.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

Message

From: Goffman, Joseph [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23474D598E8D4EDFA9214A5991F2935B-GOFFMAN, JO]
Sent: 2/25/2021 3:23:27 PM
To: Bloom, David [Bloom.David@epa.gov]
CC: Terris, Carol [Terris.Carol@epa.gov]; Williams, Maria [Williams.Maria@epa.gov]; Boyd, Wyatt [Boyd.Wyatt@epa.gov]; Shaw, Betsy [Shaw.Betsy@epa.gov]; Hyde, Courtney [Hyde.Courtney@epa.gov]; Marusiak, Eleanor [Marusiak.Eleanor@epa.gov]; Wolfe, Michael [Wolfe.Michael@epa.gov]
BCC: LaRue, Steven [LaRue.Steven@epa.gov]; Siegel, Kelly C. [Siegel.KellyC@epa.gov]
Subject: OAR FY2022 Resource Needs
Attachments: FY 2022 OAR Budget Template EO Implementation 2-25-21.docx; OAR FY2022 Funding Template Critical Infrastructure 2-25-21.docx; OAR FY2022 Funding Needs Core Program 2-25-21.docx

David,

Thank you for soliciting our resource needs for FY2022. Attached for your consideration please find OAR's request

Ex. 5 Deliberative Process (DP)

Please let us know if you have any questions about our request. We stand ready to provide more detailed information as needed.

Thank you for your consideration,

Joe

Joseph Goffman
Acting Assistant Administrator

Office of Air and Radiation
U.S. Environmental Protection Agency

Message

From: Goffman, Joseph [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23474D598E8D4EDFA9214A5991F2935B-GOFFMAN, JO]
Sent: 3/2/2021 2:08:41 PM
To: Nishida, Jane21 [ActAdmJ21Nishida@epa.gov]; Arroyo, Victoria [Arroyo.Victoria@epa.gov]; Cassady, Alison [Cassady.Alison@epa.gov]
CC: Utech, Dan [Utech.Dan@epa.gov]
Subject: RE: EPA Proposed Leader Summit Deliverables

Thanks, Jane. Confirming that OAR's items in this spreadsheet are all set.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Nishida, Jane21 <ActAdmJ21Nishida@epa.gov>
Sent: Tuesday, March 2, 2021 9:03 AM
To: Arroyo, Victoria <Arroyo.Victoria@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>; Cassady, Alison <Cassady.Alison@epa.gov>
Cc: Utech, Dan <Utech.Dan@epa.gov>
Subject: FW: EPA Proposed Leader Summit Deliverables

Per our discussion this morning, attached are the proposed EPA deliverables for the POTUS Climate Summit. Vicki/Joe – I was told that you cleared the deliverables for your offices. The NSC deadline was COB yesterday, but we asked for extension for today so if you have any edits, please let me know asap.

Thanks,

Jane

From: Kasman, Mark <Kasman.Mark@epa.gov>
Sent: Monday, March 1, 2021 4:53 PM
To: Nishida, Jane21 <ActAdmJ21Nishida@epa.gov>; Utech, Dan <Utech.Dan@epa.gov>
Subject: EPA Proposed Leader Summit Deliverables

Jane/Dan,

Attached are proposed EPA-lead deliverables for President Biden's Climate Summit. They come from OAR, OP, and OITA.
NSC has asked for these tonight, but given that you are just getting them for review, I can ask for an extension until tomorrow.

Mark S. Kasman
Acting Assistant Administrator
Office of International and Tribal Affairs
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Tel: (202)564-2024

Message

From: Goffman, Joseph [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23474D598E8D4EDFA9214A5991F2935B-GOFFMAN, JO]
Sent: 2/5/2021 12:22:16 PM
To: Grundler, Christopher [grundler.christopher@epa.gov]
Subject: Fwd: Past initial use of the SCC estimates in the microwave rule (and other rules).
Attachments: first uses of SCC .docx

Ex. 5 Deliberative Process (DP)

Sent from my iPhone

Begin forwarded message:

> **From:** "Arroyo, Victoria" <Arroyo.Victoria@epa.gov>
> **Date:** February 5, 2021 at 7:08:51 AM EST
> **To:** "Goffman, Joseph" <Goffman.Joseph@epa.gov>
> **Subject: Fwd: Past initial use of the SCC estimates in the microwave rule (and other rules).**
>
> Good morning and FYI
>
> Sent from my iPad
>
> Begin forwarded message:
>
> > **From:** "McGartland, Al" <McGartland.Al@epa.gov>
> > **Date:** February 4, 2021 at 9:49:31 AM EST
> > **To:** "Arroyo, Victoria" <Arroyo.Victoria@epa.gov>
> > **Subject: Past initial use of the SCC estimates in the microwave rule (and other rules).**
> >
> > Hi Vicki. Attached is a 1.5 page document that describes how the USG rolled out past new estimates of the SCC. This includes the time we used a new final SCC estimate in the microwave rule. We would be happy to walk you through this if its not clear.

Ex. 5 Deliberative Process (DP)

Message

From: Goffman, Joseph [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23474D598E8D4EDFA9214A5991F2935B-GOFFMAN, JO]
Sent: 2/2/2021 12:55:04 AM
To: Utech, Dan [Utech.Dan@epa.gov]; Fox, Radhika [Fox.Radhika@epa.gov]; Garbow, Avi [Garbow.Avi@epa.gov]
CC: Cassady, Alison [Cassady.Alison@epa.gov]
Subject: RE: jobs materials

Too late for a new idea on this? Colleague just suggested something, but I won't bother if the WH has closed off the process. Thanks.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Utech, Dan <Utech.Dan@epa.gov>
Sent: Friday, January 29, 2021 7:17 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Fox, Radhika <Fox.Radhika@epa.gov>; Garbow, Avi <Garbow.Avi@epa.gov>
Cc: Cassady, Alison <Cassady.Alison@epa.gov>
Subject: jobs materials

Joe, Radhika and Avi – Thanks so much for the incredibly quick turn! I have attached what we sent over to the climate team earlier. As you'll see, we included most of what you suggested. Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP) Thanks again!

Message

From: Goffman, Joseph [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23474D598E8D4EDFA9214A5991F2935B-GOFFMAN, JO]
Sent: 3/18/2021 10:32:54 PM
To: Lance, Kathleen [Lance.Kathleen@epa.gov]
CC: Enobakhare, Rosemary [Enobakhare.Rosemary@epa.gov]; Cassady, Alison [Cassady.Alison@epa.gov]; Utech, Dan [Utech.Dan@epa.gov]; Lucey, John [Lucey.John.D@epa.gov]
Subject: RE: Administrator Regan invite form

Thanks, Kathleen.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Lance, Kathleen <Lance.Kathleen@epa.gov>
Sent: Thursday, March 18, 2021 6:32 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>; Cassady, Alison <Cassady.Alison@epa.gov>; Utech, Dan <Utech.Dan@epa.gov>; Lucey, John <Lucey.John.D@epa.gov>
Subject: FW: Administrator Regan invite form

Joe,

We are confirmed for next Thursday with EEI.

I will be setting a briefing prior to the event, and ask you please lead on the topics Dan has identified as part of the TPs.

Please let me know if you have any questions.

Kindly,

Kathleen C. Lance
Director of Scheduling and Advance
U.S. Environmental Protection Agency
Cell: (202) 941-1109

From: Lance, Kathleen
Sent: Thursday, March 18, 2021 6:29 PM
To: 'Bond, Alexander' <ABond@eei.org>
Cc: Wolff, Brian <BWolff@eei.org>; Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: RE: Administrator Regan invite form

Thank you, Alex.

I am pleased to offer the Administrator's availability to offer 5-10 minutes of remarks at the beginning of your meeting next Thursday, 3/25 at 5:00pm, followed by Q&A. He will be able to participate for 45-minutes total.

Please share the link for the meeting with me at your earliest convenience.

We look forward to the event.

Kindly,

Kathleen C. Lance
Director of Scheduling and Advance
U.S. Environmental Protection Agency
Cell: (202) 941-1109

From: Bond, Alexander <ABond@eei.org>
Sent: Thursday, March 18, 2021 12:30 PM
To: Lance, Kathleen <Lance.Kathleen@epa.gov>
Cc: Wolff, Brian <BWolff@eei.org>; Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: Administrator Regan invite form

Kathleen –

Please find the attached form for Administrator Regan's meeting with our Board next week. Please let me know if you all have any questions – thank you!

Alex

--
Alex Bond
Deputy General Counsel, Climate & Clean Energy
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2696
202-508-5523
www.eei.org

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Message

From: Goffman, Joseph [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23474D598E8D4EDFA9214A5991F2935B-GOFFMAN, JO]
Sent: 2/2/2021 7:26:27 PM
To: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
Subject: RE: Now, it's my turn!

ty

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Tuesday, February 2, 2021 2:19 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: Re: Now, it's my turn!

I will call you and then conference her in at 4:15.

Sent from my iPhone

> On Feb 2, 2021, at 12:41 PM, Goffman, Joseph <Goffman.Joseph@epa.gov> wrote:
>
> Thank you, Melissa.
>
> Joseph Goffman
> Acting Assistant Administrator
> Office of Air and Radiation
> U.S. Environmental Protection Agency
>
> ---
>
> **From:** Hoffer, Melissa <Hoffer.Melissa@epa.gov>
> **Sent:** Tuesday, February 2, 2021 12:40 PM
> **To:** Goffman, Joseph <Goffman.Joseph@epa.gov>
> **Cc:** Cassady, Alison <Cassady.Alison@epa.gov>; Adhar, Radha <Adhar.Radha@epa.gov>
> **Subject:** Re: Now, it's my turn!
>
> Sure. 4:15 works. I will let her know to expect a call.
>
> Sent from my iPhone
>
>> On Feb 2, 2021, at 12:27 PM, Goffman, Joseph <Goffman.Joseph@epa.gov> wrote:
>>
>> Melissa – I think we should call her together. I am open between 1 and 1:30 and 3:15 and 3:30 and then between 4 and 5:30. Thanks.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Cassady, Alison <Cassady.Alison@epa.gov>
Sent: Tuesday, February 2, 2021 12:23 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Adhar, Radha <Adhar.Radha@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Subject: RE: Now, it's my turn!

You should call Ceronsky instead to communicate your concerns.

Alison L. Cassady
Deputy Chief of Staff for Policy
U.S. Environmental Protection Agency
Cell: (202) 941-6036

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Tuesday, February 2, 2021 11:55 AM
To: Adhar, Radha <Adhar.Radha@epa.gov>; Cassady, Alison <Cassady.Alison@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Subject: RE: Now, it's my turn!

Let me know if you want me ***to*** call Greg. Otherwise, I'm going to hold off. Thanks.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Adhar, Radha <Adhar.Radha@epa.gov>
Sent: Tuesday, February 2, 2021 11:53 AM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Cassady, Alison <Cassady.Alison@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Subject: RE: Now, it's my turn!

Hey y'all, FYI I connected with Dan and he will raise with the WH. I also shared with him the update on the CRA.

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Tuesday, February 2, 2021 11:49 AM
To: Cassady, Alison <Cassady.Alison@epa.gov>; Adhar, Radha <Adhar.Radha@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Subject: RE: Now, it's my turn!

I like that answer. ; -) Thanks.

Joseph Goffman
Acting Assistant Administrator

Office of Air and Radiation
U.S. Environmental Protection Agency

From: Cassady, Alison <Cassady.Alison@epa.gov>
Sent: Tuesday, February 2, 2021 11:44 AM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Adhar, Radha <Adhar.Radha@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Subject: RE: Now, it's my turn!

Ex. 5 Deliberative Process (DP) Will have more info in about 30 mins.

Alison L. Cassady
Deputy Chief of Staff for Policy
U.S. Environmental Protection Agency
Cell: (202) 941-6036

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Tuesday, February 2, 2021 11:44 AM
To: Cassady, Alison <Cassady.Alison@epa.gov>; Adhar, Radha <Adhar.Radha@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Subject: FW: Now, it's my turn!

Ex. 5 Deliberative Process (DP)

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Joseph Goffman <Ex. 6
Sent: Tuesday, February 2, 2021 11:30 AM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: Fwd: Now, it's my turn!

---------- Forwarded message ---------
From: **GREG J DOTSON** Ex. 6 >
Date: Tue, Feb 2, 2021 at 10:00 AM
Subject: Re: Now, it's my turn!
To: Joseph Goffman Ex. 6 >

Hi Joe,
I know you have an endless number of items on your to do list but I'm hoping to get a couple of minutes from you. I'd appreciate it.
Greg

Sent from my iPhone

> On Feb 1, 2021, at 8:52 PM, GREG J DOTSON <Ex. 6> wrote:
>
> Thanks Joe. I appreciate it. By the way, I was talking to MF tonight and wondered if you had a few minutes to talk in the morning. My cell is Ex. 6
>
> Sent from my iPhone
>
>> On Feb 1, 2021, at 3:06 PM, Joseph Goffman Ex. 6 wrote:
>>
>>
>> Greg -- Congratulations to EPW, if the report I just got is true that you are joining EPW as Chief Counsel. How lucky, and wise, are they to have you come aboard. Looking forward to connecting and working together.
>>
>> Best,
>> Joe