Message

From: Kupchan, Simma [Kupchan.Simma@epa.gov]
Sent: 4/25/2017 2:07:52 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Wendelowski, Karyn [wendelowski.karyn@epa.gov]
CC: Schwab, Justin [schwab.justin@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Prabhu, Aditi [Prabhu.Aditi@epa.gov]
Subject: RE: My comments on WOTUS

Thanks very much, Kevin. I can incorporate now.

Actually, it looks like some of your edits were cut off in the scanner – any chance I could swing by and pick up the original? If that doesn't work, no worries – I'll incorporate and just let you know if I have a specific question.

Simma Kupchan
Water Law Office
US EPA Office of General Counsel
William Jefferson Clinton Building North Room 7426Q
(p) 202-564-3105

From: Minoli, Kevin
Sent: Tuesday, April 25, 2017 10:04 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Cc: Schwab, Justin <schwab.justin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>
Subject: My comments on WOTUS

Here they are. Let me know if you can't read them or have questions. Thanks!

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Begin forwarded message:

> **From:** "Veney, Carla" <Veney.Carla@epa.gov>
> **To:** "Minoli, Kevin" <Minoli.Kevin@epa.gov>
> **Subject: pdf**

> **From:** DC-WJCN-4020-M@epa.gov [mailto:DC-WJCN-4020-M@epa.gov]
> **Sent:** Tuesday, April 25, 2017 8:43 AM
> **To:** Veney, Carla <Veney.Carla@epa.gov>
> **Subject:**

Message

From: silver.wendy@epa.gov [silver.wendy@epa.gov]
Sent: 3/13/2017 5:18:57 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: ***ACTION REQUIRED*** - Revised Litigation Hold notice regarding City of Colorado Springs potential CWA violations

Attorney Work Product / Ex. 5

This email is intended for the sole use of the intended recipient(s) and contains material that is privileged attorney-client communication and/or subject to the attorney work product doctrine. Any review, reliance, distribution, or forwarding without express permission by the sender is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies

Message

From: silver.wendy@epa.gov [silver.wendy@epa.gov]
Sent: 3/21/2017 5:38:25 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: ***Action Required***Request for Review of Custodians - R8_CityofColoradoSprings_7-9-2015_CWA litigation hold

Flag: Flag for follow up

Attorney Work Product / Ex. 5

NOTE: You must be logged into the EPA Network to access this link.

The legal team recognizes that your time is valuable and appreciates your cooperation and continued support.

Failure to promptly respond to the questions found at the end of the notice will result in automatic reminders to your email account until you respond.

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Message

From: Minoli, Kevin [Minoli.Kevin@epa.gov]
Sent: 3/24/2017 12:58:52 AM
To: Weekly Report Group [Weekly_Report_Group@epa.gov]
CC: Schwab, Justin [schwab.justin@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Gunasekara, Amanda [gunasekara.amanda@epa.gov]; Brown, Byron [brown.byron@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]; Knapp, Kristien [Knapp.Kristien@epa.gov]; Albores, Richard [Albores.Richard@epa.gov]; Trudeau, Shaun [Trudeau.Shaun@epa.gov]; Prabhu, Aditi [Prabhu.Aditi@epa.gov]; Cleland-Hamnett, Wendy [Cleland-Hamnett.Wendy@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Breen, Barry [Breen.Barry@epa.gov]; Shapiro, Mike [Shapiro.Mike@epa.gov]; Thomas, Deb [thomas.debrah@epa.gov]; Nishida, Jane [Nishida.Jane@epa.gov]
Subject: OGC Weekly Report
Attachments: OGC Weekly Report 3.23.17.docx

Attached is OGC's Weekly Report. Also available upon request are the following:

1. List of litigation deadlines for the next 90 days
2. Detailed list of litigation and similar deadlines over the next two weeks
3. Court ordered, settlement, and consent decree deadlines through 2017

Thanks, Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Office Line: 202-564-8040
Direct Dial: 202-564-5551

Message

From: Kwok, Rose [Kwok.Rose@epa.gov]
Sent: 4/19/2017 5:46:19 PM
To: Shapiro, Mike [Shapiro.Mike@epa.gov]; Peck, Gregory [Peck.Gregory@epa.gov]; Loop, Travis [Loop.Travis@epa.gov]; Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Downing, Donna [Downing.Donna@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Klasen, Matthew [Klasen.Matthew@epa.gov]; Wendelowski, Karyn [wendelowski.karyn@epa.gov]; Kaiser, Sven-Erik [Kaiser.Sven-Erik@epa.gov]; Christensen, Damaris [Christensen.Damaris@epa.gov]; Campbell, Ann [Campbell.Ann@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Bangerter, Layne [bangerter.layne@epa.gov]; McDavit, Michael W. [Mcdavit.Michael@epa.gov]; Frithsen, Jeff [Frithsen.Jeff@epa.gov]; Nickerson, William [Nickerson.William@epa.gov]; Stokely, Peter [Stokely.Peter@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Keating, Jim [Keating.Jim@epa.gov]; ian.p.osullivan@usace.army.mil; jennifer.a.moyer@usace.army.mil; David.F.Dale@usace.army.mil; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Bowles, Jack [Bowles.Jack@epa.gov]; Damico, Brian [Damico.Brian@epa.gov]; Breen, Barry [Breen.Barry@epa.gov]; Cheatham, Reggie [cheatham.reggie@epa.gov]; Donald.e.jackson@usace.army.mil; Hewitt, Julie [Hewitt.Julie@epa.gov]; Brown, Byron [brown.byron@epa.gov]; Bowman, Liz [Bowman.Liz@epa.gov]
CC: FertikEdgerton, Rachel [FertikEdgerton.Rachel@epa.gov]; Borum, Denis [Borum.Denis@epa.gov]; Orvin, Chris [Orvin.Chris@epa.gov]; Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Cherry, Andrew [Cherry.Andrew@epa.gov]; Lousberg, Macara [Lousberg.Macara@epa.gov]; Theis, Joseph [Theis.Joseph@epa.gov]; Bahk, Benjamin [Bahk.Benjamin@epa.gov]; Pollins, Mark [Pollins.Mark@epa.gov]; Evalenko, Sandy [Evalenko.Sandy@epa.gov]; Lamont, Douglas W SES (US) [douglas.w.lamont2.civ@mail.mil]; Schmauder, Craig R SES (US) [craig.r.schmauder.civ@mail.mil]; Cindy Barger [cindy.s.barger.civ@mail.mil]; McGartland, Al [McGartland.Al@epa.gov]; Penman, Crystal [Penman.Crystal@epa.gov]; Washington, Valerie [Washington.Valerie@epa.gov]; Clark, Becki [Clark.Becki@epa.gov]; Indermark, Michele [Indermark.Michele@epa.gov]; Hanson, Andrew [Hanson.Andrew@epa.gov]; Principe, Vanessa [Principe.Vanessa@epa.gov]; Swackhammer, J-Troy [Swackhammer.J-Troy@epa.gov]; Howard, MarkW [Howard.MarkW@epa.gov]
Subject: Materials for the Federalism Meeting
Attachments: WOTUS Federalism Meeting Agenda.docx; federalism draft ppt.pdf

Hi Folks,

Here are the materials for the federalism meeting today. I can send

-----Original Appointment-----
From: Shapiro, Mike
Sent: Tuesday, January 17, 2017 7:47 AM
To: Shapiro, Mike; Peck, Gregory; Loop, Travis; Best-Wong, Benita; Goodin, John; Downing, Donna; Kwok, Rose; Neugeboren, Steven; Wehling, Carrie; Klasen, Matthew; Wendelowski, Karyn; Kaiser, Sven-Erik; Christensen, Damaris; Campbell, Ann; Schwab, Justin; Bangerter, Layne; McDavit, Michael W.; Frithsen, Jeff; Nickerson, William; Stokely, Peter; Frazer, Brian; Dravis, Samantha; Keating, Jim; ian.p.osullivan@usace.army.mil; jennifer.a.moyer@usace.army.mil; David.F.Dale@usace.army.mil; Greenwalt, Sarah; Bowles, Jack; Damico, Brian; Breen, Barry; Cheatham, Reggie; Donald.e.jackson@usace.army.mil; Hewitt, Julie; Brown, Byron; Bowman, Liz
Cc: FertikEdgerton, Rachel; Borum, Denis; Orvin, Chris; Eisenberg, Mindy; Kupchan, Simma; Cherry, Andrew; Lousberg, Macara; Theis, Joseph; Bahk, Benjamin; Pollins, Mark; Evalenko, Sandy; Lamont, Douglas W SES (US); Schmauder, Craig R SES (US); Cindy Barger; McGartland, Al; Penman, Crystal; Washington, Valerie; Clark, Becki; Indermark, Michele; Hanson, Andrew; Principe, Vanessa; Swackhammer, J-Troy; Howard, MarkW
Subject: WOTUS Call in Conference Line/Code / Ex. 6 passcode Conference Line/Code / Ex. 6
When: Wednesday, April 19, 2017 10:00 AM-10:45 AM (UTC-05:00) Eastern Time (US & Canada).
Where: 3233 WJCE

Waters of the U.S. Federalism Consultation Meeting
AGENDA

Date: April 19, 2017

Time: 2:00 to 4:00 PM Eastern Time

Location: Room 1117 William Jefferson Clinton Building East
U.S. Environmental Protection Agency
1201 Constitution Ave., NW
Washington, DC 20004

Call-in: For those who will speak during the meeting, please call – (Conference Line/Code / Ex. 6
For those just listening, please call – Conference Line/Code / Ex. 6
For both, please reference the conference ID to be admitted into the call: Conference Line/Code / Ex. 6

Agenda

Ex. 5 - Deliberative Process/Attorney Client

Message

From: Hope, Brian [Hope.Brian@epa.gov]
on behalf of EPAExecSec [EPAExecSec@epa.gov]
Sent: 4/28/2017 7:59:27 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]; Flynn, Mike [Flynn.Mike@epa.gov]; Brown, Byron [brown.byron@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Hale, Michelle [hale.michelle@epa.gov]; Richardson, RobinH [Richardson.RobinH@epa.gov]; Bennett, Tate [Bennett.Tate@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Wagner, Kenneth [wagner.kenneth@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Freire, JP [Freire.JP@epa.gov]; Hupp, Millan [hupp.millan@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Bowman, Liz [Bowman.Liz@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Lyons, Troy [lyons.troy@epa.gov]; Graham, Amy [graham.amy@epa.gov]; Kelly, Albert [kelly.albert@epa.gov]
CC: Gaines, Cynthia [Gaines.Cynthia@epa.gov]; Burden, Susan [Burden.Susan@epa.gov]; Knapp, Kristien [Knapp.Kristien@epa.gov]; Fonseca, Silvina [Fonseca.Silvina@epa.gov]; Threet, Derek [Threet.Derek@epa.gov]; Dickerson, Aaron [dickerson.aaron@epa.gov]; Hargrove, Anne [Hargrove.Anne@epa.gov]
Subject: Daily Reading File - April 28, 2017
Attachments: Daily Reading File - April 28, 2017.pdf

Correspondence Management System
Control Number: AX-17-000-8033
Printing Date: April 27, 2017 03:20:45

Citizen Information

Citizen/Originator: **Lynne, Diane**
Organization: NTEU Chapter 280
Address: 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460

Constituent: N/A
Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number:	AX-17-000-8033	**Alternate Number:**	N/A
Status:	Pending	**Closed Date:**	N/A
Due Date:	May 11, 2017	**# of Extensions:**	0
Letter Date:	Apr 27, 2017	**Received Date:**	Apr 27, 2017
Addressee:	AD-Administrator	**Addressee Org:**	EPA
Contact Type:	LTR (Letter)	**Priority Code:**	Normal
Signature:	AD-Administrator	**Signature Date:**	N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF -Please Direct Management to Implement VERA/VSIPs Broadly
Instructions: AD-Prepare draft response for the Administrator's signature
Instruction Note: N/A
General Notes: N/A
CC: Derek Threet - AO-IO
OCFO - OCFO -- Immediate Office
Silvina Fonseca - AO-IO

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Brigette Moritz	OEX	OARM	Apr 27, 2017	May 11, 2017	N/A
	Instruction: AD-Prepare draft response for the Administrator's signature				

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date

Thu Apr 27 14:16:45 EDT 2017
Hope.Brian@epamail.epa.gov
FW: Please Direct Management to Implement VERA/VSIPs Broadly
To: CMS.OEX@epamail.epa.gov

DRF

From: Lynne, Diane
Sent: Thursday, April 27, 2017 2:13 PM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Please Direct Management to Implement VERA/VSIPs Broadly
Importance: High

Dear Administrator Pruitt,

NTEU learned that some offices within the agency are planning to narrowly implement the VERAs and VSIPs currently being discussed. We think this is a mistake and respectfully request that you direct them to implement the VERAs and VSIPs in the broadest way legally allowed.

Broad implementation is necessary to carry out the President's directive to reduce EPA's budget and is also consistent with the President's January 23 commitment to "reduce the size of the Federal Government's workforce through attrition." See Presidential Memorandum Regarding the Hiring Freeze, January 23, 2017. If all EPA employees are not allowed the option of voluntary outs, it is more likely that RIFs will be necessary, something NTEU *strongly* opposes.

While NTEU is not necessarily in favor of staff reductions, if reductions are necessary in your view, it's essential that they come voluntarily. Unfortunately many EPA managers believe that budgetary and/or workforce reductions are insufficient justification to allow VERAs and VSIPs. We respectfully disagree. The only way their minds are going to be changed, however, is if you to direct them to offer VERAs and VSIPs to all employees assigned to headquarters and prohibit them from excluding certain employees from accessing VERAs and VSIPs.

We are happy to meet with you, your Chief of Staff, or others to discuss this.

Best regards,

Diane Lynne

President, NTEU Chapter 280

202 566 2786

Correspondence Management System
Control Number: AX-17-000-8041
Printing Date: April 27, 2017 04:48:14

Citizen Information

Citizen/Originator: **Williams, Dennis**
Organization: UAW
Address: 1757 N Street, NW, Washington, DC 20036

Tischer, Emili
Organization: UAW
Address: 1757 N Street, NW, Washington, DC 20036

Constituent: N/A
Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number:	AX-17-000-8041	**Alternate Number:**	N/A
Status:	Pending	**Closed Date:**	N/A
Due Date:	May 11, 2017	**# of Extensions:**	0
Letter Date:	Apr 24, 2017	**Received Date:**	Apr 27, 2017
Addressee:	AD-Administrator	**Addressee Org:**	e
Contact Type:	EML (E-Mail)	**Priority Code:**	Normal
Signature:	AD-Administrator	**Signature Date:**	N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - UAW urges Administrator to reject a petition to change the point of obligation for the Renewable Fuel Standard
Instructions: AD-Prepare draft response for the Administrator's signature
Instruction Note: N/A
General Notes: N/A
CC: Kristien Knapp - AO-IO
OCIR - Office of Congressional and Intergovernmental Relations
OP - Office of Policy
R5 - Region 5 -- Immediate Office
R7 - Region 7 -- Immediate Office
Silvina Fonseca - AO-IO

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Anne Hargrove	OEX	OAR	Apr 27, 2017	May 11, 2017	N/A
	Instruction: AD-Prepare draft response for the Administrator's signature				

Supporting Information

Supporting Author: N/A

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA – UAW

DENNIS WILLIAMS, President GARY CASTEEL, Secretary-Treasurer

VICE PRESIDENTS: CINDY ESTRADA • JIMMY SETTLES • NORWOOD JEWELL

IN REPLY REFER TO
1757 N STREET, N.W.
WASHINGTON, D.C. 20036
TELEPHONE: (202) 828-8500
FAX (202) 293-3457

April 24, 2017

Administrator Scott Pruitt
U.S. EPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

Dear Administrator Pruitt:

Today, I am writing to express concerns about efforts to change the "point of obligation" under the Renewable Fuel Standard (RFS) and urge the Environmental Protection Agency (EPA) to formally reject the petition as soon as possible.

The UAW supports the RFS and other policies aimed at reducing emissions of greenhouse gases, building clean energy infrastructure, creating new manufacturing jobs, and increasing energy efficiency in our homes and workplaces. Rising carbon dioxide levels in the earth's atmosphere must be addressed by taking a comprehensive approach.

Moving the point of obligation from refiners and importers to downstream entities, such as blenders and businesses who operate at fuel terminals, could disrupt an effective program and lead to several negative unintended consequences for workers and our economy.

Dramatically increasing the number of obligated parties would likely prove extremely difficult to effectively enforce given EPA's limited resources. Many downstream entities are likely to encounter difficulties complying thereby throwing the program into chaos. These realities will likely cause uncertainty in this important market and deter future investment in facilities and technologies that produce renewable fuels. If the U.S. market becomes chaotic and unpredictable, companies and investors will simply look to grow elsewhere and hire manufacturing and construction workers overseas instead of in the United States. This is an outcome we must avoid.

UAW represents more than one million active and retired members, many of whom manufacture combines, tractors, and products needed by our emerging biofuel industry. These workers have obtained good paying jobs that enable them to provide for their families and help build a stronger local economy. This petition puts high-skilled and specialized agricultural manufacturing jobs at risk, thereby limiting the future growth of our manufacturing sector. We must not put policies in place that weaken our manufacturing base and the middle class.

This petition is a solution in search of a problem. Our manufacturing sector is viable and strong, particularly in the biofuels and renewable fuels industry. Continuing to build our biofuels industry will keep America globally competitive, create even more jobs, improve the environment, and boost economic demand. Changing the point of obligation could destabilize the renewable fuel industry and send the wrong message to investors.

We respectfully request that the EPA reject the petition to change the point of obligation as soon as possible. Thank you for considering our views on this important matter.

Sincerely,

Dennis Williams, President
International Union, UAW

DDW:JN:kmt
opeiu494/afl-cio

Correspondence Management System
Control Number: AX-17-000-8064
Printing Date: April 28, 2017 10:20:21

Citizen Information

Citizen/Originator: **Lane, Adam**
Organization: Los Angeles Business Council
Address: 2029 Century Park East, Los Angeles, CA 90067

Ziman, Richard
Organization: Los Angeles Business Council
Address: 2029 Century Park East, Los Angeles, CA 90067

Watt, Nadine
Organization: Los Angeles Business Council
Address: 2029 Century Park East, Los Angeles, CA 90067

Cox, Brad
Organization: Los Angeles Business Council
Address: 2029 Century Park East, Los Angeles, CA 90067

Leslie, Mary
Organization: Los Angeles Business Council
Address: 2029 Century Park East, Los Angeles, CA 90067

Constituent: N/A
Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number:	AX-17-000-8064	**Alternate Number:**	N/A
Status:	Pending	**Closed Date:**	N/A
Due Date:	May 15, 2017	**# of Extensions:**	0
Letter Date:	Apr 28, 2017	**Received Date:**	Apr 28, 2017
Addressee:	AD-Administrator	**Addressee Org:**	EPA
Contact Type:	EML (E-Mail)	**Priority Code:**	Normal
Signature:	AD-Administrator	**Signature Date:**	N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Urge agency to reconsider the rollback of many key environmental regulations and programs, including the Energy Star Program
Instructions: AD-Prepare draft response for the Administrator's signature
Instruction Note: N/A
General Notes: N/A
CC: Kristien Knapp - AO-IO
OCFO - OCFO -- Immediate Office
OP - Office of Policy
OPA - Office of Public Affairs
R9 - Region 9 - Immediate Office

Lead Information

Lead Author: N/A

LABC
Los Angeles Business Council
since 1936

April 28, 2017

Administrator Scott Pruitt
Environmental Protection Agency
Office of the Administrator, 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Pruitt,

On behalf of the **Los Angles Business Council**, which represents over 450 influential businesses across virtually every industry, we urge you to stop the rollback of key environmental regulations. As business leaders, we have a unique perspective on how environmental regulations have not only improved our citizens' quality of life, but significantly grown our local economy. We share the sentiment of the recently sent letter to President Trump by the Mayors National Climate Action Agenda, co-founded by Los Angeles Mayor Eric Garcetti, opposing recent actions to roll back the Clean Power Plan, reduce vehicle fuel efficiency standards, and propose budget cuts to the EPA and critical programs such as Energy Star.

There is overwhelming evidence showing that investment in clean energy and other environmentally-friendly initiatives spur job growth: Over 500,000 Californians are now employed by the clean energy industry, where wages are higher than average, and well-paying, entry-level blue collar jobs are a reality. Overall, renewable energy has the potential to be cleaner, safer, and more cost-efficient than traditional fossil fuels.

As a group devoted to promoting business interests in the Los Angeles region, we respectfully request that you do not overlook the economic benefits of policies that incentivize renewable energy use and reduce greenhouse gas emissions. These impacts reverberate across many industries: they reduce costs in the long-term, encourage research and development in job-producing industries, and save millions in public health costs.

We are especially concerned about the rollback of the Energy Star program. As a representative of leaders in the building and development industries, we stand strongly behind this voluntary program, in which 16,000 companies and organizations participate and has helped reduce 2.8 billion tons of greenhouse gas emissions. At an annual cost of merely $60 million to taxpayers and resulting in $30 billion per year in energy bill savings, this program has been a shining example of a market-driven mechanism that has minimal costs and outstanding results.

Our member companies have been successful because they take the long view. They do not sacrifice their long-term vision for short-term profits. Forcing the nation backwards will cause us irreparable harm. Climate change is real, and presents tangible threats to a state with over 800 miles of coastline, volatile weather patterns, and a history of devastating forest fires. Combatting climate change not only preserves our environment for future generations, but also allows us to avoid future cataclysms that will cost our state billions.

As one of the most innovative states in the country, we are proud of the role that California has played in crafting the modern economy: California companies have been pioneers in the entertainment, aerospace, computer, and clean energy industries. We stand firm in supporting policies that promote progress and sustainability, and urge the administration to do the same.

Sincerely,

Richard Ziman
Chairman, Rexford Industrial
Founding Chair & Vice Chair, LABC

Nadine Watt
President, Watt Companies
Chair, LABC

Brad Cox
Senior Managing Director,
Trammell Crow Company
Chair, LABC Institute

Mary Leslie
President, LABC

2029 Century Park East, Suite 1240 . Los Angeles, CA 90067 . Phone 310.226.7460 . fax 310.226.7461 . www.labusinesscouncil.org

Correspondence Management System
Control Number: AX-17-000-8066
Printing Date: April 28, 2017 10:38:52

Citizen Information

Citizen/Originator: **Miller, Barbara**
Organization: Silver Valley Community Resource Center
Address: P.O. Box 362, Kellogg, ID 83837
Personal Matters / Ex. 6
Organization: Silver Valley Community Resource Center
Address: P.O. Box 362, Kellogg, ID 83837
Personal Matters / Ex. 6
Organization: Silver Valley Community Resource Center
Address: P.O. Box 362, Kellogg, ID 83837

Constituent: N/A
Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number:	AX-17-000-8066	**Alternate Number:**	N/A
Status:	Pending	**Closed Date:**	N/A
Due Date:	May 15, 2017	**# of Extensions:**	0
Letter Date:	Apr 27, 2017	**Received Date:**	Apr 27, 2017
Addressee:	AD-Administrator	**Addressee Org:**	EPA
Contact Type:	EML (E-Mail)	**Priority Code:**	Normal
Signature:	AD-Administrator	**Signature Date:**	N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Lead exposure within the towns of the original Bunker Hill Superfund site
Instructions: AD-Prepare draft response for the Administrator's signature
Instruction Note: N/A
General Notes: N/A
CC: OCHP - Office of Children's Health Protection
OCSPP - OCSPP - Immediate Office
OLEM - Office of Land and Emergency Management
OPA - Office of Public Affairs
Silvina Fonseca - AO-IO
Susan Burden - AO-IO

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	R10	Apr 28, 2017	May 15, 2017	N/A
	Instruction: AD-Prepare draft response for the Administrator's signature				

Supporting Information

20Silver Valley Community Resource Center

PO Box 362

Kellogg, ID 83837

April 20, 2017

Dear Mr. Scott Pruitt;

The Silver Valley Community Resource Center is a 30 year old non-profit organization established in the epicenter of the Bunker Hill Superfund site, North Idaho. The site was listed as the 2nd largest EPA NPL site in 1983 due to a century of lead and heavy metal contamination. The site was originally 21 sq. miles it is now 1500 sq. miles. Of primary concern is the ongoing lead exposure in the air, soil, water and homes within the 4 towns of the original site.

It only takes an amount of lead the size of a granual of sand to harm a child for life. Careful research confirms that there are now 6 generations of families living with chronic lead health conditions.

The only proactive intervention going on is a successful Children Run Better Unleaded project conducted by the SVCRC. For 3 decades the SVCRC, grassroots efforts of education and outreach have worked in good faith with EPA to provide many resources for them to receive millions and millions of dollars to do their mission, to protect the environment and human health. These good faith actions are not working.

Now that you have assumed the responsibility of protecting the public from harmful environmental exposures, we wish to ask that you act to eliminate the toxic threat over our lives. We have been living a legacy of contamination for too long. Our lives, our children's lives are valuable. We have the right to not be poisoned. Please check contact our office to find out how to implement the law which mandates that contaminated sites be cleaned up and afford us the relief from our servitude to this error. Our children deserve to be free from this unnecessary imposition of disease. Please extend your hand to help us in this forgotten corner of our great land!

Sincerely,

Personal Matters / Ex. 6

Barbara Miller/SVCRC
Director

Correspondence Management System
Control Number: AX-17-000-8037
Printing Date: April 27, 2017 04:21:36

Citizen Information

Citizen/Originator: **Ridout, Scott**
Organization: Surfrider Foundation
Address: Address Unknown

Constituent: N/A
Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number:	AX-17-000-8037	**Alternate Number:**	N/A
Status:	Pending	**Closed Date:**	N/A
Due Date:	May 11, 2017	**# of Extensions:**	0
Letter Date:	Apr 27, 2017	**Received Date:**	Apr 27, 2017
Addressee:	AD-Administrator	**Addressee Org:**	EPA
Contact Type:	LTR (Letter)	**Priority Code:**	Normal
Signature:	AD-Administrator	**Signature Date:**	N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Surfrider member says public notification of Tijuana sewage spill that began Feb. 6 and fouled U.S. beaches was slow
Instructions: AD-Prepare draft response for the Administrator's signature
Instruction Note: N/A
General Notes: N/A
CC: Derek Threet - AO-IO
OCFO - OCFO -- Immediate Office
OCIR - Office of Congressional and Intergovernmental Relations
OITA - Office of International and Tribal Affairs
OP - Office of Policy
R9 - Region 9 - Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Anne Hargrove	OEX	OW	Apr 27, 2017	May 11, 2017	N/A
	Instruction: AD-Prepare draft response for the Administrator's signature				

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

Thu Apr 27 14:19:23 EDT 2017
Hope.Brian@epamail.epa.gov
FW: Sewage Spills from Mexico
To: CMS.OEX@epamail.epa.gov

DRF

From: Scott Ridout [mailto:scottridout@surfridersd.org]
Sent: Thursday, April 27, 2017 12:55 PM
To: R9.Info <R9.Info@epa.gov>; Pruitt, Scott <Pruitt.Scott@epa.gov>; Lynn, Tricia <lynn.tricia@epa.gov>
Cc: Nairin Andrade <nairin@surfridersd.org>; Adam Collardey <adamc@surfridersd.org>; Gabriela Torres <gabriela@resolvelegalsolutions.com>
Subject: Sewage Spills from Mexico

Dear Scott Pruitt, Alexis Strauss, and Tricia Lynn

I am writing on behalf of the Surfrider Foundation to express our outrage regarding the**143 million gallons of raw sewage that** was discharged into the Tijuana River upstream in Tijuana from February 6 to 23, 2017, as well as the many subsequent flows since then. Sewage discharges from Mexico into the Tijuana River valley have created an emergency situation that is threatening public health, the environment, and our national security. I call upon you to resolve this critical issue as soon as possible.

While the Tijuana River is notorious for trash and sewage, February's spill is by far the largest raw sewage spill into the Tijuana River in over a decade. The Tijuana River snakes the U.S./Mexico Border and ultimately discharges into the Pacific Ocean. The enormity of the spill polluted beaches from Rosarito, MX to Coronado, CA - posing an unacceptable risk to humans, wildlife, and the environment.

It should also be noted that the sewage outflows from the Tijuana river directly affect U.S. Border Patrol agents as well as the U.S. Navy Seals (who train in Imperial Beach and are currently building a $1 billion expansion to their campus). Sewage from the Tijuana river is a direct threat to our national security and the problem needs to be addressed immediately.

In early February 2017, residents of Imperial Beach and Tijuana noticed the familiar sewage stench and made multiple queries to the IBWC and authorities in Baja Norte, MX, asking what was going on. Despite the overwhelming evidence that a major sewage spill was occurring, these queries were met with deafening silence on both sides of the border.

It was not until February 24, 2017, 18 days into the sewage spill, that the International Boundary and Water Commission (IBWC) in San Diego publicly acknowledged the spill by publishing a National Pollutant Discharge Elimination System (NPDES) federal sewage spill report that confirmed the discharge of **143 million gallons of raw sewage.** Over two weeks with no public announcement of the sewage spill is On April 3, the IBWC released a report titled, "Report of Transboundary Bypass Flows into the Tijuana River", in which they detail their findings from an investigation into the February spill.

As outlined by the U.S.-Mexico IBWC Treaty Minute 320, sewage spills are required to be reported immediately. This accord, along with others, calls for cooperation between the two nations to prohibit and eliminate pollution issues in the Tijuana River Valley.

Considering this pressing situation, I am calling upon you to:

- **Launch a federal investigation into the management and practices of the IBWC regarding why it took more than 3 weeks for U.S. citizens to learn of the spill.**
- **Develop policies that would ensure a regular system of communication with respect to water quality, contamination, and sewer works between the IBWC and CILA (IBWC's Mexican counterpart)**
- **Support the expansion and frequency of water quality testing by the IBWC and the City of San Diego.**
- **Promote the development of a plan that will address Mexico's deficient infrastructure issue and the environmental impact it has on local beaches.**
- **Advocate for the use of Federal and State resources to stop sewage discharges in the Tijuana River as a result of Tijuana's waste water management issues.**
- **Enforce IBWC Minute 283 and 320 which stipulates against discharges of sewage into the Tijuana River Valley.**
- **Hold the parties and individuals responsible for this spill accountable.**

For Surfrider's full policy position on the border sewage issue, visit https://sandiego.surfrider.org/2017/04/17/surfriders-no-border-sewage-policy/

Thank you for your time and consideration.

--

Scott Ridout

No Border Sewage co-chair

Surfrider Foundation, San Diego Chapter

(619) 218-3961

Help protect your oceans, waves and beaches by becoming a Surfrider Foundation member today!

Correspondence Management System
Control Number: AX-17-000-8068
Printing Date: April 28, 2017 10:56:11

Citizen Information

Citizen/Originator: **Chevalier, Jed**
Organization: Sales Graphics Corporation
Address: 216 East 45th Street, New York, NY 10017

Constituent: N/A
Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number:	AX-17-000-8068	**Alternate Number:**	N/A
Status:	Pending	**Closed Date:**	N/A
Due Date:	May 15, 2017	**# of Extensions:**	0
Letter Date:	Apr 28, 2017	**Received Date:**	Apr 28, 2017
Addressee:	AD-Administrator	**Addressee Org:**	EPA
Contact Type:	EML (E-Mail)	**Priority Code:**	Normal
Signature:	AD-Administrator	**Signature Date:**	N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - In support of the Administrator; Keep up the good work
Instructions: AD-Prepare draft response for the Administrator's signature
Instruction Note: N/A
General Notes: N/A
CC: Kristien Knapp - AO-IO
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OAR	Apr 28, 2017	May 15, 2017	N/A
	Instruction: AD-Prepare draft response for the Administrator's signature				

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
Jacqueline Leavy	OEX	Assign OAR as lead office	Apr 28, 2017

Fri Apr 28 10:24:54 EDT 2017
Hope.Brian@epamail.epa.gov
FW: Keep up the good work
To: CMS.OEX@epamail.epa.gov

DRF

From: Jed Chevalier [mailto:jed@salesgraphics.com]
Sent: Friday, April 28, 2017 10:15 AM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>
Subject: Keep up the good work

Hello Mr. Pruitt,

I have been following your work ever since you have been appointed to the EPA. I am a tremendous fan of what you are doing. I care about the success of this country and the EPA has been acting as an unelected totalitarian regime, making it harder for companies to do business and for citizens to make their own decisions.

I care about the auto industry and I love to restore vintage cars. Most of us who are trying to preserve America's motor heritage have been extremely unhappy with the EPA. The inability to get lacquer paints, R12 refrigerant and zinc rated oils represent government's needless encroaching into the smallest details in our lives.

All you have to be is a user of any car, new or old, to see how bad ethanol is as a fuel. To start, mpg figures are reduced by 10% with this costly additive. Not to mention, if you keep ethanol blended gasoline for more than a week, it will start to break down, attracting water into fuel systems, eating away at rubber gaskets and fuel lines and causing a varnish that fouls fuel systems on cars, boats and small engines. Not to mention, the increase in livestock feed prices leads to sky high meat costs.

Ethanol is like Obamacare for your gas tank, with more deleterious results. I realize that there is a tremendous lobby to force Americans to buy this unfortunate "fuel" product, and that can be hard to take a stand against, but I know you have called it "useless" in the past and I hope you can at least prevent the minimum from being increased to 15% if not eliminated altogether.

I appreciate what you have been doing to beat back the climate change agenda. The religious fervor that your adversaries have and the way that they silence scientific debate and evidence that does not agree with them is a corruption of the scientific method and a black mark on the scientific community. The zealots would gladly stifle any economic activity and literally put us into the dark ages to advance their agenda. I hope you can pull out of the Paris Accords and unleash some real scientific debate against the climate change wackos.

I still have a stock of incandescent light bulbs. The phasing out of these symbols of a good idea was another arbitrary incursion into our personal freedoms. The result of this regulation was the shutting down of US light bulb factories. If you look at the new "improved" light bulbs, they are made in China.

The media is constantly on your tail and I wanted you to know that there are many Americans like me who appreciate what you are doing and see you at the forefront of keeping America a free place brimming with economic activity.

Let me know if there is anything I can do to help you.

Best Regards,

Jed Chevalier

Correspondence Management System
Control Number: AX-17-000-8017
Printing Date: April 28, 2017 10:43:33

Citizen Information

Citizen/Originator: **McCahan, Graham G**
Organization: Environmental Defense Fund
Address: 2060 Broadway Street, Boulder, CO 80302

Janeway, William C
Organization: The Adirondack Council
Address: PO Box D-2, 103 Hand Avenue, Elizabethtown, NY 12932

Weeks, Ann B.
Organization: Clean Air Task Force
Address: 18 Tremont Street, Boston, MA 02108

O'Donnell, Frank
Organization: Clean Air Watch
Address: 1250 Connecticut Avenue, NW, Washington, DC 20036

Johnson, Seth L.
Organization: Earthjustice
Address: 1625 Massachusetts Ave., NW, Washington, DC 20036-2212

Iwanowicz, Peter
Organization: Environmental Advocates of New York
Address: 353 Hamilton Street, Albany, NY 12210

Kelly, Leah
Organization: Environmental Integrity Project
Address: 1 Thomas Circle, Washington, DC 20005

Toles O'Laughlin, Tamara
Organization: Maryland Environmental Health Network
Address: 2 East Read Street, Baltimore 21202

Rauch, Molly
Organization: Moms Clean Air Force
Address: 1315 Kalmia Road, NW, Washington, DC 20012

Berman, Joshua
Organization: Sierra Club
Address: 85 Second Street, 2nd Floor, San Francisco, CA 94105

Hollis, Adrienne L.
Organization: WE ACT for Environmental Justice
Address: 50 F Street, NW, Seventh Floor, Washington, DC 20001

Constituent: N/A
Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number:	AX-17-000-8017	**Alternate Number:**	N/A
Status:	Pending	**Closed Date:**	N/A
Due Date:	May 12, 2017	**# of Extensions:**	0
Letter Date:	Apr 25, 2017	**Received Date:**	Apr 27, 2017
Addressee:	AD-Administrator	**Addressee Org:**	EPA

Correspondence Management System
Control Number: AX-17-000-8017
Printing Date: April 28, 2017 10:43:33

Contact Type:	EML (E-Mail)	**Priority Code:**	Normal
Signature:	AD-Administrator	**Signature Date:**	N/A
File Code:	404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.		
Subject:	DRF - Good Neighbor protections of the Clean Air Act because their smokestack pollution was contributing to unhealthy ozone levels within their respective states. Docket ID No. EPA-HQ-OAR-2016-0347, EPA-HQ-OAR-2016-0402, EPA-HQ-OAR-2016-0509, EPA-HQ-OAR-2016-0690, and EPA-HQ-OAR-2016-0691		
Instructions:	AD-Prepare draft response for the Administrator's signature		
Instruction Note:	N/A		
General Notes:	N/A		
CC:	Kristien Knapp - AO-IO OCIR - Office of Congressional and Intergovernmental Relations OPA - Office of Public Affairs		

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Brenda Salvador	OEX	OAR	Apr 28, 2017	May 12, 2017	N/A
	Instruction: N/A				

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
Brenda Salvador	OEX	Control Created	Apr 27, 2017
Brenda Salvador	OEX	Forward control to OAR	Apr 27, 2017
Maria Carroll	OAR	Forwarded control to OAR-OAP	Apr 27, 2017
Brenda Salvador	OEX	Control Taken Over	Apr 28, 2017
Brenda Salvador	OEX	Changed Status For Your Information Pending	Apr 28, 2017
Brenda Salvador	OEX	Changed File Code 401_127_a General Correspondence Files Record copy 404-141-02-01_141_a(2) Copy of Controlled and Major Corres	Apr 28, 2017
Brenda Salvador	OEX	Changed Signature SNR-Signature Not Required AD-Administrator	Apr 28, 2017
Brenda Salvador	OEX	Changed Instruction For Your Information -- No action required AD-Prepare draft response for the Administrator's signature	Apr 28, 2017

Administrator Scott Pruitt
Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

Re: Request to Grant Clean Air Act "Good Neighbor" Petitions from Connecticut, Delaware, and Maryland (Docket ID Nos. EPA-HQ-OAR-2016-0347, EPA-HQ-OAR-2016-0402, EPA-HQ-OAR-2016-0509, EPA-HQ-OAR-2016-0690, and EPA-HQ-OAR-2016-0691).

Dear Administrator Pruitt:

The American Lung Association's 2017 State of the Air report found that nearly 4 in 10 Americans live in communities with dangerous air pollution levels. The burden on human health from this air pollution is serious and far-reaching. Every year in the U.S., air pollution causes thousands of premature deaths, heart attacks, asthma attacks, and missed school and work days. Those afflicted include the most vulnerable in our nation: the elderly, children, those who work outdoors, and people living in poverty. In addition, some communities of color bear a disproportionate burden from air pollution. Families from rural Shelocta to urban Pittsburgh in Pennsylvania, and communities extending from Columbus, Ohio to Atlanta, Georgia, are breathing air that is unsafe. In the face of this evidence, commencing an unprecedented attack on clean air safeguards (including some fully-implemented clean air measures) that will only worsen this serious health burden for all Americans moves the Agency further away from achieving its Congressional purpose to protect and enhance the quality of the Nation's air resources so as to promote the health and welfare and the productive capacity of its population. At the same time, you are failing to respond to states that have petitioned you to carry out your duty under our nation's clean air laws to protect millions from pollution originating from large industrial sources in upwind jurisdictions. We urge you to carry out your duties under our nation's clean air laws.

On behalf of the undersigned public health, conservation, and environmental organizations, and our millions of members and supporters, we strongly urge you to carry out your responsibility under the statutory Good Neighbor provisions of the Clean Air Act to protect communities and families in Connecticut, Delaware, and Maryland, and millions more in communities across the eastern United States living downwind from smokestack pollution significantly contributing to dangerous ground-level ozone (or smog) pollution levels. Last year, the States of Connecticut, Delaware, and Maryland all submitted petitions under section 126 of the Clean Air Act asking EPA to find that specified power plants outside of their respective borders were violating the Good Neighbor protections of the Clean Air Act because their smokestack pollution was contributing to unhealthy ozone levels within their respective states.

Remarkably, each and every one of the power plants identified by Maryland's November 16, 2016 petition and by Delaware's August 8, 2016 and November 10, 2016 petitions—plants located in Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia—has modern pollution controls *installed* that

the owners are not fully *operating* to reduce dangerous smog-forming pollution. In addition, the Pennsylvania power plant identified by Connecticut's June 1, 2016 petition and by Delaware's July 7, 2016 petition is also capable of dramatically reducing its ozone-causing emissions this upcoming ozone season. In other words, all of the identified power plants are able to immediately provide much-needed pollution reductions for surrounding communities and downwind states struggling to clean up their air. To protect the health of millions of Americans, it is urgent that you end your delay and grant these petitions by the May 1st start of the summer ozone season.

In its petition, Maryland asked EPA to require the affected power plants to effectively run their *already-installed* pollution controls every day during the ozone season, which extends from May 1 through September 30. Maryland's petition included rigorous air quality modeling showing that its proposed solution would not only help Maryland meet the national, health-based, air quality standards for ozone, but would also help the Philadelphia and Washington, D.C. areas to make progress towards achieving those public health standards. Similarly, Connecticut's and Delaware's petitions showed significant air quality benefits in their respective states stemming from solutions that are immediately available at upwind power plants. These proposed solutions would also provide critical air quality benefits to the communities surrounding the affected power plants in Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia, as well as other downwind states, including New Jersey and New York, and even Maine, Massachusetts, and Rhode Island. You can get additional information, review Maryland's petition, and see its list and descriptions of the power plants failing to operate their pollution controls here. In addition, you can find additional information about the Connecticut petition here.

Given the imminent onset of ozone season on May 1, 2017 and the fact that you have had several months to review and act upon these petitions, we request that you immediately grant the petitions as a necessary part of fulfilling your obligations to ensure that communities and families in all of the affected states have air that is safe to breathe. Taking the common-sense and easily-implemented step of requiring the specified power plants to turn on their existing pollution controls and run them effectively every day during ozone season will help keep the millions of people in these communities from being subjected to dangerous smog levels.

We also urge you to stop the unprecedented attack on vital clean air safeguards that are protecting these same communities and millions of Americans nationwide. Your assault on clean air safeguards is a clear and present danger to the health and well-being of our communities, our families, and our children.

Thank you for your prompt attention to these urgent matters.

ED_002401_00000922-00018

Sincerely,

William C. Janeway
Executive Director
The Adirondack Council

Leah Kelly
Attorney
Environmental Integrity Project

Ann B. Weeks
Legal Director
Clean Air Task Force

Tamara Toles O'Laughlin
Executive Director
Maryland Environmental Health Network

Frank O'Donnell
President
Clean Air Watch

Molly Rauch, MPH
Public Health Policy Director
Moms Clean Air Force

Seth Johnson
Attorney
Earthjustice

Joshua Berman
Attorney
Sierra Club

Peter M. Iwanowicz
Executive Director
Environmental Advocates of New York

Dr. Adrienne L. Hollis, Esq.
Director of Federal Policy
WE ACT for Environmental Justice

Graham McCahan
Senior Attorney
Environmental Defense Fund

Cc: Sarah Dunham, Acting Administrator, EPA Office of Air and Radiation
Gobeail McKinley, EPA (for Docket ID Nos. EPA-HQ-OAR-2016-0347, EPA-HQ-OAR-2016-0402, and EPA-HQ-OAR-2016-0509)
Benjamin Gibson, EPA (for Docket ID Nos. EPA-HQ-OAR-2016-0690 and EPA-HQ-OAR-2016-0691)

ED_002401_00000922-00019

Correspondence Management System
Control Number: AX-17-000-8065
Printing Date: April 28, 2017 10:28:05

Citizen Information

Citizen/Originator: **Schroll, Carolyn R.**
Organization: Wiley Rein LLP
Address: 1776 K Street, NW, Washington, DC 20006

Weinberg, David B.
Organization: Wiley Rein, LLP
Address: 1776 K Street, N.W., Washington, DC 20006

Constituent: N/A
Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number:	AX-17-000-8065	**Alternate Number:**	N/A
Status:	Pending	**Closed Date:**	N/A
Due Date:	May 15, 2017	**# of Extensions:**	0
Letter Date:	Apr 27, 2017	**Received Date:**	Apr 27, 2017
Addressee:	AD-Administrator	**Addressee Org:**	EPA
Contact Type:	EML (E-Mail)	**Priority Code:**	Normal
Signature:	AD-Administrator	**Signature Date:**	N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Draft Carbaryl Biological Evaluation
Instructions: AD-Prepare draft response for the Administrator's signature
Instruction Note: N/A
General Notes: N/A
CC: OGC - Office of General Counsel -- Immediate Office
OPA - Office of Public Affairs
Susan Burden - AO-IO

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OCSPP	Apr 28, 2017	May 15, 2017	N/A
	Instruction: AD-Prepare draft response for the Administrator's signature				

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

Wiley Rein LLP

David B. Weinberg
202.719.7102
DWeinberg@wileyrein.com

April 27, 2017

The Honorable Scott Pruitt
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Draft Carbaryl Biological Evaluation

Dear Administrator Pruitt:

We wrote to you recently with regard to the Agency's Biological Evaluations ("BEs") of three organophosphate ("OP") pesticide active ingredients. We write today on behalf of our client Tessenderlo Kerley, Inc. ("TKI") with regard to a fourth, and so far incomplete, BE that addresses products containing the carbamate carbaryl as an active ingredient. TKI is a principal registrant of carbaryl pesticides.

The Agency's staff has been working on the carbaryl BE for almost a year. In its work, the Agency has employed the experimental interim methodologies described in the "Interim Approaches" to Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA")/Endangered Species Act ("ESA") issues adopted in 2013 by the Obama Administration[1] – methodologies that the Agency in releasing the OP BEs acknowledged should be reconsidered. A first draft of the carbaryl BE is scheduled to be released for public comment shortly. For the reasons presented below, TKI respectfully requests that the Agency revise its processes now and complete the carbaryl BE with a scientific methodology that is properly aligned with the Agency's registration review obligations and environmental mandates.

The experimental approach demonstrated in the OP BEs is unreliable and erects unrealistic standards for the use of any pesticide in the United States. Indeed, the approach puts into limbo registrations of products that have virtually any measurable environmental effect on local habitat, no matter how minor. But these products are vitally necessary to protect agricultural production from pests and by reducing noxious weeds. If carried through to their conclusion, the interim approaches would result in the ban or withdrawal of most pesticide products and

[1] Interim Approaches for National-Level Pesticide Endangered Species Act Assessments Based on the Recommendations of the National Academy of Sciences April 2013 Report, *available at* https://www.epa.gov/sites/production/files/2015-07/documents/interagency.pdf.

their uses. That result would be inconsistent with sound science and place American food security in jeopardy.

It thus is critical that the Agency fundamentally reconsider its approach to the ongoing controversy about the intersection between pesticide registration activities under FIFRA and related activities of EPA and the National Marine Fisheries and U.S. Fish & Wildlife Services under ESA. By revisiting the current approach prior to releasing the carbaryl BE, the Agency would be able to correct its methodology, issue a sound evaluation, and avoid causing unnecessary public confusion regarding carbamates.

TKI's representatives' interactions with EPA staff over the past year have provided TKI with some insight as to how the Agency is proceeding. And it is clear to our client that the soon-to-be-completed carbaryl BE cannot be expected to correct most, if any, of the well-documented scientific deficiencies of the OP BEs.

Furthermore, the release of that draft in its current form will trigger the need for TKI to undertake a tremendous effort to critique it, unnecessarily divert limited Agency resources, and – based on historical experience – result in a spate of misleading negative press reports about the future of carbaryl products. Those reports, in turn, may substantially injure TKI and unnecessarily raise concerns in the public and agricultural community about a product that is critical to the protection of the US food supply.

In the context of the OP BEs, EPA excused its failure to respond to the many critical comments the Agency had received on drafts by asserting that it had a legal obligation to publish the BEs.[2] That position was incorrect as to the OP BEs, and is incorrect as to the carbaryl BE.[3]

---

[2] Office of Chemical Safety and Pollution Prevention's Response to Comments on the Draft Biological Evaluations for Chlorpyrifos, Diazinon, and Malathion, at 2 (Jan. 17, 2017), *available at* https://www3.epa.gov/pesticides/nas/final/response-to-comments.pdf.

[3] EPA presumably based its assertion on stipulations entered in court cases by NMFS and FWS. One of those stipulations, to which NMFS was a party, did commit NMFS to complete a nationwide OP biological opinion by December 31, 2017. Stipulation and Order to Amend the Stipulated Settlement Agreement Affirmed by this Court on August 1, 2008, *NW Coalition for Alternatives to Pesticides, et al. v. National Marine Fisheries Service*, No. 07-cv-01791 (W.D. Wash., May 21, 2014) ("*NCAP v. NMFS*"), Dkt. No. 50, at 6. But a party to a settlement agreement may request, by motion, that the court modify the settlement agreement for any "reason that justifies relief." Fed. R.

TKI would welcome the opportunity to discuss these issues with you and others at the Agency. However, TKI's immediate concern is with the forthcoming BE. Its publication may have significant negative consequences. TKI thus respectfully requests that the carbaryl BE not be issued before the Administration has developed a clear policy of how to proceed with FIFRA-ESA coordination.

Thank you for your prompt attention to this request.

Sincerely,

David B. Weinberg

Counsel to Tessenderlo Kerley, Inc.

cc: The Honorable Sonny Perdue, Secretary, United States Department of Agriculture

Mr. Richard Keigwin, EPA OPP

Mr. Ray Starling, Special Assistant to the President for Agriculture, Trade and Food Assistance

Dr. Jonathan Akins, Head of Crop Protection, Tessenderlo Kerley, Inc.

Civ. P. 60. Thus, EPA could have asked NMFS to file a motion to modify the *NCAP v. NMFS* settlement agreement deadline so EPA could adequately fulfill its own statutory obligations.

FWS entered into an analogous stipulation in *Center for Biological Diversity v. U.S. Fish and Wildlife Service et al.* See Stipulation Amending Original Stipulated Settlement and Order, No. 11-cv-5108 (N.D. Cal., July 28, 2014), Dkt. No. 87 ("Amended Stipulated Settlement"). But that stipulation expressly states that FWS "is not obligated to" complete OP consultations by December 31, 2017, and it provides that if there were to be a delay the parties would meet and confer to discuss appropriate actions and, if necessary, petition the Court to resolve any dispute. Amended Stipulated Settlement at 4-5.

Correspondence Management System
Control Number: AX-17-000-8067
Printing Date: April 28, 2017 10:46:54

Citizen Information

Citizen/Originator: **Hobbs, Aaron**
Organization: Responsible Industry for a Sound Environment, RISE
Address: 1156 15th Street, NW, Washington, DC 20005

Constituent: N/A
Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number:	AX-17-000-8067	**Alternate Number:**	N/A
Status:	Pending	**Closed Date:**	N/A
Due Date:	May 15, 2017	**# of Extensions:**	0
Letter Date:	Apr 27, 2017	**Received Date:**	Apr 27, 2017
Addressee:	AD-Administrator	**Addressee Org:**	EPA
Contact Type:	EML (E-Mail)	**Priority Code:**	Normal
Signature:	AD-Administrator	**Signature Date:**	N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - Registration Request to Return Biological Evaluations to EPA
Instructions: AD-Prepare draft response for the Administrator's signature
Instruction Note: N/A
General Notes: N/A
CC: OPA - Office of Public Affairs
ORD - Office of Research and Development -- Immediate Office
Susan Burden - AO-IO

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OCSPP	Apr 28, 2017	May 15, 2017	N/A
	Instruction: AD-Prepare draft response for the Administrator's signature				

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date

Responsible Industry for a Sound Environment®

April 27, 2017

The Honorable Scott Pruitt
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

The Honorable Ryan Zinke
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

The Honorable Wilbur Ross
Secretary
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Via E-mail

Re: Registrant Request to Return Biological Evaluations to EPA

Dear Administrator Pruitt, Secretary Zinke, and Secretary Ross:

We want to express our support of our members, Dow Agrosciences LLC and FMC Corporation in their April 13 request for the Environmental Protection Agency (EPA) to withdraw its biological evaluations (BEs) for three organophosphate chemicals. EPA originally submitted the BEs to the National Marine Fisheries Service and U.S. Fish & Wildlife Service (jointly, the Services) on January 18, 2017.

We support science-based regulation that allows pesticides to be used safely and effectively to control pests. However, we agree with the registrants' claim that the Services did not use the best available scientific and commercial data in developing the BEs as required under the Endangered Species Act.

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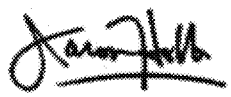
Withdrawing the BEs will allow EPA to reconsider the data and ensure the assessments are as scientifically accurate as possible. It will also allow EPA and the Services to reevaluate the interim approaches it used for the three OPs.

Though the interim approaches were intended to test recommendations from the 2013 National Academy of Sciences (NAS) report *Risks to Endangered and Threatened Species from Pesticides*, the interim approaches failed to heed many recommendations from the report. The approach used made overly conservative assessments of exposure and assumptions of use that resulted in an unsustainable and inefficient evaluation process. Ultimately, EPA failed to lay a foundation for a meaningful tiered risk assessment for endangered species.

Despite many comments submitted to the BE docket, EPA continued to pursue the same methods in publishing the final versions. As a result, numerous pesticide products are at risk of being removed from the market, including products for use in controlling mosquitos. Chlorpyrifos and malathion are among the few active ingredients registered for use in mosquito control, and additional mitigations on their use could eliminate important tools for controlling the spread of diseases such as Zika virus, West Nile virus, and chikungunya. It is critical that the BEs use the best available real-world data to protect the public health uses of these products as well as uses for controlling dangerous pests in other spaces.

We appreciate recent efforts toward regulatory reform and believe withdrawing the BEs for chlorpyrifos, diazinon, and malathion is a good step toward an efficient and effective regulatory system. We continue to support additional work to develop a process that protects endangered species while maintaining vital uses of pesticide products that protect public health and safety.

Sincerely,



Aaron Hobbs
President
RISE, Responsible Industry for a Sound Environment
1156 15th Street, NW
Suite 400
Washington, DC 20005
(202) 872-3860

RISE is a national not-for-profit trade association representing more than 220 producers and suppliers of specialty pesticide and fertilizer products to both the professional and consumer markets. RISE

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member companies manufacture more than 90 percent of domestically produced specialty pesticides used in the United States, including a wide range of products used on lawns, gardens, sport fields, golf courses, and to protect public health.

cc: Mr. Richard P. Keigwin, Jr., Acting Director, Office of Pesticide Programs, Environmental Protection Agency

ED_002401_00000922-00027

Correspondence Management System
Control Number: AX-17-000-8034
Printing Date: April 27, 2017 03:21:00

Citizen Information

Citizen/Originator: **Hughes, Jeffrey**
Organization: Alliance for Water Efficiency
Address: 33 North LaSalle Street, Chicago, IL 60602

Constituent: N/A
Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number:	AX-17-000-8034	**Alternate Number:**	N/A
Status:	Pending	**Closed Date:**	N/A
Due Date:	May 12, 2017	**# of Extensions:**	0
Letter Date:	Apr 27, 2017	**Received Date:**	Apr 27, 2017
Addressee:	AD-Administrator	**Addressee Org:**	EPA
Contact Type:	EML (E-Mail)	**Priority Code:**	Normal
Signature:	AD-Administrator	**Signature Date:**	N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: DRF - We Urge You to Continue Funding the EPA WaterSense Labeling Program
Instructions: AD-Prepare draft response for the Administrator's signature
Instruction Note: N/A
General Notes: N/A
CC: Derek Threet - AO-IO
OCFO - OCFO -- Immediate Office
OPA - Office of Public Affairs

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Jacqueline Leavy	OEX	OW	Apr 27, 2017	May 12, 2017	N/A
	Instruction: AD-Prepare draft response for the Administrator's signature				

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date

April 25, 2017

The Honorable Scott Pruitt
Administrator
The U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Pruitt:

The Alliance for Water Efficiency and the undersigned water utilities, manufacturers, distributors, consumer groups, and water efficiency advocates join in urging you to continue to fund EPA's highly successful **WaterSense®** program, a voluntary public-private partnership that has saved American consumers more than $33 billion (in 2015 dollars) on their water and energy bills over the past decade.

WaterSense is a voluntary program, not a regulatory one, and it costs less than $2 million dollars a year to administer. It is universally supported by consumers, manufacturers and the public and private agencies charged with supplying water to American households and businesses. Since its inception in 2006, it has been immensely successful at achieving its goal of reducing water consumption. An estimated **1.5 trillion gallons have been saved** using WaterSense-labeled products.

WaterSense Is Also Good for American Businesses and American Jobs

- WaterSense fuels innovation in American manufacturing and is strongly supported by the plumbing and irrigation industry. WaterSense performance standards and independent certifying process helps start-ups get to market more quickly and helps companies differentiate their products in the marketplace.
- More than 1,700 manufacturers, retailers and distributors, water and energy utilities, state and local government, non-profit and trade organizations, irrigation training organizations, and home-builders strengthen their businesses through partnerships with WaterSense.
- Businesses can reduce their operating costs and increase resiliency by updating their facilities with WaterSense-labeled fixtures and appliances.
- Homeowners and businesses can hire any of the 2,200 WaterSense-certified irrigation professionals to help design, install, and maintain an irrigation system that delivers a healthy landscape while minimizing waste.

WaterSense Helps Americans Save Money and Provides Choices

- WaterSense-labelled products have saved more than $32.6 billion (2015 dollars) on American consumers' water, sewer, and energy bills.
- Water utilities, many of whom have been facing drought and other supply constraints in recent years, utilize WaterSense certified products as a vital tool that they can promote

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through conservation outreach and rebate programs, saving ratepayers the expense of each utility certifying water savings of products separately.

- Thanks to WaterSense and its partners, American families and businesses can buy WaterSense-labeled products that use at least 20 percent less water and work as well as or better than standard models.
- Americans can choose from more than 16,000 available models of WaterSense-labeled products for bathrooms, commercial kitchens and irrigation systems.

WaterSense Helps Create Thriving and Resilient Communities

- WaterSense has already saved more than 1.5 trillion gallons of water. That's more than the amount of water used by all of the households in California for a year!
- Saving water helps protect our water future. It means we can serve more people today and secure supplies for future generations. It saves water for emergencies. And, it leaves more water in lakes, rivers and underground aquifers to support water-based recreation and wildlife habitat.

WaterSense Is a Cost-Effective Investment and Eliminating WaterSense Endangers Our Economy and Our Communities

- With an annual budget of $2 million, WaterSense produces benefits that far outweigh its costs – strengthening our economy, protecting water for our communities, and helping families maximize their budgets.
- Without WaterSense, 212 billion kilowatt hours of electricity would not have been saved. That is a year's worth of power to more than 19.4 million American homes.

Since the WaterSense program has never been authorized by Congress, its modest costs have been paid from discretionary funds available to previous EPA administrators of both parties. We urge you to continue this practice for both FY 17 and FY 18 so that this valuable and highly productive partnership between government and the private sector can continue.

Sincerely,

The following 187 National, Regional, and Local Organizations:

NATIONAL

Alliance for Water Efficiency
Chicago, IL

American Council for an Energy-Efficient Economy
Washington, D.C.

American Rainwater Catchment Systems Association
Tempe, AZ

American Rivers
Washington, D.C.

American Society of Irrigation Consultants
East Lansing, MI

American Supply Association
Itasca, IL

American Water Works Association
Denver, CO

Association of Metropolitan Water Agencies
Washington, D.C.

Cushman & Wakefield
Tampa, FL

Delta Faucet Company
Indianapolis, IN

Ewing Irrigation & Landscape Supply
Phoenix, AZ

Flow Dynamics, LLC
Livingston, NJ

Green Building Initiative
Portland, OR

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Hunter Industries
San Marcos, CA

IAPMO Group
Mokena, IL

Imagine H2O
San Francisco, CA

Irrigation Association
Fairfax, VA

Irrometer Co., Inc.
Riverside, CA

Kohler Co.
Kohler, WI

LIXIL Corporation/American Standard Brands
Piscataway, NJ

Natural Resources Defense Council
New York, NY

Netafim USA
Fresno, CA

Niagara Conservation Corporation
Cedar Knoll, NJ

Plumbing Manufacturers International
Rolling Meadows, IL

Rain Bird Corp.
Tucson, AZ

River Network
Boulder, CO

Sierra Club
Austin, TX

Sloan Valve Co.
Los Angeles, CA

T&S Brass and Bronze Works
Travelers Rest, SC

The Scotts Miracle-Gro Company
Marysville, OH

TOTO USA, Inc.
Ontario, CA

U.S. Golf Association
Stillwater, OK

U.S. Green Building Council
Washington, D.C.

REGIONAL/LOCAL

AIQUEOUS
Austin, TX

Amy Vickers & Associates, Inc.
Amherst, MA

Aqua Water Supply Corporation
Bastrop, TX

Arizona Municipal Water Users Association
Phoenix, AZ

Arizona Nursery Association
Tempe, AZ

Arizona State University's Sustainable Cities Network
Tempe, AZ

Arizona Water Association
Queen Creek, AZ

Austin Water Utility
Austin, TX

Best Management Partners
Waterloo, IL

Bonesteel, Inc.
Sun City, AZ

Boulder Associates
Boulder, CO

Bruce Grey Dental Clinic
Kemble, ON, Canada

C+C, Inc.
Seattle, WA

Cahaba River Society
Birmingham, AL

Calyx Sustainable Tourism
Seattle, WA

Carilion Clinic
Roanoke, VA

Carpinteria Valley Water District
Carpinteria, CA

Central Utah Water Conservancy District
Orem, UT

Central Arizona Project
Phoenix, AZ

City of Avondale
Avondale, AZ

City of Bend
Bend, OR

City of Big Bear Lake, Dept. of Water & Power
Big Bear Lake, CA

City of Bozeman
Bozeman, MT

City of Buckeye
Buckeye, AZ

City of College Station
College Station, TX

City of Flagstaff
Flagstaff, AZ

City of Glendale
Glendale, AZ

City of Goodyear
Goodyear, AZ

City of Lincoln
Lincoln, CA

City of Marana, Water Dept.
Tucson, AZ

City of Mesa
Mesa, AZ

City of Olympia
Olympia, WA

City of Peoria
Peoria, AZ

City of Phoenix
Phoenix, AZ

City of Portsmouth
Portsmouth, NH

City of Round Rock
Round Rock, TX

City of Sacramento
Sacramento, CA

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City of San Antonio
San Antonio, TX

City of San Marcos
San Marcos, TX

City of Santa Cruz, Water Dept.
Santa Cruz, CA

City of Stuart
Stuart, FL

City of Tempe
Tempe, AZ

City of Tucson, Water Dept.
Tucson, AZ

City of Tumwater
Tumwater, WA

Cobb County Water System
Marietta, GA

Codes & Standards International
Belen, NM

Colorado WaterWise
Denver, CO

Connecticut Water Company
Clinton, CT

Cool Choices, Inc.
Madison, WI

Denver Botanic Gardens
Denver, CO

Denver Water
Denver, CO

Dropcountr, Inc.
Redwood City, CA

East Bay Municipal Utility District
Oakland, CA

Econics
Victoria, BC, Canada

El Dorado Irrigation District
Placerville, CA

Elevate Energy
Chicago, IL

Encon, Inc.
Tampa, FL

EnviroMedia
Austin, TX

EPCOR
Edmonton, AL, Canada

F.W. Behler, Inc.
York, PA

FloLogic, Inc.
Raleigh, NC

Forester Media, Inc.
Santa Barbara, CA

Fort Bend County MUD #25
Richmond, TX

Foundation for Rural Housing, Inc.
Madison, WI

Gauley Associates, Ltd.
Acton, ON, Canada

Global Water Policy Project
Los Lunas, NM

Global Water Works
Chicago, IL

Greater Edwards Aquifer Alliance
San Antonio, TX

Green Business Certification Inc.
Washington, D.C.

Greywater Action
Berkeley, CA

Halperin Creative, LLC
Denver, CO

Huron River Watershed Council
Ann Arbor, MI

HydroTech Solutions
Fort Worth, TX

Inland Empire Utilities Agency
Chino, CA

Jordan Valley Water Conservancy District
West Jordan, UT

Lake Havasu City
Lake Havasu City, AZ

Las Virgenes Municipal Water District
Calabasas, CA

Lone Star Groundwater Conservation District
Conroe, TX

LOTT Clean Water Alliance
Olympia, WA

LTS Design Group
Fort Worth, TX

Maddaus Water Management, Inc.
Danville, CA

Madison Water Utility
Madison, WI

ManageWater, Inc.
Redwood City, CA

Marin Municipal Water District
Corte Madera, CA

Massachusetts Institute of Technology
Cambridge, MA

Massachusetts Water Works Association
Acton, MA

Maximum Performance (MaP) Testing
Yorba Linda, CA

Medford Water Commission
Medford, OR

Metropolitan North Georgia Water Planning District
Atlanta, GA

Metropolitan Water District of Southern California
Los Angeles, CA

Miami Dade Water & Sewer Dept.
Miami, FL

Middletown Sprinkler Company
Port Monmouth, NJ

National Turfgrass Evaluation Program
Beltsville, MD

Neponset River Watershed Association
Canton, MA

New Resources Group, Inc.
Fairfield, CT

North Kingstown Water Dept.
North Kingstown, RI

North Main Water District
Novato, CA

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Northern Arizona Municipal Water Users Association
Gilbert, AZ

O'Reilly DePalma
Frankfort, IL

PAC Properties
St. Paul, MN

PCR Resources
Santa Fe, NM

Plant Partners, Inc.
Sarasota, FL

Portland Water Bureau
Portland, OR

Purlin, LLC
Sarasota, FL

Ramona's Plumber/ diyplumbingadvice.com
Ramona, CA

Regional Water Authority
Citrus Heights, CA

Regional Water Providers Consortium
Portland, OR

Same Drop
San Francisco, CA

Sammamish Plateau Water
Sammamish, WA

San Dieguito Water District
Encinitas, CA

Scottsdale Water
Scottsdale, AZ

Seelig and Associates
Livermore, CA

Seminole County Board of County Commissioners
Sanford, FL

Site Line
Leawood, KS

Sonoma County Water Agency
Santa Rosa, CA

Sonoma-Marin Saving Water Partnership
Santa Rosa, CA

Soquel Creek Water District
Soquel, CA

South Central Connecticut Regional Water Authority
New Haven, CT

Southern Arizona Water Users Association
Tucson, AZ

Southern Environmental Law Center
Birmingham, AL

Southern Nevada Water Authority
Las Vegas, NV

Southern Oregon Landscape Association
Medford, OR

St. Johns River Water Management District
Maitland, FL

Sustainable Waters
Crozet, VA

Sweetwater Authority
Chula Vista, CA

Tampa Bay Water
Clearwater, FL

Tennessee Duck River Development Agency
Shelbyville, TN

Terlyn Industries
Clearwater, FL

Terra Bella Water
Los Angeles, CA

Texas Water Foundation
Austin, TX

The Ashkin Group, LLC
Bloomington, IN

The Edwards Design Group, Inc.
Scottsdale, AZ

Todd Valley Farms, Inc.
Mead, NE

Tohono O'odham Nation
Sells, AZ

Town of Queen Creek
Queen Creek, AZ

Turfgrass Water Conservation Alliance
Albany, OR

University of Arizona
Phoenix, AZ

University of Florida
Gainesville, FL

Utah Division of Water Resources
Salt Lake City, UT

Utah State University
Logan, UT

Valencia Water Company
Valencia, CA

Vata Verks, Inc.
Arlington, MA

WasteWater Education, Inc.
Traverse City, MI

Water - Use It Wisely
Phoenix, AZ

Water Efficiency Action Network of the Colorado River Basin States
Boulder, CO

Water Supply Citizens Advisory Committee
Belchertown, MA

WaterDM
Boulder, CO

Waterkind Consulting Services, Ltd.
Kelowna, BC, Canada

Watershed, LLC
Vashon, WA

WaterSmart Software
San Francisco, CA

West Basin Municipal Water District
Carson, CA

West Valley Water Association
Mesa, AZ

Western Resource Advocates
Boulder, CO

Woodcock & Associates, Inc.
Northborough, MA

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Correspondence Management System
Control Number: AX-17-000-8042
Printing Date: April 27, 2017 03:52:07

Citizen Information

Citizen/Originator: **Stilson, Ashley Nicole**
Organization: Pace Environmental Litigation Clinic
Address: Elisabeth Haub School of Law, 78 North Broadway, White Plains, NY 10603

Ommen, Todd D.
Organization: Pace Environmental Litigation Clinic, Inc.
Address: 78 North Broadway, White Plains, NY 10603

Constituent: N/A
Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number:	AX-17-000-8042	**Alternate Number:**	N/A
Status:	For Your Information	**Closed Date:**	N/A
Due Date:	N/A	**# of Extensions:**	0
Letter Date:	Apr 27, 2017	**Received Date:**	Apr 27, 2017
Addressee:	AD-Administrator	**Addressee Org:**	EPA
Contact Type:	EML (E-Mail)	**Priority Code:**	Normal
Signature:	SNR-Signature Not Required	**Signature Date:**	N/A

File Code: 401_127_a General Correspondence Files Record copy
Subject: DRF - Sixty-day notice of intent to sue for failure to carry out non-discretionary duty to approve or disapprove New York State's revised water quality standards in violation of Clean Water Act section 303(c)
Instructions: For Your Information -- No action required
Instruction Note: N/A
General Notes: N/A
CC: Derek Threet - AO-IO
OECA - OECA -- Immediate Office
OPA - Office of Public Affairs
OW - Office of Water -- Immediate Office
R2 - Region 2 -- Immediate Office

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
Jacqueline Leavy	OEX	OGC	Apr 27, 2017

PACE ENVIRONMENTAL LITIGATION CLINIC, INC.

ELISABETH HAUB SCHOOL OF LAW
78 NORTH BROADWAY
WHITE PLAINS, NEW YORK 10603
PHONE: 914.422.4343
FAX: 914.422.4437

SUPERVISING ATTORNEYS
KARL S. COPLAN
ROBERT F. KENNEDY, JR.
TODD D. OMMEN

ADMINISTRATOR
JENNIFER RUHLE

April 27, 2017

Via Certified Mail, Return Receipt Requested

Administrator Scott Pruitt
U.S. Environmental Protection Agency
Aerial Rios Building, Mail Code 1101A
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Katherine McCabe
Acting Regional Administrator
Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007-1866

Hon. Jeff Sessions
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: Sixty-day notice of intent to sue for failure to carry out non-discretionary duty to approve or disapprove New York State's revised water quality standards in violation of Clean Water Act section 303(c)

Dear Administrator Pruitt, Acting Regional Administrator McCabe and Mr. Attorney General,

I write on behalf of Riverkeeper, Inc., Natural Resources Defense Council, Connecticut Fund for the Environment and its bi-state program Save the Sound, and the additional parties listed on Exhibit A (the "Noticing Parties") to provide you with notice of our intent to bring suit against you in your official capacities as Administrator and Acting Regional Administrator of the United States Environmental Protection Agency ("EPA"). This suit will seek redress of EPA's

continuous Clean Water Act ("CWA" or the "Act") violation resulting from its failure to carry out its non-discretionary duties under section 303(c)(2)-(4) of the Clean Water Act, 33 U.S.C. § 1313(c)(2)–(4), to ensure the adoption of water quality standards that protect the human health of people seeking to recreate in New York State's Class I and SD waterbodies.

These coastal waters, mostly located in New York City, provide recreational access and opportunities to millions of New Yorkers. While the revised standards require the maintenance in these waters of a water quality suitable for primary contact recreational uses, they failed to adopt water quality criteria based on enterococcus that would meet this standard. Instead, New York's standards rely upon fecal coliform, which, in EPA's own judgment, is scientifically indefensible and does not adequately protect public health.

New York State's Department of Environmental Conservation ("NYSDEC") and the City of New York rely on such standards to claim that coastal waters are or will be clean enough for in-water recreation, despite their expectation that billions of gallons per year of raw sewage and polluted runoff will continue flowing into these waterways indefinitely. EPA's continuous CWA violation has allowed such waters to remain subject to water quality standards that fail to protect recreational users from water-bourne diseases.

Pursuant to 33 U.C.S. § 1365(b)(2) and 40 C.F.R. § 135.2(c), the Noticing Parties will file suit if EPA's violation is not cured within sixty days of the postmark date of this letter. As required by 40 C.F.R. § 135.2(b), a copy of this notice is being sent to the Attorney General of the United States.

I. STATUTORY FRAMEWORK

The CWA aims "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" and to attain "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water." 33 U.S.C. § 1251(a), (a)(2). Under the Act, the federal government and the State share the responsibility of regulating water pollution.

The CWA established the goal of achieving fishable and swimmable waters nationwide. Among other things, the Act created the National Pollutant Discharge Elimination System (NPDES) permit program, which regulates point sources discharging pollutants into waters of the United States. In New York, the NPDES permit program is administered by NYSDEC.

Pursuant to the CWA, the NYSDEC, on behalf of the State of New York, has established water quality standards for all navigable waters in the State. These water quality standards inform, among other things, the establishment of pollution discharge limits for dischargers regulated under the Act.

There are three basic components to water quality standards, two of which are relevant to this matter. First, states must establish the designated uses of their water bodies. *See* 33 U.S.C. § 1313(c)(2)(A); 40 C.F.R. § 131.6(a). Second, states must establish water quality criteria sufficient to protect the designated uses. *See* 33 U.S.C. § 1313(c)(2)(A); 40 C.F.R. § 131.6(c).

Although the CWA allows states to promulgate water quality standards, Congress established a mandatory federal oversight system to ensure states maintain adequate water quality standards. Section 303(c) of the CWA provides that "[w]henever the State revises or adopts a new [water quality] standard, such revised or new standard shall be submitted to the Administrator" of the EPA for review and a consistency determination. 33 U.S.C. § 1313(c)(2)(A), (c)(3). The CWA requires EPA to find whether revised water quality standards submitted by states are consistent or inconsistent with the Act. 33 U.S.C. § 1313 (c)(3).

EPA reviews water quality standards to determine whether they comply with multiple requirements, including: (1) the water quality criteria in the new or revised standard "are consistent with the requirements of the [CWA]"; (2) the water quality criteria "protect the designated water uses"; (3) in adopting or revising the standard, the state followed its own "legal procedures for revising or adopting standards"; (4) that "standards which do not include [fish and wildlife protection or recreational uses] are based upon "appropriate technical and scientific data and analyses"; and (5) that the new or revised standard "meets the requirements included in [EPA's regulations]." 40 C.F.R. § 131.5.

If water quality standards submitted to EPA meet each of these five criteria, EPA must find the standard consistent within sixty days. 33 U.S.C. § 1313(c)(3); 40 C.F.R. § 131.5(b). However, "[i]f the Administrator determines that any such revised or new standard is not consistent with the applicable requirements of this chapter, he shall not later than the ninetieth day after the date of submission of such standard notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standard pursuant to [33 U.S.C. § 1313(c)(4)]." 33 U.S.C. § 1313(c)(3).

Under 33 U.S.C. § 1313(c)(4)(A), when EPA is required to promulgate such a rule under these circumstances, the Agency "shall promptly prepare and publish proposed regulations" and "shall promulgate any revised or new standard…not later than ninety days after [EPA] publishes such proposed standards, unless prior to such promulgation, [the] State has adopted a revised or new water quality standard which the Administrator determines to be in accordance with [the CWA]." *Id.* § 1313(c)(4).

In short, the CWA mandates EPA must either approve revised water quality standards within 60 days or disapprove within 90 days and promulgate federal standards if a state thereafter fails to submit acceptable revised water quality standards. 33 U.S.C. § 1313(c)(3)-(4). As described below, EPA has failed to follow this mandate.

II. FACTUAL BACKGROUND

In the waters surrounding New York City, pollution from combined sewer overflows and polluted runoff keep millions of New Yorkers from enjoying the water for recreation. Over 50 times a year, when New York City receives as little as one-tenth of an inch of rain, its outdated sewer systems are inundated with storm water and spew raw sewage from over 400 locations along the shoreline in all five boroughs.

Raw sewage fouls places where people of all ages, ethnicities, and income levels live, fish, swim, row, kayak, or engage in other direct water contact activities. Sewage in the water can cause gastroenteritis, skin rashes, pinkeye, ear, nose and throat problems, respiratory infections, meningitis, and hepatitis. Consequences are worse for children, the elderly, pregnant women, and anyone with a weakened immune system. As a result, use of and recreation on the waters is significantly impacted by sewage discharges.

Until recently, NYSDEC's water quality standards defined the best uses of a "Class I" water body as secondary contact recreation and fishing. The Class I waters are saline waters and include, among others, the Bronx River, Harlem River, East River, Flushing Bay, and certain tributaries of Jamaica Bay, in New York City. Class SD water bodies are also saline waters, but are less protective of public health and the environment. Examples include Newtown Creek, the Gowanus Canal, and the waters surrounding the north and west shores of Staten Island, also in New York City. Until 2015, the identified best use of Class SD waters was fishing. NYSDEC's full list of Class I and Class SD waters, along with descriptions of these categories, can be found at http://www.dec.ny.gov/regulations/99693.html.

In 2014, NYSDEC initiated a rulemaking to revise water quality standards for Class I and Class SD water bodies. Commenters (including some of the Noticing Parties) made several requests, including adding "primary contact recreation" to the designated uses of the waters and updating the water quality criteria for the waters. Commenters further urged that revised water quality criteria must be based on enterococcus bacteria as a fecal indicator, a modern scientific measure of water quality that is more protective of human health than NYDEC's preexisting criteria, which are based on coliform bacteria. EPA's 2012 Recreation Water Quality Criteria (RWQC) explain why enterococcus is the proper indicator, and set forth the maximum levels of enterococcus deemed by EPA to scientifically defensible as protective of public health and the environment. Many commentors referenced the 2012 RWQC in testimony submitted during the NYSDEC rulemaking process (for further information see Notice of availability of the 2012 *Recreational Water Quality Criteria,* 77 F.R. 71191 (Nov. 29, 2012)).

In 2015, NYSDEC adopted revised water quality standards for both Class I and Class SD waters. The revised standards require the maintenance in these waters of a water quality suitable for primary contact recreational uses. However, the revised water quality standards did *not* adopt water quality criteria based on enterococcus and the 2012 RQWC. Rather, NYSDEC continued to utilize the outdated and scientifically indefensible total and fecal coliform water quality criteria.

NYSDEC submitted the 2015 revisions to EPA for approval on February 24, 2016, pursuant to 33 U.S.C. § 1313(c)(2)(A). In a letter dated May 9, 2016, EPA responded to NYSDEC's submission. EPA approved the addition of "primary contact recreation" to the use sections of standards for both Class I and Class SD waters. However, EPA harshly criticized NYSDEC's revised water quality criteria for Class I and Class SD waters.

EPA's letter explained that "when states adopt new or revised water quality standards, they must be scientifically defensible and protective of the designated uses of the waterbodies."

The letter explained that the agency "has not supported [NYSDEC's proposed use of] fecal indicator bacteria (FIB) since 1986"; that EPA's own 2012 RWQC, based on enterococcus bacteria, "are the scientifically defensible recreational criteria"; and that EPA therefore "expect[s] NYSDEC to adopt [those criteria] for all primary contact recreation waters in the state, including Class I and SD waters, as soon as possible. . . . [T]he State's pathogen standards must be revised as quickly as possible to be both scientifically defensible and fully protective of the primary contact recreation use." Despite these clear statements that NYSDEC's proposed criteria are inadequate, EPA also asserted in the letter that the agency "is not taking action on [NYSDEC's revised water quality criteria for Class I and Class SD waters] pursuant to Section 303(c) of the CWA [i.e., 33 U.S.C. § 1313(c)]."

III. VIOLATION OF CWA SECTION 303(c)(2)-(4) FOR FAILURE TO REVIEW AND EITHER APPROVE OR DISAPPROVE NYSDEC'S REVISIONS TO WATER QUALITY CRITERIA FOR CLASS I AND CLASS SD WATERS

Whether EPA's May 9, 2016 letter is construed as "not taking action" or as a finding that NYSDEC's revised water quality criteria are inconsistent with the CWA, EPA violated, and continues to violate, the CWA due to its failure to perform its mandatory duties under Section 303(c).

If EPA's letter is deemed not to be a determination under 33 U.S.C. § 1313(c) that NYSDEC's revised water quality criteria for Class I and Class SD waters are not consistent with the applicable requirements of the Clean Water Act, EPA is in violation of its mandatory duty under that provision to make a determination as to whether such standards are consistent with the Act. Furthermore, given EPA's own findings presented in the letter, if EPA has not yet made a determination, it has no lawful option but to make a determination finding NYSDEC's revised water quality criteria inconsistent with the CWA.

Alternatively, if EPA's May 9, 2016 letter represents a detemination that NYSDEC's revised water quality criteria for Class I and Class SD waters are not consistent with the Act, and an instruction to adopt new criteria for those waters incorporating the 2012 RWQC, then EPA's ongoing failure to promulgate such new criteria violates EPA's mandatory duties under 33 U.S.C. § 1313(c)(3)-(4). Specifically, because NYSDEC has not revised its criteria as per EPA's instruction, 33 U.S.C. § 1313(c)(4) requires EPA to "promptly prepare and publish proposed regulations" establishing for New York State the necessary water quality criteria, and to "promulgate [such standards] not later than ninety days after [EPA] publishes such proposed standards, unless prior to such promulgation, [the] State has adopted a revised or new water quality standard which the Administrator determines to be in accordance with [the CWA]." EPA has failed to do this.

The CWA's citizen suit provision authorizes suit against "the Administrator where there is alleged a failure of the Administrator to perform such act or duty under this chapter which is not discretionary with the Administrator." 33 U.S.C. §1365(a)(2). Under this provision, a citizen may sue to compel EPA to perform its mandatory duties under 33 U.S.C. § 1313(c). *See, e.g., Miccosukee Tribe of Indians v. EPA*, 105 F.3d 599, 602-03.

At the close of the 60-day notice period, we intend to file a citizen suit against EPA to compel it to perform the nondiscretionary duties which it has failed to perform and continues to fail to perform. We intend to seek injunctive relief, attorneys' fees, and litigation costs for these violations. During the 60-day notice period, we are willing to discuss effective remedies for the violations noted in this letter. Please do not hesitate to contact us at (914) 422-4343 if you wish to discuss this matter.

IV. IDENTIFICATION OF PERSONS GIVING NOTICE AND LEGAL COUNSEL

The Noticing Parties are identified on Exhibit A to this letter.

Respectfully,

Todd D. Ommen
Managing Attorney

Ashley N. Stilson
Legal Intern

Pace Environmental Litigation Clinic, Inc.
Elisabeth Haub School of Law
78 North Broadway
White Plains New York

Message

From: Ford, Hayley [ford.hayley@epa.gov]
Sent: 4/17/2017 1:23:12 PM
To: Fotouhi, David [fotouhi.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]
CC: Munoz, Charles [munoz.charles@epa.gov]
Subject: Cabinet Affairs Update
Attachments: Cabinet Affairs Update 4.14.17.docx

Hi all,

Hope you had a nice weekend! Charles and I will be attending the Cabinet Affairs call daily in the afternoons to provide the EPA update. They've asked us to send an update in the mornings to then review on our call. Attached is our update for this past Friday. Could you review the legal section and update as needed? You can either update using track changes or copy/paste in email format.

Moving forward, could you either provide us with an update at the end of the day or in the morning before 9AM? If there are no changes to the previous day's update, you can just let us know that.

Thank you!

Hayley Ford
Deputy White House Liaison
Office of the Administrator
Environmental Protection Agency
Room: 3309C William Jefferson Clinton North
ford.hayley@epa.gov
Phone: 202-564-2022
Cell: Personal Phone / Ex. 6

Appointment

From: Schmidt, Lorie [Schmidt.Lorie@epa.gov]
Sent: 3/31/2017 9:12:33 PM
To: Zenick, Elliott [Zenick.Elliott@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Jordan, Scott [Jordan.Scott@epa.gov]; Skinner-Thompson, Jonathan [Skinner-Thompson.Jonathan@epa.gov]; Conrad, Daniel [conrad.daniel@epa.gov]

Subject: CPP legal discussion
Location: 7340 (Lorie's office)

Start: 4/3/2017 3:00:00 PM
End: 4/3/2017 4:00:00 PM
Show Time As: Tentative

Call in – Conference Line/Code / Ex. 6
Call code: Conference Line/Code / Ex. 6
Participant code: Conference Line/Code / Ex. 6

Message

From: silver.wendy@epa.gov [silver.wendy@epa.gov]
Sent: 3/21/2017 5:36:51 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: ***ACTION REQUIRED*** - Revised Litigation Hold notice regarding City of Colorado Springs potential CWA violations

Attorney Work Product / Ex. 5

NOTE: You must be logged into the EPA Network at your assigned workstation using your assigned computer and use Internet Explorer to access the [URL].
We recognize that your time is valuable and appreciate your cooperation. The legal team is also expending considerable time and resources to support this matter and appreciates your continued support.
Failure to promptly respond to the questions found at the end of the litigation hold notice will result in automatic reminders to your email account until compliance is obtained.

IMPORTANT: You can access this litigation hold and all other matters in which you are included as a custodian at: http://litholdandcollect.epa.gov/portal.

This email is intended for the sole use of the intended recipient(s) and contains material that is privileged attorney-client communication and/or subject to the attorney work product doctrine. Any review, reliance, distribution, or forwarding without express permission by the sender is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies

Message

From: Albores, Richard [Albores.Richard@epa.gov]
Sent: 3/17/2017 4:23:50 PM
To: Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]; Veney, Carla [Veney.Carla@epa.gov]
CC: Wendelowski, Karyn [wendelowski.karyn@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]
Subject: RE: Options for Revising WOTUS Rule

+ Justin Schwab

Justin has a 2:30 to 3pm meeting also, so he plans to call in (hopefully together with Kevin).

R

~~~~~

RICHARD L. ALBORES
Associate Deputy General Counsel * Office of General Counsel * U.S. EPA * 1200 Pennsylvania Avenue, NW * MC2310A * Washington, DC 20460 * email: albores.richard@epa.gov * phone: 202.564.7102 * mobile: Personal Phone / Ex. 6

From: Neugeboren, Steven
Sent: Friday, March 17, 2017 10:58 AM
To: Albores, Richard <Albores.Richard@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Veney, Carla <Veney.Carla@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: Options for Revising WOTUS Rule

Kevin – so you are aware, I spoke with Jennifer Newman and said it looks like Jeff Wood is planning to be there. Don't know if that affects your plans

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Albores, Richard
Sent: Friday, March 17, 2017 10:49 AM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>; Veney, Carla <Veney.Carla@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: RE: Options for Revising WOTUS Rule

Carla/Kevin:

Steve will attend in person. He does not think it is necessary for Kevin to attend in person.

I have not connected with Justin yet to see what his plans are.
~~~~~

R

~~~~~

RICHARD L. ALBORES
Associate Deputy General Counsel * Office of General Counsel * U.S. EPA * 1200 Pennsylvania Avenue, NW * MC2310A * Washington, DC 20460 * email: albores.richard@epa.gov * phone: 202.564.7102 * mobile: Personal Phone / Ex. 6

-----Original Appointment-----
From: Gelber, Bruce (ENRD) [mailto:Bruce.Gelber@usdoj.gov]
Sent: Thursday, March 16, 2017 9:46 AM
To: Gelber, Bruce (ENRD); Grishaw, Letitia (ENRD); O'Donnell, Jessica (ENRD); Doyle, Andrew (ENRD); martha.mann@usdoj.gov; Neumann, Jennifer Scheller (ENRD); craig.r.schmauder.civ@mail.mil; 'Cooper, David R SES HQ02'; Schwab, Justin; Minoli, Kevin; Greenwalt, Sarah; Neugeboren, Steven; Wendelowski, Karyn; Wehling, Carrie; Hazard, Katherine (ENRD); Thode, Anna (ENRD); Wood, Jeffrey (ENRD); Middleton, Brandon (ENRD)
Subject: Options for Revising WOTUS Rule
When: Friday, March 17, 2017 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: RFK 2143 - Call in **Conference Line/Code / Ex. 6**

All visitors to the Robert F. Kennedy Justice Department Building must enter via the Constitution Avenue center entrance located between 9th & 10th Streets, NW and will need to show a photo ID.
~~~~~

Message

From: Cozad, David [Cozad.David@epa.gov]
Sent: 1/31/2017 7:04:36 PM
To: Schwab, Justin [schwab.justin@epa.gov]
CC: Starfield, Lawrence [Starfield.Lawrence@epa.gov]
Subject: FW: List of EPA Enforcement Actions - Case Names - Confidential/Enforcement Sensitive
Attachments: List of U.S. EPA Enforcement Actions 1-31-17 (Enforcement Sensitive).docx

Hi Justin

Attorney Client / Ex. 5

That work?

Dave

From: Shiffman, Cari
Sent: Tuesday, January 31, 2017 1:41 PM
To: Cozad, David <Cozad.David@epa.gov>
Cc: Miles, Erin <Miles.Erin@epa.gov>
Subject: List of EPA Enforcement Actions - Case Names

Thanks,

Cari Shiffman, Special Assistant
U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Office: (202) 564-2898 | Mobile: Personal Phone / Ex. 6

Message

From: Fotouhi, David [fotouhi.david@epa.gov]
Sent: 4/12/2017 5:32:05 PM
To: Greenwalt, Sarah [greenwalt.sarah@epa.gov]
Subject: RE: WOTUS plans -- E&E News

Thanks!

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Greenwalt, Sarah
Sent: Wednesday, April 12, 2017 12:54 PM
To: Fotouhi, David <fotouhi.david@epa.gov>
Subject: RE: WOTUS plans -- E&E News

Yes. It's handled.

Thanks, David!

Sarah A. Greenwalt
Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency
Work: 202-564-1722 | Cell: 202-816-1388
Greenwalt.Sarah@epa.gov

From: Fotouhi, David
Sent: Wednesday, April 12, 2017 9:54 AM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Subject: FW: WOTUS plans -- E&E News

FYI—do you know anything about this?

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Bowman, Liz
Sent: Wednesday, April 12, 2017 9:27 AM
To: Valentine, Julia <Valentine.Julia@epa.gov>
Cc: Freire, JP <Freire.JP@epa.gov>; Konkus, John <konkus.john@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Subject: FW: WOTUS plans -- E&E News

Deliberative Process / Ex. 5

From: Ariel Wittenberg [mailto:awittenberg@eenews.net]
Sent: Wednesday, April 12, 2017 8:20 AM
To: Press <Press@epa.gov>
Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: WOTUS plans -- E&E News

Hi John and Nancy,

Was hoping to confirm something I've been hearing from a few people that someone from the EPA spoke at a meeting of the Association of State Wetland Managers yesterday and discussed plans to repeal and revise WOTUS. What I've heard is that someone from EPA Headquarters (It was scheduled to be Benita Best-Wong but someone else came instead) said that the EPA intends to hold two separate rulemaking processes to fulfill President Trump's Executive Order. The first would issue a proposal to rescind WOTUS and replace it with the 1986 regulations. The second would begin a new rulemaking to issue a new definition of "Waters of the U.S.". I was hoping you could please confirm this and also tell me who it was that replaced Benita at the meeting. Also, any further comment would be appreciated. My deadline is 11:30 today,

Thanks,

Ariel

Ariel Wittenberg
E&E News reporter
awittenberg@eenews.net
202-737-4557
@arielwittenberg

E&E NEWS
122 C Street NW 7th Floor Washington, DC 20001
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Energywire, Climatewire, Greenwire, E&E Daily, E&E News PM, E&ETV

Message

From: Minoli, Kevin [Minoli.Kevin@epa.gov]
Sent: 2/28/2017 1:49:27 PM
To: Schwab, Justin [schwab.justin@epa.gov]
CC: Neugeboren, Steven [Neugeboren.Steven@epa.gov]
Subject: Re: Morning Energy, presented by Utah Diné Bikéyah: Trump administration pushing massive EPA changes — Major change coming to RFS via executive order — Zinke teed up for final confirmation

Our messages crossed...but we are good. Thanks.

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Feb 28, 2017, at 8:48 AM, Schwab, Justin <schwab.justin@epa.gov> wrote:

> I concur, subject to Kevin's opinion. Kevin?
>
> Sent from my iPhone
>
> On Feb 28, 2017, at 8:46 AM, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:
>
> Justin. Attorney Client / Ex. 5
>
> Attorney Client / Ex. 5
>
> Sent from my iPhone
>
> Steven Neugeboren
> Associate General Counsel
> United States Environmental Protection Agency
> 1200 Pennsylvania Ave. NW
> Washington DC. 20460
> 202-564-5488
>
> Begin forwarded message:
>
> **From:** "Shapiro, Mike" <Shapiro.Mike@epa.gov>
> **Date:** February 28, 2017 at 7:40:50 AM EST
> **To:** "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Rees, Sarah" <rees.sarah@epa.gov>, "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Pollins, Mark"

<Pollins.Mark@epa.gov>, "Peck, Gregory" <Peck.Gregory@epa.gov>
Subject: Fwd: Morning Energy, presented by Utah Diné Bikéyah: Trump administration pushing massive EPA changes — Major change coming to RFS via executive order — Zinke teed up for final confirmation

In case you haven't seen this coverage of WOUS

Michael Shapiro
Deputy Assistant Administrator
US EPA, Office of Water

Begin forwarded message:

> **From:** POLITICO Pro Energy <politicoemail@politicopro.com>
> **Date:** February 28, 2017 at 5:48:24 AM EST
> **To:** <shapiro.mike@epa.gov>
> **Subject: Morning Energy, presented by Utah Diné Bikéyah: Trump administration pushing massive EPA changes — Major change coming to RFS via executive order — Zinke teed up for final confirmation**
> **Reply-To:** POLITICO subscriptions <reply-fe8a12737d6604747c-630326_HTML-709550709-1376319-0@politicoemail.com>
>
> By Anthony Adragna | 02/28/2017 05:45 AM EDT
>
> *With help from Annie Snider*
>
> **'BIG LEAGUE' CHANGES COMING TO EPA:** President Donald Trump's administration is charging ahead with its plans to dramatically revamp the EPA. Today, the president will sign an executive order at 1:50 p.m. beginning the long and winding process of attempting to undo the controversial Waters of the U.S. rule. The order will instruct EPA and the Army Corps of Engineers to "review and reconsider the rule," a senior White House official told reporters Monday night, at the same time ordering Attorney General Jeff Sessions to ask the court to put the court case on hold. It's a review that "is going to take a long time to get through," the official said, and don't expect any more certainty in the meantime. "You'll just have to do sort of a case-by-case assessment as permit issues arise."
>
> **But that's not all:** The Trump administration has bigger plans than just killing the Obama rule: it's

also taking on the legal interpretation on which the rule is premised. In the 2006 case *Rapanos v. United States* dealing with which wetlands are protected under the Clean Water Act, the Supreme Court reached a muddled 4-1-4 ruling, with the four conservative justices, led by Antonin Scalia, on one side, the four liberal justices on the other, and moderate Anthony Kennedy issuing his own concurring opinion that set an entirely separate test for when a water body should be covered. Since then courts have largely held that Kennedy's test, at least, must be met. But the Trump administration doesn't buy that, and as part of the EO is asking the Army Corps and EPA "to consider thinking about Justice Scalia's interpretation of navigable waters," which is generally narrower, the senior White House official said.

A friendly reminder: Vowing to kill the water rule, like promises to undo EPA's climate regulations, is easier said than done. Justices may not want to put the case on hold, especially since the Supreme Court has already agreed to take on a related question about which court has jurisdiction over challenges. And if the Trump administration moves to withdraw the Obama rule, it'll have to go through the same rulemaking process that created it, including notice and comment periods, and will face all but certain legal challenges from environmental groups and sympathetic states.

Huge EPA budget, staffing cuts eyed: The executive order comes on the heels of a White House proposal — "far more severe than anyone imagined," according to one source — that would see the agency's budget slashed by a quarter and one in five of its workers eventually eliminated, Pro's Alex Guillén reports . If enacted, sources said, EPA's budget would drop from its current level of $8.1 billion to $6.1 billion, a level not seen since 1991, and one source said the agency's 15,000-strong workforce would drop to 12,000, a level not seen since the mid-1980s. It's unclear if congressional Republicans would go along with such dramatic reductions, but Democrats are already vowing staunch resistance and the final appropriations package will need some of their votes (more on that reaction below).

Meanwhile, the Capitol buzzes with anticipation of Trump's speech to a joint session tonight. Expect the president to tout the two Congressional Review

Act resolutions he signed to wipe away Obama-era energy regulations, as well as his efforts to revamp the regulatory process through executive orders. ME isn't holding its breath for specific additional details on an energy agenda, though we may get more details on additional steps to slash regulations. Advocates, including Food & Water Watch, National Nurses United, the Hip Hop Caucus and (long-time Trump foe) Rosie O'Donnell, will gather in front of the White House at 6:00 p.m. ahead of the speech to highlight their opposition to his agenda.

Before the speech: House lawmakers today take up the SCRUB Act (H.R. 998), which would create a five-year commission to identify federal regulations that could be rescinded. It would focus on older regulations and aim to reduce overall regulatory costs by 15 percent.

WELCOME TO TUESDAY! How is it already the end of February? I'm your host Anthony Adragna, and Daniel J. Weiss was first to identify Hugo Black as the most recent sitting senator picked for the Supreme Court. For today: Who was the last pro athlete to serve in Congress? Send your tips, energy gossip and comments to aadragna@politico.com, or follow us on Twitter @AnthonyAdragna, @Morning_Energy, and @POLITICOPro.

MAJOR CHANGE COMING TO RFS: Trump's administration plans to issue an executive order changing the Renewable Fuel Standard so that oil refiners would no longer be responsible for meeting the EPA biofuels mandates, leaving that job instead to gasoline wholesalers who supply fuel to retail outlets, Bob Dinneen, CEO of the Renewable Fuels Association, tells Pro's Eric Wolff. That move is likely to be worth hundreds of millions of dollars to CVR Energy, a company owned by Trump regulation czar Carl Icahn.

POET, the world's largest biofuel producer, blasted the "bailout" and "back-room deal" in a statement. "Bob Dinneen does not have the authority to negotiate on behalf of the biofuels industry, and Icahn does not have the authority to negotiate policy on behalf of the U.S. government," POET CEO Jeff Broin said in a statement.

ZINKE POISED FOR CONFIRMATION: It's now only a matter of time — and how much of it Senate Democrats want to burn — before Rep. Ryan Zinke takes the reins of the Interior Department, Pro's Esther Whieldon reports. The Montana Republican easily cleared a procedural hurdle on Monday night by a 67 to 31 vote. Sixteen members of the Democratic caucus supported cloture on the nomination, while Sen. Ron Wyden voted present over what he said were unanswered questions about Oregon forestry: "So far, it has proven impossible to get even a twig of information about his intentions for Oregon's O&C forests," he said in a statement. "Oregonians deserve to have this information before a final vote."

SENIOR DEMOCRATS SLAM POTENTIAL EPA CUTS: Senior Senate Democrats slammed the Trump administration's plans for drastic EPA cuts and warned the president will ultimately need some Democratic appropriations votes. "I hope that he thinks about that when he establishes his priorities," Dick Durbin, the No. 2 Democrat, told reporters. "Many of the things which he's pushing for now are not going to win a lot of Democratic support." Top EPW Democrat Tom Carper called the threatened cuts "appalling" and said they would imperil public health. "Reckless cuts to the EPA — the agency responsible for protecting public health and our environment — are not what Americans voted for in November," he said in a statement.

GOP unsure too: Congressional Republicans expressed skepticism Monday about building up the military on the back of deep cuts to domestic programs, POLITICO's Rachael Bade, Sarah Ferris and Shane Goldmacher report. "The president will propose and the Congress will dispose," House Appropriator Charlie Dent (R-Pa.) said. "We'll look at his budget but at the end of the day we in Congress write the appropriations bills, and I am not one who thinks you can pay for an increase in [military] spending on the backs of domestic discretionary programs, which constitute 13 or 14 percent of all federal spending."

Barrasso backs fundamental changes: EPW Chairman John Barrasso declined to comment on the initial guidance but said he supported "fundamentally" changing the EPA's direction. "The EPA has really lost its way over the last eight years," the Wyoming Republican told ME. "We

need to fundamentally change the direction of the EPA to get it back basically focused on the laws that passed Congress, not on what it chooses to do with a mind of its own." He declined to say whether he would support drastically cutting the agency's climate change work until he reviewed Trump's proposal.

Blame it on the Democrats: Any delay in getting White House energy policy efforts up and running stems from staunch Democratic opposition to even the most non-controversial Cabinet nominations, Barrasso said. "Needless obstruction is causing difficulty in getting things done from the standpoint of energy policy," he told ME. "It's deliberate and obstructive and I think it's not helping the country move forward." But he also described Trump's actions in his first month in office as "pretty terrific," citing executive orders aimed at overhauling the regulatory process and getting two energy-related CRAs signed into law.

**** A message from Utah Diné Bikéyah:** The protection of the Bears Ears National Monument reflected the will of Utahns and Native Americans. Now, President Trump and Interior Secretary-nominee Ryan Zinke are considering undermining this designation and threatening this sacred public land. Join us as we ask them to honor Tribes and stand with Bears Ears: http://bit.ly/2luGehY **

MORE PRESSURE AGAINST BLM METHANE CRA: More than 60 local officials from Colorado, Utah, New Mexico, Nevada and the Ute Tribe are urging senators in a letter today not to vote on a Congressional Review Act challenge to a BLM rule targeting methane emissions from oil and gas operations on public lands. "We urge your opposition to using the Congressional Review Act to eliminate BLM's rule to reduce natural gas waste because of the rule's benefit to our local governments, constituents, and taxpayers," they wrote.

But senior Senate Republicans remain committed to voting on the CRA challenge, even though some undecided GOP senators complicate its path to passage. "I'm committed to getting that passed," Barrasso told ME. Regardless, it appears Cabinet nominations will consume the Senate's time this week, so any consideration of the CRA will wait.

PRUITT EMAIL QUESTIONS NOT GOING AWAY: Revelations that EPA Administrator Scott Pruitt used a private email account while serving as Oklahoma attorney general — in direct contradiction to his Senate testimony — are "only the beginning of the mess of conflicts and falsehoods," Sen. Sheldon Whitehouse told ME in a statement. "Lo and behold, the documents Scott Pruitt wanted to keep hidden have confirmed our suspicion that he used his personal email address to conduct official state business and that he was not honest with the Senate about this during his confirmation process," the Rhode Island Democrat said. "Senate Republicans had every opportunity to prevent this mess. Instead, they rammed this nomination through, and it looks like they did it, not despite him being the polluters' tool, but because he is the polluters' tool."

Listening sessions roll on: Add another governor — Mississippi's Phil Bryant — to the list of state executives Pruitt has met with since assuming office little more than a week ago. That brings the total to 19 governors, according to EPA, which Pruitt tweeted is a "good 1st step to restoring cooperative federalism."

SOCIAL COST OF CARBON UNDER THE SPOTLIGHT: Two House Science subcommittees today plan to "examine the methods and parameters used to establish the social cost of carbon" and look at "how the process can be improved." Chairman Lamar Smith is decidedly not a fan of the metric used to measure costs imposed on society by each metric ton of greenhouse gas pollution, warning in his priorities for this Congress that it was used by the Obama administration to "push a costly climate agenda with little transparency or accessibility." Witnesses include the University of Chicago's Michael Greenstone, who helped implement the figure during the Obama presidency; the Brookings Institution's Ted Gayer; the Heritage Foundation's Kevin Dayaratna and the Cato Institute's Patrick Michaels. It kicks off at 10:00 a.m. in Rayburn 2318.

WHAT'S UP IN INTERNATIONAL CLIMATE ACTION? UNFCCC Executive Secretary Patricia Espinosa delivers her first remarks in the U.S. since the start of the Trump administration today. Expect discussion to touch on how the international community is adjusting to the new U.S. president. It

kicks off at 1:00 p.m. at the Copley Formal Lounge at Georgetown University (3700 O St NW).

NOT BORDERLINE: Alberta Premier Rachel Notley warned Monday a border adjustment tax that hurts the flow of crude from the oil-rich province would negatively impact both the U.S. and Canada, Pro's Ben Lefebvre reports. Notley said Canadian energy executives "asked for us to make the case to as many people as possible on the economic effects of Albertan oil."

MAIL CALL! TIME TO SAVE THE WHALES: The Center for Biological Diversity sent a letter Monday to Pruitt urging the agency to prosecute Hilcorp Alaska for Clean Air Act and Clean Water Act violations related to an ongoing natural gas pipeline leak in Alaska's Cook Inlet or face a lawsuit. "Every day they delay, wildlife is harmed, boaters are at risk, and a potent greenhouse gas rises into the atmosphere," Miyoko Sakashita, the group's oceans program director, said in a statement.

BANKS, CATANZARO FORMALLY ANNOUNCED: Pros learned last week they had begun work, but the White House formally announced George David Banks and Michael Catanzaro as presidential aides on Monday. Banks, previously executive vice president of the American Council for Capital Formation, will serve as special assistant for international energy and environment, while Catanzaro, most recently a partner at the CGCN Group, will be special assistant for domestic energy and environmental policy.

MOVER, SHAKER: Johan Bergenas is joining Paul Allen's Vulcan Inc. as senior director for government affairs, focusing on wildlife trafficking, illegal fishing, and energy and climate change issues. He was previously senior associate at the Stimson Center (h/t POLITICO Influence).

John Holdren, former President Barack Obama's top science adviser, has rejoined the Woods Hole Research Center as senior adviser to its president. "The Center's work on the causes, dynamics, and consequences of climate change and on the actions needed to reduce its damages has never been more important," Holdren said in a statement.

QUICK HITS

— EPA wants planning schedule on Flint's future water source. MLive.

— Shell Shuns New Oil-Sands Projects as Low Prices Force Cost Control. Bloomberg.

— Eni chief denies wrongdoing in Nigerian corruption case. Financial Times.

— How will Alaskans talk climate change with the Trump administration? Alaska Dispatch News.

— Officials temporarily shut off water flow at damaged Oroville Dam in a race against Mother Nature. Los Angeles Times.

— Final cleanup begins at Dakota Access pipeline protest camp. AP.

HAPPENING TUESDAY

9:00 a.m. — "ARPA-E Energy Innovation Summit," Gaylord Hotel and Convention Center in National Harbor, MD

10:00 a.m. — "At What Cost? Examining the Social Cost of Carbon," House Science, Space and Technology Environment and Oversight Subcommittees, 2318 Rayburn

11:00 a.m. — American Public Power Association President and CEO Sue Kelly discusses 2017 legislative priorities, The Mayflower Hotel, Rhode Island Room, 1127 Connecticut Ave. NW

12:00 p.m. — "101 on Onshore Drilling Rigs and Well Construction," International Association of Drilling Contractors, 406 Dirksen

12:00 p.m. — "Geopolitical Dynamics and Middle East Energy," The Middle East Institute, 1319 18th Street NW

12:30 p.m. — "Public Policy Issues Facing the Federal Energy Regulatory Commission," The American Council for Capital Formation's Center for Policy Research, 485 Russell

1:00 p.m. — Interview with Patricia Espinosa, executive secretary of the UNFCCC, Georgetown

Institute for Women, Peace & Security, Copley Formal Lounge, 3700 O Street Northwest

1:30 p.m. — House Appropriations Members' Day hearing on Interior, 2007 Rayburn

2:00 p.m. — Meeting on H.R. 1009 and H.R. 1004, House Rules Committee, H-313

3:00 p.m. — "The Next Generation of Climate Conversations: A Town Hall Discussion," Bloomberg Government, 1101 K Street, Suite 500 (by invitation)

THAT'S ALL FOR ME!

**** A message from Utah Diné Bikéyah:** The designation of the Bears Ears National Monument reflected the will of a majority of Utahns and Native American Tribes. This monument permanently protected public lands threatened by vandalism and looting in southeast Utah that we consider sacred. Yet already, politicians are pushing President Trump and Interior Secretary-nominee Ryan Zinke to reduce or undo its protections. We call on President Trump to resist efforts to seize or sell off Bears Ears and other parks and monuments. Stand with Bears Ears. Let's protect our national public lands for future generations of all people. Learn more at: http://bit.ly/2luGehY **

To view online: https://www.politicopro.com/tipsheets/morning-energy/2017/02/trump-administration-pushing-massive-epa-changes-021585

Stories from POLITICO Pro

Sources: White House proposes to cut EPA budget by quarter Back

By Alex Guillén | 02/27/2017 07:10 PM EDT

The White House has proposed slashing EPA's budget by about a quarter and eventually eliminating 1 in 5 of the agency's workers, according to sources familiar with the budget proposal sent to EPA on Monday.

That budget proposal would set EPA's budget at $6.1 billion, down from its current level of $8.1 billion, according to two sources outside the

agency. EPA's budget hasn't been that low since 1991, according to agency records. One of those sources also said that the White House has proposed reducing EPA's 15,000-strong workforce to 12,000, a level not seen since the mid-1980s.

The White House declined to confirm the figures.

One source told POLITICO that the proposed cuts were "far more severe than anyone imagined." And an EPA employee said staff were buzzing on Monday about the possibility of such a massive cut to the agency's budget.

In a brief interview, a senior EPA official refused to confirm the proposed cuts, adding that he was "not in a position to discuss it publicly." The official said the budget blueprint is part of a "deliberative process" between the White House and EPA, adding that the Office of Management and Budget is expecting a response from the agency by Wednesday afternoon.

The White House said Monday it is seeking to hike defense spending by $54 billion, a jump offset by shrinking spending at non-security agencies across the federal government.

Monday's proposal is part of the initial stages of the Trump administration's budget-crafting process. Agencies will return the proposals with comment in the coming days, and the Office of Management and Budget will release a "budget blueprint" on March 16, OMB Director Mick Mulvaney said. A full, detailed budget plan will not be released until May.

It remains unclear whether congressional Republicans will be willing to make such drastic budget shifts, but Democrats and environmentalists are already blasting the Trump proposal's domestic spending cuts.

"Reckless cuts to the EPA — the agency responsible for protecting public health and our environment — are not what Americans voted for in November," said Sen. Tom Carper (D-Del.).

"Here's what cutting EPA's budget means in the real world: more air pollution, more asthma attacks for kids, more health problems. This isn't about budget savings. It is about giving big polluters a license to

pollute without consequences," said Elizabeth Thompson of the Environmental Defense Fund.

Andrew Restuccia and Esther Whieldon contributed to this report.

Back

Biofuel official: Trump to alter ethanol program, helping Icahn Back

By Eric Wolff | 02/27/2017 10:00 PM EDT

The White House is planning to issue an executive order to shift the burden for blending corn ethanol into the nation's gasoline, according to an ethanol industry official, a move that's likely to be worth hundreds of millions of dollars to a company owned by President Donald Trump's regulation czar and fellow billionaire Carl Icahn.

Bob Dinneen, CEO of the ethanol lobby group Renewable Fuels Association, told POLITICO on Monday that he received a call from a person in the Trump administration informing him that Trump would issue an executive order to change the Renewable Fuel Standard so that oil refiners, like Icahn's CVR Energy, would no longer be responsible for meeting the EPA biofuels mandates. Instead, that job would fall to the gasoline wholesalers who supply fuel to retail outlets.

Dineen said that he told the official, whose identity he declined to disclose, that the ethanol producers would support the move if EPA would allow the use of E15 — gasoline containing 15 percent ethanol — year round. Currently, most gasoline is contains no more than 10 percent ethanol, with the higher 15 percent blend available only in the cooler months.

"I was told the executive order was coming no matter what, so I tried to get what I could for my members," he said.

That move is likely to be opposed by the broader oil industry, which is seeking to overhaul or repeal the RFS that was last updated by Congress in 2007. Automakers have also fought higher ethanol blends, and burning E15 or higher blends in many cars will void the warranty. Even others in the ethanol industry are likely to oppose the move.

"If we had been approached with this deal we would have flat out rejected it," said Emily Skor, CEO of Growth Energy, another ethanol producer's group. "This would gut the RFS and violate the president's commitment to the policy."

Icahn, who Trump has been named as a special adviser to the president on overhauling federal regulations, did not respond to requests for comment.

But Icahn has been the most vocal proponent of moving the responsibility that his CVR Energy has to blend the ethanol into its gasoline and to buy the trading credits, called Renewable Identification Numbers. Buying those RINs to meet the federal rules was expected to cost his CVR $235 million last year — all part of what Icahn derided as "the mother of all short squeezes" that resulted from the collaboration of retail gas chains and investment bankers.

Other refiners, such as Valero Energy and Monroe Energy, have also complained about the RFS requirements, which they say was costing them hundreds of millions of dollars.

Dinneen said he received a call from the administration, though not the EPA, which administers the RFS. EPA did not respond to requests for comment.

White House spokeswoman Stephanie Grisham would not confirm Dinneen's remarks, saying, "When we have something we can comment on, we will let you know."

Ethanol producers are banking on higher ethanol blends gaining acceptance in the market as the best way to increase their domestic sales, since the mandate for conventional biofuel set by Congress will peak this year at 15 billion gallons. RFA has also been pressing EPA to accept scientific studies that show higher proportions of ethanol can be accommodated in the U.S. fuel market.

Dinneen said that his request for the increase in E15 sales was not granted immediately by his caller, but that he was later given assurances the waiver from the EPA and the reviews would be forthcoming.

He disputed that notion that he had struck a deal with the administration, as had been rumored in the industry, although he added that he might be willing to join Trump for the signing of an executive order or to put out a supportive statement, providing political cover for a move that will infuriate the rest of the ethanol industry.

"If I can get a waiver that ethanol producers have been trying to get for five years, if I can get reviews of studies that ethanol has been trying to get for years, then yes, I might," he said.

RFA has opposed the change to the point of obligation since it became a hot issue last fall, though the group added refining and ethanol giant Valero to it's membership late last year.

Back

Senate moves closer to final Zinke vote Back

By Esther Whieldon | 02/27/2017 07:57 PM EDT

Rep. Ryan Zinke's nomination to be Interior secretary cleared a key procedural hurdle on a 67-31 vote this evening in the Senate, setting up final approval in the chamber.

Procedural rules call for up to 30 hours of debate before a final vote, meaning Democrats could push the final vote on the Montana Republican's nomination to early Wednesday morning.

Zinke appears to be well positioned to clear the chamber after he garnered support from a number of Democrats in the Energy and Natural Resources Committee vote and again at tonight's cloture vote.

Zinke is a former state senator and Navy SEAL commander, as well as an avid hunter and angler who has positioned himself as a Teddy Roosevelt conservationist.

Back

Trump budget faces GOP resistance Back

By Rachael Bade, Sarah Ferris and Shane Goldmacher | 02/27/2017 07:31 PM EDT

Congressional Republicans on Monday panned Donald Trump's call to finance a military buildup by slashing domestic agencies and ignoring entitlement programs — undermining the president's budget even before it's been finalized.

The consternation spanned the party's ranks just one day before Trump addresses Congress for his first time Tuesday evening: House GOP fiscal hawks said it was ludicrous to think they'd pass a budget that did not address ballooning costs in Medicare and Social Security, the main drivers of the national debt. Pragmatic-minded GOP appropriators scratched their heads over where Trump would siphon off $54 billion in domestic cuts. And GOP defense hawks said the Pentagon budget boost doesn't go nearly far enough.

Republican sources in leadership and on the Budget and Appropriations committees, meanwhile, quietly assured reporters that this was just an opening bid and that Congress, ultimately, has the power of the purse.

Make no mistake, they say: They'll be writing their own budget plans.

"The president will propose and the Congress will dispose," said House appropriator Charlie Dent (R-Pa.) "We'll look at his budget, but at the end of the day we in Congress write the appropriations bills, and I am not one who thinks you can pay for an increase in [military] spending on the backs of domestic discretionary programs, which constitute 13 or 14 percent of all federal spending."

Senior GOP aides echoed that sentiment. One noted, for instance that "few if any Democrats voted for President [Barack] Obama's budget the first time around. ... It's a blueprint." Another added, "it's the White House budget request — and 'request' is the key word here."

While most Republicans declined to be quoted on record criticizing Trump's budget before it has even been released, their initial reaction is a warning sign for the White House: If Trump wants to fortify the military, he has to give Republicans on the Hill something they can work with.

It's not that Republicans don't want to boost the Pentagon, but if they're going to pay for it, they'd

rather not do it all on the backs of domestic agencies that have already seen their budgets gutted in recent years. They also are itching to do entitlement reform — a key pillar of the traditional GOP platform.

"There have been many attempts made to try to balance the books of the U.S. government on the backs of the discretionary dollar, and we all know that's a fantasy because the drivers of the debt are on the mandatory side: Medicare, Medicaid, Social Security," said Rep. Steve Womack (R-Ark.), who also sits on both the Budget and the Appropriations committees. "Trying to solve for a deficit in the hundreds of billions of dollars cannot be accomplished through deeper cuts to discretionary programs without terrific harm to both the economy and a lot of innocent people."

That's to say nothing of the practical problem Trump's plan would face in the Senate, where at least eight Democrats will be needed to overcome a filibuster and pass any spending bill. Senior Democrats on both sides of the Capitol greeted Trump's initial budget plan with furious opposition, and one Senate Democratic aide said "it's pretty hard to imagine" a single member of their party backing the proposal.

"Democrats will not help pass laws that shift more economic burdens onto hardworking American families," said House Appropriations Committee ranking member Nita Lowey (D-N.Y.) in a statement. Senate Minority Leader Chuck Schumer equated the plan to "taking a meat ax to programs that benefit the middle class."

The White House on Monday unveiled the proposed spike in military spending and vowed to offset it dollar-for-dollar with cuts to domestic programs that have nothing to do with defense. Those agencies and departments, including State and the Environmental Protection Agency, could face severe cutbacks on average of more than 10 percent if veterans' benefits remain unchanged.

The White House sources said the domestic offsets were necessary because Trump does not intend to go after entitlements to pay for spending increases, a promise he made on the campaign trail. And therein lies the first problem: The Republican budget playbook in recent years has always relied

on entitlement reforms to achieve the party's fiscal gold standard: balancing the budget within 10 years.

House Republicans are already prodding their leaders to maintain that pledge in their coming budget — even if Trump doesn't in his.

"We can't abandon long-term reforms and entitlement and maintain any kind of credibility at all," Rep. Tom Cole (R-Okla.) said in an interview last week. "We've always had reforms in there, we need to keep reforms there."

Republicans will also find themselves under heavy pressure from outside conservative groups to rein in entitlements, which compose about half of annual federal spending. In an interview last week, FreedomWorks policy director Jason Pye noted that Republicans could "cut every single bit of nondefense discretionary spending, and you're still going to run a budget deficit." The entire budgets of the State Department and EPA, for instance, barely exceed the proposed $54 billion increase in defense-related spending.

"You're effectively only taking 12.5 percent of federal spending. I don't think that's tenable. You actually have to do more," Pye said.

Hill Democrats spent all of Monday accusing the president of putting the burden on everyday Americans. Sen. Chris Coons (D-Del.) argued that foreign aid — which is on Trump's chopping block — isn't "charity" but "directly advances U.S. national interests by fostering a safer and more stable world." Schumer said Americans under Trump's domestic cuts would be breathing "dirtier air and drinking dirtier water." And House Minority Leader Nancy Pelosi (R-Calif.) said the cuts could mean "1,000 grants to medical researchers" are cut and "100,000 low-income kids would be cut out of" federal education programs.

Meanwhile, defense hawks like Sen. John McCain said there wasn't enough spent on defense. Other defense-minded Republicans quietly fretted that cuts to State, the key department heading up the nation's diplomacy, would mean less security for the country, not more.

Not everyone dreads the idea of offsetting a military boost with cuts to domestic spending. One Freedom

Caucus source believed its group members could be receptive to such reductions; they feel the government is too bloated anyway. Other budget hawks like Rep. Todd Rokita (R-Ind.) said there "certainly" is enough waste on the domestic side that it could offset the defense boost.

Like Democrats, Republicans on the appropriations panel — and most if not all moderate Republicans — also worry about what such those cuts would mean for their constituents. Rep. Mike Simpson (R-Idaho) says he doesn't think the House could pass such cuts, and "I think you'd see even appropriators voting against those bills." Asked if he worried Trump might tweet shame him for opposing his idea, Simpson said no.

"There is just not that much spending in the rest of [the agencies]" to offset the military increase, he told reporters during a House vote Monday night. "There is more to our government than just defense."

Appropriations Committee spokeswoman Jennifer Hing said Chairman Rodney Frelinghuysen (R-N.J.) "strongly agrees that more investment in our national defense is needed, and that all federal programs should be reviewed as to their worth and value."

She notably added this caveat, however, echoing the theme of the day on the Hill: "As always, the power of the purse lies with Congress, and any budget decisions will go through the regular budget and appropriations process."

Jennifer Scholtes and Burgess Everett contributed to this story.

Back

Alberta's Notley starts push against border tax proposal Back

By Ben Lefebvre | 02/27/2017 04:37 PM EDT

Alberta Premier Rachel Notley warned today that both the U.S. and Canada will suffer economically if U.S. lawmakers institute a border adjustment tax that hurts the flow of crude from the oil-rich province.

Notley, who traveled to Washington after huddling earlier in the month with Canadian energy executives — including the CEOs of Cenovus Energy, Enbridge, TransCanada and Imperial Oil — said the Canadian industry was concerned about a potential 20 percent tax on goods imported into the U.S., which would include crude from the oil sands of western Canada.

In an interview, Notley called the border tax "a hypothetical," but said the energy executives "asked for us to make the case to as many people as possible on the economic effects of Albertan oil."

"We're trying to get as much time as we can with as many Congressional members as we can," Notley said. She is also planning to visit with a group of U.S. governors later today to plead the case against a border tax.

Canada supplied 40 percent of U.S. oil imports in November, making it America's largest single foreign crude source.

"The American economy benefits greatly from the contribution of Alberta's energy exports," Notley said in an interview. "And folks in Alberta have strong economic connections in the U.S. as well. The nature of the Canadian-U.S. relationship is such that all of us lose if we interfere with our ability to move our products back and forth over the border."

Back

Energy advisers Banks and Catanzaro start at White House Back

By Eric Wolff | 02/21/2017 02:14 PM EDT

George David Banks and Mike Catanzaro have started working in the White House, providing President Donald Trump with expertise in energy and environment.

Banks started last week as Special Assistant to the President and Senior Director for International Energy and Environment, a White House spokeswoman confirmed today. Prior to joining the Trump administration, Banks had worked for the CIA, the State Department, the Senate Committee on Environment and Public Works and the George W. Bush White House.

Catanzaro, an energy lobbyist and former staffer for Sen. James Inhofe (R-Okla.) at EPW, started today as the Special Assistant to the President for Energy and the Environmental Policy at the National Economic Council.

Back

Was this Pro content helpful? Tell us what you think in one click.

Yes, very

Somewhat

Neutral

Not really

You received this POLITICO Pro content because your customized settings include: Morning Energy. To change your alert settings, please go to https://www.politicopro.com/settings

POLITICOPRO

This email was sent to shapiro.mike@epa.gov by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

Message

From: Ferguson, Lincoln [ferguson.lincoln@epa.gov]
Sent: 4/11/2017 12:42:26 PM
To: Fotouhi, David [fotouhi.david@epa.gov]
CC: Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Brown, Byron [brown.byron@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]
Subject: Re: For Review: EPA Accomplishments for 8am WH Meeting

Not tardy at all! We didn't use this document for this mornings meeting, but will use in the future. Thanks for the input!

Sent from my iPhone

On Apr 11, 2017, at 8:41 AM, Fotouhi, David <fotouhi.david@epa.gov> wrote:

> Thanks, Lincoln.
>
> I apologize if this feedback is too tardy to be helpful, but I wanted to provide it nonetheless just in case. **Attorney Client/Deliberative Ex. 5**
>
> **Attorney Client/Deliberative Ex. 5**
>
> **David Fotouhi**
>
> Deputy General Counsel
> Office of General Counsel
> U.S. Environmental Protection Agency
> Tel: +1 202.564.1976
> fotouhi.david@epa.gov
>
> ---
>
> **From:** Ferguson, Lincoln
> **Sent:** Tuesday, April 11, 2017 7:52 AM
> **To:** Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
> **Cc:** Schwab, Justin <schwab.justin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
> **Subject:** RE: For Review: EPA Accomplishments for 8am WH Meeting
>
> Please review substance.
>
> ---
>
> **From:** Gunasekara, Mandy
> **Sent:** Monday, April 10, 2017 9:37 PM
> **To:** Bolen, Brittany <bolen.brittany@epa.gov>
> **Cc:** Schwab, Justin <schwab.justin@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Freire, JP <Freire.JP@epa.gov>; Graham, Amy <graham.amy@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Konkus, John

<konkus.john@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Re: For Review: EPA Accomplishments for 8am WH Meeting

I concur with all suggested edits.

Sent from my iPhone

On Apr 10, 2017, at 9:31 PM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

Attorney Client/Deliberative Ex. 5

Sent from my iPhone

On Apr 10, 2017, at 8:50 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:

Attorney Client/Deliberative Ex. 5

Attorney Client/Deliberative Ex. 5

On Apr 10, 2017, at 8:27 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

> All – I apologize for the ! email, but can you please review the attached list of SP's accomplishments, for SP's 8 a.m. meeting tomorrow with POTUS. It lists a summary of the accomplishments at the top, with supporting points, including a few details and statements of support from outside organizations underneath. It isn't meant to be comprehensive or overly detailed, but it lays out our accomplishments with regard to implementing the President's agenda. In the future, we will be updating this weekly, as well as using it to create a more visual document (infographic, or graph of some kind).
>
> Please take a look to make sure the facts are accurate. Even though it's an internal draft, we still want to make sure our legal ducks are in a row.
>
> **Can you all send any edits to JP (either in an email copying the group to avoid duplication of efforts or in tracked changes)? And, JP, can you please do a detailed proof (including checking links, etc.) and then send the final over to Ryan Jackson when it's completed?**
>
> Thank you all for your help and effort!
>
> <2017-04-09 EPA Rx.docx>

Message

From: Trudeau, Shaun [Trudeau.Shaun@epa.gov]
Sent: 4/20/2017 9:06:09 PM
To: OGC Immediate Office Support [OGCFrontOfficeSupportStaff@epa.gov]
CC: Fotouhi, David [fotouhi.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]
Subject: Two-week deadlines report
Attachments: Wednesday Weekly Report 04202017.docx

Attached is the two-week deadlines document.

Kevin—I believe the document is an improvement from last week, but some process tweaks will need to be made for the next report. That will enable me to create a draft weekly report for you instead of spending an inordinate amount of time editing. We are getting close to a good system!

Shaun R. Trudeau
Attorney-Advisor
Operational Special Assistant to the Principal Deputy
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202.564.5127

Message

From: Neugeboren, Steven [Neugeboren.Steven@epa.gov]
Sent: 2/28/2017 1:46:37 PM
To: Schwab, Justin [schwab.justin@epa.gov]
CC: Minoli, Kevin [Minoli.Kevin@epa.gov]
Subject: Fwd: Morning Energy, presented by Utah Diné Bikéyah: Trump administration pushing massive EPA changes — Major change coming to RFS via executive order — Zinke teed up for final confirmation

Justin. Attorney Client / Ex. 5

Attorney Client / Ex. 5

Sent from my iPhone

Steven Neugeboren
Associate General Counsel
United States Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington DC. 20460
202-564-5488

Begin forwarded message:

> **From:** "Shapiro, Mike" <Shapiro.Mike@epa.gov>
> **Date:** February 28, 2017 at 7:40:50 AM EST
> **To:** "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Rees, Sarah" <rees.sarah@epa.gov>, "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Pollins, Mark" <Pollins.Mark@epa.gov>, "Peck, Gregory" <Peck.Gregory@epa.gov>
> **Subject: Fwd: Morning Energy, presented by Utah Diné Bikéyah: Trump administration pushing massive EPA changes — Major change coming to RFS via executive order — Zinke teed up for final confirmation**
>
> In case you haven't seen this coverage of WOUS
>
> Michael Shapiro
> Deputy Assistant Administrator
> US EPA, Office of Water
>
> Begin forwarded message:
>
> > **From:** POLITICO Pro Energy <politicoemail@politicopro.com>
> > **Date:** February 28, 2017 at 5:48:24 AM EST
> > **To:** <shapiro.mike@epa.gov>
> > **Subject: Morning Energy, presented by Utah Diné Bikéyah: Trump administration pushing massive EPA changes — Major change coming to RFS via executive order — Zinke teed up for final confirmation**

Reply-To: POLITICO subscriptions <reply-fe8a12737d6604747c-630326_HTML-709550709-1376319-0@politicoemail.com>

By Anthony Adragna | 02/28/2017 05:45 AM EDT

With help from Annie Snider

'BIG LEAGUE' CHANGES COMING TO EPA: President Donald Trump's administration is charging ahead with its plans to dramatically revamp the EPA. Today, the president will sign an executive order at 1:50 p.m. beginning the long and winding process of attempting to undo the controversial Waters of the U.S. rule. The order will instruct EPA and the Army Corps of Engineers to "review and reconsider the rule," a senior White House official told reporters Monday night, at the same time ordering Attorney General Jeff Sessions to ask the court to put the court case on hold. It's a review that "is going to take a long time to get through," the official said, and don't expect any more certainty in the meantime. "You'll just have to do sort of a case-by-case assessment as permit issues arise."

But that's not all: The Trump administration has bigger plans than just killing the Obama rule: it's also taking on the legal interpretation on which the rule is premised. In the 2006 case *Rapanos v. United States* dealing with which wetlands are protected under the Clean Water Act, the Supreme Court reached a muddled 4-1-4 ruling, with the four conservative justices, led by Antonin Scalia, on one side, the four liberal justices on the other, and moderate Anthony Kennedy issuing his own concurring opinion that set an entirely separate test for when a water body should be covered. Since then courts have largely held that Kennedy's test, at least, must be met. But the Trump administration doesn't buy that, and as part of the EO is asking the Army Corps and EPA "to consider thinking about Justice Scalia's interpretation of navigable waters," which is generally narrower, the senior White House official said.

A friendly reminder: Vowing to kill the water rule, like promises to undo EPA's climate regulations, is easier said than done. Justices may not want to put the case on hold, especially since the Supreme Court has already agreed to take on a related question about which court has jurisdiction over challenges. And if the Trump administration moves to withdraw the Obama rule, it'll have to go through the same rulemaking process that created it, including notice and comment periods, and will face all but certain legal challenges from environmental groups and sympathetic states.

Huge EPA budget, staffing cuts eyed: The executive order comes on the heels of a White House proposal — "far more severe than anyone imagined," according to one source — that would see the agency's budget slashed by a quarter and one in five of its workers eventually eliminated, Pro's Alex Guillén reports . If enacted, sources said, EPA's budget would drop from its current level of $8.1 billion to $6.1 billion, a level not seen since 1991, and one source said the agency's 15,000-strong workforce would drop to 12,000, a level not seen since the mid-1980s. It's unclear if congressional Republicans would go along with such dramatic reductions, but Democrats are already vowing staunch resistance and the final appropriations package will need some of their votes (more on that reaction below).

Meanwhile, the Capitol buzzes with anticipation of Trump's speech to a joint session tonight. Expect the president to tout the two Congressional Review Act resolutions he signed to wipe away Obama-era energy regulations, as well as his efforts to revamp the regulatory process through executive orders. ME isn't holding its breath for specific additional details on an energy agenda, though we may get more details on additional steps to slash regulations. Advocates, including Food & Water Watch, National Nurses United, the Hip Hop Caucus and (long-time Trump foe) Rosie O'Donnell, will gather in front of the White House at 6:00 p.m. ahead of the speech to highlight their opposition to his agenda.

Before the speech: House lawmakers today take up the SCRUB Act (H.R. 998), which would create a five-year commission to identify federal regulations that could be rescinded. It would focus on older regulations and aim to reduce overall regulatory costs by 15 percent.

WELCOME TO TUESDAY! How is it already the end of February? I'm your host Anthony Adragna, and Daniel J. Weiss was first to identify Hugo Black as the most recent sitting senator picked for the Supreme Court. For today: Who was the last pro athlete to serve in Congress? Send your tips, energy gossip and comments to aadragna@politico.com, or follow us on Twitter @AnthonyAdragna, @Morning_Energy, and @POLITICOPro.

MAJOR CHANGE COMING TO RFS: Trump's administration plans to issue an executive order changing the Renewable Fuel Standard so that oil refiners would no longer be responsible for meeting the EPA biofuels mandates, leaving that job instead to gasoline wholesalers who supply fuel to retail outlets, Bob Dinneen, CEO of the Renewable Fuels Association, tells Pro's Eric Wolff. That move is likely to be worth hundreds of millions of dollars to CVR Energy, a company owned by Trump regulation czar Carl Icahn.

POET, the world's largest biofuel producer, blasted the "bailout" and "back-room deal" in a statement. "Bob Dinneen does not have the authority to negotiate on behalf of the biofuels industry, and Icahn does not have the authority to negotiate policy on behalf of the U.S. government," POET CEO Jeff Broin said in a statement.

ZINKE POISED FOR CONFIRMATION: It's now only a matter of time — and how much of it Senate Democrats want to burn — before Rep. Ryan Zinke takes the reins of the Interior Department, Pro's Esther Whieldon reports. The Montana Republican easily cleared a procedural hurdle on Monday night by a 67 to 31 vote. Sixteen members of the Democratic caucus supported cloture on the nomination, while Sen. Ron Wyden voted present over what he said were unanswered questions about Oregon forestry: "So far, it has proven impossible to get even a twig of information about his intentions for Oregon's O&C forests," he said in a statement. "Oregonians deserve to have this information before a final vote."

SENIOR DEMOCRATS SLAM POTENTIAL EPA CUTS: Senior Senate Democrats slammed the Trump administration's plans for drastic EPA cuts and warned the president will ultimately need some Democratic appropriations votes. "I hope that he thinks about that when he establishes his priorities," Dick Durbin, the No. 2 Democrat, told reporters. "Many of the things which he's pushing for

now are not going to win a lot of Democratic support." Top EPW Democrat Tom Carper called the threatened cuts "appalling" and said they would imperil public health. "Reckless cuts to the EPA — the agency responsible for protecting public health and our environment — are not what Americans voted for in November," he said in a statement.

GOP unsure too: Congressional Republicans expressed skepticism Monday about building up the military on the back of deep cuts to domestic programs, POLITICO's Rachael Bade, Sarah Ferris and Shane Goldmacher report. "The president will propose and the Congress will dispose," House Appropriator Charlie Dent (R-Pa.) said. "We'll look at his budget but at the end of the day we in Congress write the appropriations bills, and I am not one who thinks you can pay for an increase in [military] spending on the backs of domestic discretionary programs, which constitute 13 or 14 percent of all federal spending."

Barrasso backs fundamental changes: EPW Chairman John Barrasso declined to comment on the initial guidance but said he supported "fundamentally" changing the EPA's direction. "The EPA has really lost its way over the last eight years," the Wyoming Republican told ME. "We need to fundamentally change the direction of the EPA to get it back basically focused on the laws that passed Congress, not on what it chooses to do with a mind of its own." He declined to say whether he would support drastically cutting the agency's climate change work until he reviewed Trump's proposal.

Blame it on the Democrats: Any delay in getting White House energy policy efforts up and running stems from staunch Democratic opposition to even the most non-controversial Cabinet nominations, Barrasso said. "Needless obstruction is causing difficulty in getting things done from the standpoint of energy policy," he told ME. "It's deliberate and obstructive and I think it's not helping the country move forward." But he also described Trump's actions in his first month in office as "pretty terrific," citing executive orders aimed at overhauling the regulatory process and getting two energy-related CRAs signed into law.

**** A message from Utah Diné Bikéyah:** The protection of the Bears Ears National Monument reflected the will of Utahns and Native Americans. Now, President Trump and Interior Secretary-nominee Ryan Zinke are considering undermining this designation and threatening this sacred public land. Join us as we ask them to honor Tribes and stand with Bears Ears: http://bit.ly/2luGehY **

MORE PRESSURE AGAINST BLM METHANE CRA: More than 60 local officials from Colorado, Utah, New Mexico, Nevada and the Ute Tribe are urging senators in a letter today not to vote on a Congressional Review Act challenge to a BLM rule targeting methane emissions from oil and gas operations on public lands. "We urge your opposition to using the Congressional Review Act to eliminate BLM's rule to reduce natural gas waste because of the rule's benefit to our local governments, constituents, and taxpayers," they wrote.

But senior Senate Republicans remain committed to voting on the CRA challenge, even though some undecided GOP senators complicate its path to passage. "I'm committed to getting that passed," Barrasso told ME. Regardless, it appears Cabinet nominations will consume the Senate's time this week, so any consideration of the CRA will wait.

PRUITT EMAIL QUESTIONS NOT GOING AWAY: Revelations that EPA Administrator Scott Pruitt used a private email account while serving as Oklahoma attorney general — in direct contradiction to his Senate testimony — are "only the beginning of the mess of conflicts and falsehoods," Sen. Sheldon Whitehouse told ME in a statement. "Lo and behold, the documents Scott Pruitt wanted to keep hidden have confirmed our suspicion that he used his personal email address to conduct official state business and that he was not honest with the Senate about this during his confirmation process," the Rhode Island Democrat said. "Senate Republicans had every opportunity to prevent this mess. Instead, they rammed this nomination through, and it looks like they did it, not despite him being the polluters' tool, but because he is the polluters' tool."

Listening sessions roll on: Add another governor — Mississippi's Phil Bryant — to the list of state executives Pruitt has met with since assuming office little more than a week ago. That brings the total to 19 governors, according to EPA, which Pruitt tweeted is a "good 1st step to restoring cooperative federalism."

SOCIAL COST OF CARBON UNDER THE SPOTLIGHT: Two House Science subcommittees today plan to "examine the methods and parameters used to establish the social cost of carbon" and look at "how the process can be improved." Chairman Lamar Smith is decidedly not a fan of the metric used to measure costs imposed on society by each metric ton of greenhouse gas pollution, warning in his priorities for this Congress that it was used by the Obama administration to "push a costly climate agenda with little transparency or accessibility." Witnesses include the University of Chicago's Michael Greenstone, who helped implement the figure during the Obama presidency; the Brookings Institution's Ted Gayer; the Heritage Foundation's Kevin Dayaratna and the Cato Institute's Patrick Michaels. It kicks off at 10:00 a.m. in Rayburn 2318.

WHAT'S UP IN INTERNATIONAL CLIMATE ACTION? UNFCCC Executive Secretary Patricia Espinosa delivers her first remarks in the U.S. since the start of the Trump administration today. Expect discussion to touch on how the international community is adjusting to the new U.S. president. It kicks off at 1:00 p.m. at the Copley Formal Lounge at Georgetown University (3700 O St NW).

NOT BORDERLINE: Alberta Premier Rachel Notley warned Monday a border adjustment tax that hurts the flow of crude from the oil-rich province would negatively impact both the U.S. and Canada, Pro's Ben Lefebvre reports. Notley said Canadian energy executives "asked for us to make the case to as many people as possible on the economic effects of Albertan oil."

MAIL CALL! TIME TO SAVE THE WHALES: The Center for Biological Diversity sent a letter Monday to Pruitt urging the agency to prosecute Hilcorp Alaska for Clean Air Act and Clean Water Act violations related to an ongoing natural gas pipeline leak in Alaska's Cook Inlet or face a lawsuit. "Every day they delay, wildlife is harmed, boaters are at risk, and a potent greenhouse gas rises into the atmosphere," Miyoko Sakashita, the group's oceans program director, said in a statement.

BANKS, CATANZARO FORMALLY ANNOUNCED: Pros learned last week they had begun work, but the White House formally announced George David

Banks and Michael Catanzaro as presidential aides on Monday. Banks, previously executive vice president of the American Council for Capital Formation, will serve as special assistant for international energy and environment, while Catanzaro, most recently a partner at the CGCN Group, will be special assistant for domestic energy and environmental policy.

MOVER, SHAKER: Johan Bergenas is joining Paul Allen's Vulcan Inc. as senior director for government affairs, focusing on wildlife trafficking, illegal fishing, and energy and climate change issues. He was previously senior associate at the Stimson Center (h/t POLITICO Influence).

John Holdren, former President Barack Obama's top science adviser, has rejoined the Woods Hole Research Center as senior adviser to its president. "The Center's work on the causes, dynamics, and consequences of climate change and on the actions needed to reduce its damages has never been more important," Holdren said in a statement.

QUICK HITS

— EPA wants planning schedule on Flint's future water source. MLive.

— Shell Shuns New Oil-Sands Projects as Low Prices Force Cost Control. Bloomberg.

— Eni chief denies wrongdoing in Nigerian corruption case. Financial Times.

— How will Alaskans talk climate change with the Trump administration? Alaska Dispatch News.

— Officials temporarily shut off water flow at damaged Oroville Dam in a race against Mother Nature. Los Angeles Times.

— Final cleanup begins at Dakota Access pipeline protest camp. AP.

HAPPENING TUESDAY

9:00 a.m. — "ARPA-E Energy Innovation Summit," Gaylord Hotel and Convention Center in National Harbor, MD

10:00 a.m. — "At What Cost? Examining the Social Cost of Carbon," House Science, Space and Technology Environment and Oversight Subcommittees, 2318 Rayburn

11:00 a.m. — American Public Power Association President and CEO Sue Kelly discusses 2017 legislative priorities, The Mayflower Hotel, Rhode Island Room, 1127 Connecticut Ave. NW

12:00 p.m. — "101 on Onshore Drilling Rigs and Well Construction," International Association of Drilling Contractors, 406 Dirksen

12:00 p.m. — "Geopolitical Dynamics and Middle East Energy," The Middle East Institute, 1319 18th Street NW

12:30 p.m. — "Public Policy Issues Facing the Federal Energy Regulatory Commission," The American Council for Capital Formation's Center for Policy Research, 485 Russell

1:00 p.m. — Interview with Patricia Espinosa, executive secretary of the UNFCCC, Georgetown Institute for Women, Peace & Security, Copley Formal Lounge, 3700 O Street Northwest

1:30 p.m. — House Appropriations Members' Day hearing on Interior, 2007 Rayburn

2:00 p.m. — Meeting on H.R. 1009 and H.R. 1004, House Rules Committee, H-313

3:00 p.m. — "The Next Generation of Climate Conversations: A Town Hall Discussion," Bloomberg Government, 1101 K Street, Suite 500 (by invitation)

THAT'S ALL FOR ME!

**** A message from Utah Diné Bikéyah:** The designation of the Bears Ears National Monument reflected the will of a majority of Utahns and Native American Tribes. This monument permanently protected public lands threatened by vandalism and looting in southeast Utah that we consider sacred. Yet already, politicians are pushing President Trump and Interior Secretary-nominee Ryan Zinke to reduce or undo its protections. We call on President Trump to resist efforts to seize or sell off Bears Ears and other parks and monuments. Stand with Bears Ears. Let's protect our national public lands for future generations of all people. Learn more at: http://bit.ly/2luGehY **

To view online:
https://www.politicopro.com/tipsheets/morning-energy/2017/02/trump-administration-pushing-massive-epa-changes-021585

Stories from POLITICO Pro

Sources: White House proposes to cut EPA budget by quarter Back

By Alex Guillén | 02/27/2017 07:10 PM EDT

The White House has proposed slashing EPA's budget by about a quarter and eventually eliminating 1 in 5 of the agency's workers, according to sources familiar with the budget proposal sent to EPA on Monday.

That budget proposal would set EPA's budget at $6.1 billion, down from its current level of $8.1 billion, according to two sources outside the agency. EPA's budget hasn't been that low since 1991, according to agency records. One of those sources also said that the White House has proposed reducing EPA's 15,000-strong workforce to 12,000, a level not seen since the mid-1980s.

The White House declined to confirm the figures.

One source told POLITICO that the proposed cuts were "far more severe than anyone imagined." And an EPA employee said staff were buzzing on Monday about the possibility of such a massive cut to the agency's budget.

In a brief interview, a senior EPA official refused to confirm the proposed cuts, adding that he was "not in a position to discuss it publicly." The official said the budget blueprint is part of a "deliberative process" between the White House and EPA, adding that the Office of Management and Budget is expecting a response from the agency by Wednesday afternoon.

The White House said Monday it is seeking to hike defense spending by $54 billion, a jump offset by shrinking spending at non-security agencies across the federal government.

Monday's proposal is part of the initial stages of the Trump administration's budget-crafting process. Agencies will return the proposals with comment in the coming days, and the Office of Management and Budget will release a "budget blueprint" on March 16, OMB Director Mick Mulvaney said. A full, detailed budget plan will not be released until May.

It remains unclear whether congressional Republicans will be willing to make such drastic budget shifts, but Democrats and environmentalists are already blasting the Trump proposal's domestic spending cuts.

"Reckless cuts to the EPA — the agency responsible for protecting public health and our environment — are not what Americans voted for in November," said Sen. Tom Carper (D-Del.).

"Here's what cutting EPA's budget means in the real world: more air pollution, more asthma attacks for kids, more health problems. This isn't about budget savings. It is about giving big polluters a license to pollute without consequences," said Elizabeth Thompson of the Environmental Defense Fund.

Andrew Restuccia and Esther Whieldon contributed to this report.

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Biofuel official: Trump to alter ethanol program, helping Icahn Back

By Eric Wolff | 02/27/2017 10:00 PM EDT

The White House is planning to issue an executive order to shift the burden for blending corn ethanol into the nation's gasoline, according to an ethanol industry official, a move that's likely to be worth hundreds of millions of dollars to a company owned by President Donald Trump's regulation czar and fellow billionaire Carl Icahn.

Bob Dinneen, CEO of the ethanol lobby group Renewable Fuels Association, told POLITICO on Monday that he received a call from a person in the Trump

administration informing him that Trump would issue an executive order to change the Renewable Fuel Standard so that oil refiners, like Icahn's CVR Energy, would no longer be responsible for meeting the EPA biofuels mandates. Instead, that job would fall to the gasoline wholesalers who supply fuel to retail outlets.

Dineen said that he told the official, whose identity he declined to disclose, that the ethanol producers would support the move if EPA would allow the use of E15 — gasoline containing 15 percent ethanol — year round. Currently, most gasoline is contains no more than 10 percent ethanol, with the higher 15 percent blend available only in the cooler months.

"I was told the executive order was coming no matter what, so I tried to get what I could for my members," he said.

That move is likely to be opposed by the broader oil industry, which is seeking to overhaul or repeal the RFS that was last updated by Congress in 2007. Automakers have also fought higher ethanol blends, and burning E15 or higher blends in many cars will void the warranty. Even others in the ethanol industry are likely to oppose the move.

"If we had been approached with this deal we would have flat out rejected it," said Emily Skor, CEO of Growth Energy, another ethanol producer's group. "This would gut the RFS and violate the president's commitment to the policy."

Icahn, who Trump has been named as a special adviser to the president on overhauling federal regulations, did not respond to requests for comment.

But Icahn has been the most vocal proponent of moving the responsibility that his CVR Energy has to blend the ethanol into its gasoline and to buy the trading credits, called Renewable Identification Numbers. Buying those RINs to meet the federal rules was expected to cost his CVR $235 million last year — all part of what Icahn derided as "the mother of all short squeezes" that resulted from the collaboration of retail gas chains and investment bankers.

Other refiners, such as Valero Energy and Monroe Energy, have also complained about the RFS requirements, which they say was costing them hundreds of millions of dollars.

Dinneen said he received a call from the administration, though not the EPA, which administers the RFS. EPA did not respond to requests for comment.

White House spokeswoman Stephanie Grisham would not confirm Dinneen's remarks, saying, "When we have something we can comment on, we will let you know."

Ethanol producers are banking on higher ethanol blends gaining acceptance in the market as the best way to increase their domestic sales, since the mandate for conventional biofuel set by Congress will peak this year at 15 billion gallons. RFA has also been pressing EPA to accept scientific studies that show higher proportions of ethanol can be accommodated in the U.S. fuel market.

Dinneen said that his request for the increase in E15 sales was not granted immediately by his caller, but that he was later given assurances the waiver from the EPA and the reviews would be forthcoming.

He disputed that notion that he had struck a deal with the administration, as had been rumored in the industry, although he added that he might be willing to join Trump for the signing of an executive order or to put out a supportive statement, providing political cover for a move that will infuriate the rest of the ethanol industry.

"If I can get a waiver that ethanol producers have been trying to get for five years, if I can get reviews of studies that ethanol has been trying to get for years, then yes, I might," he said.

RFA has opposed the change to the point of obligation since it became a hot issue last fall, though the group added refining and ethanol giant Valero to it's membership late last year.

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Senate moves closer to final Zinke vote Back

By Esther Whieldon | 02/27/2017 07:57 PM EDT

Rep. Ryan Zinke's nomination to be Interior secretary cleared a key procedural hurdle on a 67-31 vote this evening in the Senate, setting up final approval in the chamber.

Procedural rules call for up to 30 hours of debate before a final vote, meaning Democrats could push the final vote on the Montana Republican's nomination to early Wednesday morning.

Zinke appears to be well positioned to clear the chamber after he garnered support from a number of Democrats in the Energy and Natural Resources Committee vote and again at tonight's cloture vote.

Zinke is a former state senator and Navy SEAL commander, as well as an avid hunter and angler who has positioned himself as a Teddy Roosevelt conservationist.

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Trump budget faces GOP resistance Back

By Rachael Bade, Sarah Ferris and Shane Goldmacher | 02/27/2017 07:31 PM EDT

Congressional Republicans on Monday panned Donald Trump's call to finance a military buildup by slashing domestic agencies and ignoring entitlement programs — undermining the president's budget even before it's been finalized.

The consternation spanned the party's ranks just one day before Trump addresses Congress for his first time Tuesday evening: House GOP fiscal hawks said it was ludicrous to think they'd pass a budget that did not address ballooning costs in Medicare and Social Security, the main drivers of the national debt. Pragmatic-minded GOP appropriators scratched their heads over where Trump would siphon off $54 billion in domestic cuts. And GOP defense hawks said the Pentagon budget boost doesn't go nearly far enough.

Republican sources in leadership and on the Budget and Appropriations committees, meanwhile, quietly assured reporters that this was just an opening bid and that Congress, ultimately, has the power of the purse.

Make no mistake, they say: They'll be writing their own budget plans.

"The president will propose and the Congress will dispose," said House appropriator Charlie Dent (R-Pa.) "We'll look at his budget, but at the end of the day we in Congress write the appropriations bills, and I am not one who thinks you can pay for an increase in [military] spending on the backs of domestic discretionary programs, which constitute 13 or 14 percent of all federal spending."

Senior GOP aides echoed that sentiment. One noted, for instance that "few if any Democrats voted for President [Barack] Obama's budget the first time around. ... It's a blueprint." Another added, "it's the White House budget request — and 'request' is the key word here."

While most Republicans declined to be quoted on record criticizing Trump's budget before it has even been released, their initial reaction is a warning sign for the White House: If Trump wants to fortify the military, he has to give Republicans on the Hill something they can work with.

It's not that Republicans don't want to boost the Pentagon, but if they're going to pay for it, they'd rather not do it all on the backs of domestic agencies that have already seen their budgets gutted in recent years. They also are itching to do entitlement reform — a key pillar of the traditional GOP platform.

"There have been many attempts made to try to balance the books of the U.S. government on the backs of the discretionary dollar, and we all know that's a fantasy because the drivers of the debt are on the mandatory side: Medicare, Medicaid, Social Security," said Rep. Steve Womack (R-Ark.), who also sits on both the Budget and the Appropriations committees. "Trying to solve for a deficit in the hundreds of billions of dollars cannot be accomplished through deeper cuts to discretionary programs without terrific harm to both the economy and a lot of innocent people."

That's to say nothing of the practical problem Trump's plan would face in the Senate, where at least eight Democrats will be needed to overcome a filibuster and pass any spending bill. Senior Democrats on both sides of the Capitol greeted Trump's initial budget plan with furious opposition, and one Senate Democratic aide said "it's pretty hard to imagine" a single member of their party backing the proposal.

"Democrats will not help pass laws that shift more economic burdens onto hardworking American families," said House Appropriations Committee ranking member Nita Lowey (D-N.Y.) in a statement. Senate Minority Leader Chuck Schumer equated the plan to "taking a meat ax to programs that benefit the middle class."

The White House on Monday unveiled the proposed spike in military spending and vowed to offset it dollar-for-dollar with cuts to domestic programs that have nothing to do with defense. Those agencies and departments, including State and the Environmental Protection Agency, could face severe cutbacks on average of more than 10 percent if veterans' benefits remain unchanged.

The White House sources said the domestic offsets were necessary because Trump does not intend to go after entitlements to pay for spending increases, a promise he made on the campaign trail. And therein lies the first problem: The Republican budget playbook in recent years has always relied on entitlement reforms to achieve the party's fiscal gold standard: balancing the budget within 10 years.

House Republicans are already prodding their leaders to maintain that pledge in their coming budget — even if Trump doesn't in his.

"We can't abandon long-term reforms and entitlement and maintain any kind of credibility at all," Rep. Tom Cole (R-Okla.) said in an interview last week. "We've always had reforms in there, we need to keep reforms there."

Republicans will also find themselves under heavy pressure from outside conservative groups to rein in entitlements, which compose about half of annual federal spending. In an interview last week, FreedomWorks policy director Jason Pye noted that Republicans could "cut every single bit of nondefense discretionary spending, and you're still going to run a budget deficit." The entire budgets of the State Department and EPA, for instance, barely exceed the proposed $54 billion increase in defense-related spending.

"You're effectively only taking 12.5 percent of federal spending. I don't think that's tenable. You actually have to do more," Pye said.

Hill Democrats spent all of Monday accusing the president of putting the burden on everyday Americans. Sen. Chris Coons (D-Del.) argued that foreign aid — which is on Trump's chopping block — isn't "charity" but "directly advances U.S. national interests by fostering a safer and more stable world." Schumer said Americans under Trump's domestic cuts would be breathing "dirtier air and drinking dirtier water." And House Minority Leader Nancy Pelosi (R-Calif.) said the cuts could mean "1,000 grants to medical researchers" are cut and "100,000 low-income kids would be cut out of" federal education programs.

Meanwhile, defense hawks like Sen. John McCain said there wasn't enough spent on defense. Other defense-minded Republicans quietly fretted that cuts to State, the key department heading up the nation's diplomacy, would mean less security for the country, not more.

Not everyone dreads the idea of offsetting a military boost with cuts to domestic spending. One Freedom Caucus source believed its group members could be receptive to such reductions; they feel the government is too bloated anyway. Other budget hawks like Rep. Todd Rokita (R-Ind.) said there "certainly" is enough waste on the domestic side that it could offset the defense boost.

Like Democrats, Republicans on the appropriations panel — and most if not all moderate Republicans — also worry about what such those cuts would mean for their constituents. Rep. Mike Simpson (R-Idaho) says he doesn't think the House could pass such cuts, and "I think you'd see even appropriators voting against those bills." Asked if he worried Trump might tweet shame him for opposing his idea, Simpson said no.

"There is just not that much spending in the rest of [the agencies]" to offset the military increase, he told reporters during a House vote Monday night. "There is more to our government than just defense."

Appropriations Committee spokeswoman Jennifer Hing said Chairman Rodney Frelinghuysen (R-N.J.) "strongly agrees that more investment in our national defense is needed, and that all federal programs should be reviewed as to their worth and value."

She notably added this caveat, however, echoing the theme of the day on the Hill: "As always, the power of the purse lies with Congress, and any budget decisions will go through the regular budget and appropriations process."

Jennifer Scholtes and Burgess Everett contributed to this story.

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Alberta's Notley starts push against border tax proposal Back

By Ben Lefebvre | 02/27/2017 04:37 PM EDT

Alberta Premier Rachel Notley warned today that both the U.S. and Canada will suffer economically if U.S. lawmakers institute a border adjustment tax that hurts the flow of crude from the oil-rich province.

Notley, who traveled to Washington after huddling earlier in the month with Canadian energy executives — including the CEOs of Cenovus Energy, Enbridge, TransCanada and Imperial Oil — said the Canadian industry was concerned about a potential 20 percent tax on goods imported into the U.S., which would include crude from the oil sands of western Canada.

In an interview, Notley called the border tax "a hypothetical," but said the energy executives "asked for us to make the case to as many people as possible on the economic effects of Albertan oil."

"We're trying to get as much time as we can with as many Congressional members as we can," Notley said. She is also planning to visit with a group of U.S. governors later today to plead the case against a border tax.

Canada supplied 40 percent of U.S. oil imports in November, making it America's largest single foreign crude source.

"The American economy benefits greatly from the contribution of Alberta's energy exports," Notley said in an interview. "And folks in Alberta have strong economic connections in the U.S. as well. The nature of the Canadian-U.S. relationship is such that all of us lose if we interfere with our ability to move our products back and forth over the border."

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Energy advisers Banks and Catanzaro start at White House Back

By Eric Wolff | 02/21/2017 02:14 PM EDT

George David Banks and Mike Catanzaro have started working in the White House, providing President Donald Trump with expertise in energy and environment.

Banks started last week as Special Assistant to the President and Senior Director for International Energy and Environment, a White House spokeswoman confirmed today. Prior to joining the Trump administration, Banks had worked for the CIA, the State Department, the Senate Committee on Environment and Public Works and the George W. Bush White House.

Catanzaro, an energy lobbyist and former staffer for Sen. James Inhofe (R-Okla.) at EPW, started today as the Special Assistant to the President for Energy and the Environmental Policy at the National Economic Council.

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To: Prabhu, Aditi [Prabhu.Aditi@epa.gov]; Dolph, Becky [Dolph.Becky@epa.gov]; Veney, Carla [Veney.Carla@epa.gov]; Fort, Daniel [Fort.Daniel@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]; Jones, Gail-R [Jones.Gail-R@epa.gov]; Duross, Jeanne [Duross.Jeanne@epa.gov]; Keith, Jennie [Keith.Jennie@epa.gov]; Justin Schwab [Schwab.Justin@epamail.epa.gov]; Fugh, Justina [Fugh.Justina@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]; Patrick, Monique [Patrick.Monique@epa.gov]; Albores, Richard [Albores.Richard@epa.gov]; David Fotouhi [Fotouhi.David@epamail.epa.gov]
Subject: CTS Pending Items Newsletter

CTS Pending Items - Your goal is to make this list EMPTY! Click a link at the left and follow-up on every item.

Current Approver [Due Date] Showing Pending Items Only

Deliberative Process / Ex. 5

Message

From: Starfield, Lawrence [Starfield.Lawrence@epa.gov]
Sent: 2/24/2017 12:11:55 AM
To: Schnare, David [schnare.david@epa.gov]
CC: Schwab, Justin [schwab.justin@epa.gov]
Subject: FW: enforcement docket - one pager
Attachments: OECA Civil Enforcement One Pager 2 23 17 - Enforcement Sensitive - Confidential.docx; Consolidated Response - Non CERCLA - (2-22-17) (Enforcement Confidential - Do Not Distribute).docx; Consolidated Response - Superfund - (2-22-17) (Enforcement Confidential - Do Not Distribute).docx

Flag: Flag for follow up

Dave,

On the charts I just sent, the items in red are those that were deemed to merit a deeper level of review with Justin, which has already occurred for many of the cases. FYI.

Larry

From: Starfield, Lawrence
Sent: Thursday, February 23, 2017 7:08 PM
To: Schnare, David <schnare.david@epa.gov>
Cc: Schwab, Justin <schwab.justin@epa.gov>
Subject: enforcement docket - one pager

Dave,

Attached is a one-pager summarizing the open enforcement settlements and litigation. Deliberative Process / Attorney-Client / Ex. 5

Deliberative Process / Attorney-Client / Ex. 5

I have also tried to describe the Deliberative Process / Attorney-Client / Ex. 5

Deliberative Process / Attorney-Client / Ex. 5

Deliberative Process / Attorney-Client / Ex. 5

I hope this meets your needs. Please let me know if you would like additional information.

Larry

Larry Starfield
Principal Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance

(202) 564-2440 (office)
(202) 564-8179 (direct)
Personal Phone / Ex. 6 (cell)

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believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

Message

From: Greenwalt, Sarah [greenwalt.sarah@epa.gov]
Sent: 3/21/2017 4:24:35 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]
CC: Schwab, Justin [schwab.justin@epa.gov]
Subject: Re: CPP (Call in number: Conference Line/Code / Ex. 6 Extension: Conference Line/Code / Ex. 6 Code: Conference Line/Code / Ex. 6

The administrator has asked that I step into his 1:15, so I will be walking in late. My apologies.

Sent from my iPhone

> On Mar 21, 2017, at 12:17 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:
>
>
> <meeting.ics>

Message

From: Privacy Info in Enforcement Records Ex. 7(c)/Personal Privacy Ex. 6 @epa.gov]
Sent: 3/3/2017 10:16:02 PM
To: Barnet, Henry [Barnet.Henry@epa.gov]; Beaty, James [Beaty.James@epa.gov]; Fisher, Mike [Fisher.Mike@epa.gov]; McAtee, Jeffrey [McAtee.Jeffrey@epa.gov]; Stanich, Ted [Stanich.Ted@epa.gov]; Mazakas, Pam [Mazakas.Pam@epa.gov]; Amon, Tyler [Amon.Tyler@epa.gov]; Green, Jay-M [Green.Jay-M@epa.gov]; Taylor, Jessica [taylor.jessica@epa.gov]; Cavanaugh, Charles [Cavanaugh.Charles@epa.gov]
CC: Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Cozad, David [Cozad.David@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]
Subject: C-ECAR February 27, 2017 to March 10, 2017 (CID Weekly Case Report)
Attachments: C-ECAR February 27, 2017 to March 10, 2017.docx

Flag: Flag for follow up

Privacy Info in Enforcement Records Ex. 7(c)/Personal Privacy Ex. 6
Associate Special Agent in Charge, Investigations
U.S. Environmental Protection Agency, Criminal Investigation Division
1200 Pennsylvania Ave NW, Room 1228, MC 2233A
Washington, DC 20004
202-564-1776

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Message

From: Starfield, Lawrence [Starfield.Lawrence@epa.gov]
Sent: 1/31/2017 1:16:24 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]
CC: Schwab, Justin [schwab.justin@epa.gov]
Subject: RE: DOJ visit on Tuesday

Kevin,

A meet-and-greet is all we need.

I'd suggest that I have my folks in room 4045 at 3 pm, and then wrap up around 3:20 pm when your folks arrive -- less chaotic for the DOJ folks as well as Catherine, and fewer delays.

Will that work (is 4045 free at 3 pm)?

Thanks.

Larry

Sent from my Windows Phone

From: Minoli, Kevin
Sent: 1/30/2017 9:11 PM
To: Starfield, Lawrence
Cc: Schwab, Justin
Subject: RE: DOJ visit on Tuesday

Hi Larry- I am sorry I am just now getting back to you… it was another chaotic day at points. Jeff is coming with Bruce Gelber, Jean Williams, and Brandon Middleton. I had not recognized Brandon's name and so googled him. I located the following on the Ohio State University Law School website (obviously now outdated):

> Brandon Middleton, 2007
>
> Brandon Middleton '07 recently joined the Republican staff of the U.S. Senate Committee on Environment and Public Works as Senior Clean Water Act Counsel. He previously served as a staff attorney for Pacific Legal Foundation and as an associate attorney for a litigation boutique in Sacramento.

As you noted earlier, Jeff has one hour, so we really need to just treat these as quick introductory meetings. I can bring him to your office (or wherever you would like) at 3:00. At 3:20, if you could walk him over to 4045 (OGC's conference room), I will have my folks waiting there. Leaving five minutes for transit/delay, we will chat with him until 3:45. At that point, Justin and I did want to raise a few specific cases to him in the last 15 minutes.

I hope that works and apologize for not sending this note sooner.

Kevin

Kevin S. Minoli
Acting General Counsel

Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

From: Starfield, Lawrence
Sent: Monday, January 30, 2017 3:58 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>
Subject: FW: DOJ

Kevin,

Any word on the meeting tomorrow?

Larry

From: Starfield, Lawrence
Sent: Sunday, January 29, 2017 9:26 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>
Subject: RE: DOJ

Kevin,

3 pm (or 3:15 pm) is perfect. I'll probably include a few of my Office Directors. If Jeff has time, 20-30 minutes would be ideal, but if he's tight on time, we can make 15 minutes work.

Thanks.

Larry

Sent from my Windows Phone

From: Minoli, Kevin
Sent: 1/29/2017 9:08 PM
To: Starfield, Lawrence
Subject: Re: DOJ

Hi Larry- Jeff is going to come over to EPA. He's coming for 3:00 on Tuesday. I defer to you on what the best use of his time is for the enforcement program, so if that is a meeting with you and Dave only that works. Could you guys do it at 3:00 or 3:15? How much time would you like? 15 minutes? More? Just let me know.

Kevin.

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Jan 28, 2017, at 4:52 PM, Starfield, Lawrence <Starfield.Lawrence@epa.gov> wrote:

> Thanks.
>
> If he comes over here, rather than meet with senior staff who are not deeply engaged in litigation, it

might be more productive if he could meet with you on defensive case issues, then meet for a few minutes with Dave Cozad and me on enforcement issues, and then visit with Catherine on her priorities. Just a thought.

Please let me know what you decide. Thanks.

Larry

Sent from my Windows Phone

From: Minoli, Kevin
Sent: 1/28/2017 4:21 PM
To: Starfield, Lawrence
Subject: Re: DOJ

Hey Larry, I had included our meeting with Jeff on my weekly report yesterday. I am more than happy to have you and Catherine and others join us and meet Jeff. I wonder, though, whether we may want to invite him over to EPA to meet us. For example, I could invite him over earlier in the day on Tuesday to meet all of our managers at our senior staff meeting. I will see if he has a preference.

We did have plans to have a little bit of a substantive discussion with him, but we could easily do that another time or, as you suggest, after others head back to the building if we go over to DOJ. I will let you know.

Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Jan 28, 2017, at 2:09 PM, Starfield, Lawrence <Starfield.Lawrence@epa.gov> wrote:

> Kevin,
>
> Catherine mentioned that you, Catherine, and Justin Schwab are planning to go over to DOJ on Tuesday to meet with Jeff Wood, and she asked if I would like to attend as well.
>
> Although Justin and I had an introductory phone call with Jeff Wood and Bruce Gelber, I'd appreciate the chance to meet Jeff in person. If you and Justin had also planned to have a substantive discussion of OGC issues, I'm happy to leave after the general introductory portion. (Catherine said if there are plans to talk about options for the CPP or WOTUS, she would like to participate so that she is prepared to react quickly if the WH asks for action on those topics before Scott Pruitt is confirmed.)
>
> Can you let me know what is planned for the meeting?
>
> Thanks.
>
> Larry
>
> This message is CONFIDENTIAL, and may contain legally privileged information. If you

are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

Message

From: Whitfield, Peter C. [peter.whitfield@hoganlovells.com]
Sent: 3/29/2017 12:51:07 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: Re: Trump EO

Thanks

Sent from my iPhone

On Mar 28, 2017, at 4:10 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:

> I don't think I have a copy of the EO as signed today. If the White House doesn't have it, surely Inside EPA or E&E will have it soon....
>
> **From:** Whitfield, Peter C. [mailto:peter.whitfield@hoganlovells.com]
> **Sent:** Tuesday, March 28, 2017 4:08 PM
> **To:** Schwab, Justin <schwab.justin@epa.gov>
> **Subject:** Trump EO
>
> Justin,
> Any chance you have a copy of the executive order released today regarding climate change policy/CPP? I'm seeing news on it, but no actual EO.
> Thanks,
> Peter

Peter Whitfield
Senior Associate

Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004

Tel: +1 202 637 5600
Direct: +1 202 637 3685
Fax: +1 202 637 5910
Email: peter.whitfield@hoganlovells.com
www.hoganlovells.com

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Message

From: Prabhu, Aditi [Prabhu.Aditi@epa.gov]
Sent: 3/23/2017 9:55:07 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: Litigation deadline charts
Attachments: One Docket Report 3-23-17.pdf; Weekly Report 3-23-17.docx

Hi Justin,

Attached are: (1) a chart of OGC's litigation deadlines through the end of May, and (2) a more detailed 2-week look ahead with additional information on matters with upcoming deadlines.

Aditi

Aditi Prabhu
Special Assistant, Office of General Counsel
U.S. Environmental Protection Agency
(202)564-2473

Message

From: Schmidt, Lorie [Schmidt.Lorie@epa.gov]
Sent: 3/21/2017 4:18:32 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Veney, Carla [Veney.Carla@epa.gov]
CC: Schwab, Justin [schwab.justin@epa.gov]
Subject: RE: For the 1:30 CPP mtg

It would be good to ask Sarah. I'm not sure who she has told about this and I don't think the first thing her staff hears about this should be coming from us.

Lorie Schmidt
Associate General Counsel, Air and Radiation
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

-----Original Message-----
From: Minoli, Kevin
Sent: Tuesday, March 21, 2017 12:17 PM
To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Veney, Carla <Veney.Carla@epa.gov>
Cc: Schwab, Justin <schwab.justin@epa.gov>
Subject: For the 1:30 CPP mtg

We need to invite Sarah Dunham (and if she wants to bring a key staff person or two she can). I will mention it to her in person in the meeting we're in now, but could you please add her to the invite and Lorie and Gautam if you know who else to add from OAR please let Carla know. Thanks, Kevin.

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Message

From: Minoli, Kevin [Minoli.Kevin@epa.gov]
Sent: 2/28/2017 5:05:46 AM
To: Jackson, Ryan [jackson.ryan@epa.gov]; Schnare, David [schnare.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; brown.byron@epa.gov
CC: Shapiro, Mike [Shapiro.Mike@epa.gov]
Subject: Tuesday 12:01 Version of the FR Notice
Attachments: CWR FR notice draft 2-28-17...12-01AM Version.docx

All- The attached version caught a few more typos and small edits from the previous version. I sent it to Mike and Ann in OW and my team in OGC, and recommend this as the one we should start Tuesday working from. Thanks, Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Office Line: 202-564-8040
Direct Dial: 202-564-5551

Appointment

From: Penman, Crystal [Penman.Crystal@epa.gov]
Sent: 3/29/2017 12:00:46 PM
To: Peck, Gregory [Peck.Gregory@epa.gov]; Loop, Travis [Loop.Travis@epa.gov]; Best-Wong, Benita [Best-Wong.Benita@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Downing, Donna [Downing.Donna@epa.gov]; Kwok, Rose [Kwok.Rose@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Klasen, Matthew [Klasen.Matthew@epa.gov]; Wendelowski, Karyn [wendelowski.karyn@epa.gov]; Kaiser, Sven-Erik [Kaiser.Sven-Erik@epa.gov]; Christensen, Damaris [Christensen.Damaris@epa.gov]; Campbell, Ann [Campbell.Ann@epa.gov]; Schnare, David [schnare.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Bangerter, Layne [bangerter.layne@epa.gov]; Frithsen, Jeff [Frithsen.Jeff@epa.gov]; Nickerson, William [Nickerson.William@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Keating, Jim [Keating.Jim@epa.gov]; David.F.Dale@usace.army.mil; Bowles, Jack [Bowles.Jack@epa.gov]; McDavit, Michael W. [Mcdavit.Michael@epa.gov]; Stokely, Peter [Stokely.Peter@epa.gov]; ian.p.osullivan@usace.army.mil; jennifer.a.moyer@usace.army.mil; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Damico, Brian [Damico.Brian@epa.gov]; Breen, Barry [Breen.Barry@epa.gov]; Cheatham, Reggie [cheatham.reggie@epa.gov]; Donald.e.jackson@usace.army.mil
CC: FertikEdgerton, Rachel [FertikEdgerton.Rachel@epa.gov]; Borum, Denis [Borum.Denis@epa.gov]; Orvin, Chris [Orvin.Chris@epa.gov]; Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]; Pollins, Mark [Pollins.Mark@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Cherry, Andrew [Cherry.Andrew@epa.gov]; Lousberg, Macara [Lousberg.Macara@epa.gov]; Theis, Joseph [Theis.Joseph@epa.gov]; Bahk, Benjamin [Bahk.Benjamin@epa.gov]; Evalenko, Sandy [Evalenko.Sandy@epa.gov]; Lamont, Douglas W SES (US) [douglas.w.lamont2.civ@mail.mil]; Schmauder, Craig R SES (US) [craig.r.schmauder.civ@mail.mil]; Cindy Barger [cindy.s.barger.civ@mail.mil]; McGartland, Al [McGartland.Al@epa.gov]; Penman, Crystal [Penman.Crystal@epa.gov]; Washington, Valerie [Washington.Valerie@epa.gov]; Clark, Becki [Clark.Becki@epa.gov]; Indermark, Michele [Indermark.Michele@epa.gov]

Subject: WOTUS Call in Conference Line/Code / Ex. 6
Location: 3233 WJCE

Start: 3/29/2017 2:00:00 PM
End: 3/29/2017 2:45:00 PM
Show Time As: Tentative

Recurrence: Weekly
every Wednesday from 10:00 AM to 10:45 AM

Message

From: Bowman, Liz [Bowman.Liz@epa.gov]
Sent: 4/20/2017 7:33:26 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]
CC: Fotouhi, David [fotouhi.david@epa.gov]
Subject: RE: Media Request re: dental amalgam rule

Nope, not a problem. Just want that document to be comprehensive.

From: Dravis, Samantha
Sent: Thursday, April 20, 2017 2:53 PM
To: Schwab, Justin <schwab.justin@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>
Cc: Fotouhi, David <fotouhi.david@epa.gov>
Subject: RE: Media Request re: dental amalgam rule

I concur with Justin. Liz, let us know if you think that's a problem.

From: Schwab, Justin
Sent: Thursday, April 20, 2017 2:16 PM
To: Bowman, Liz <Bowman.Liz@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Subject: Re: Media Request re: dental amalgam rule

Deliberative Process/AC/AWP Ex. 5

Sent from my iPhone

On Apr 20, 2017, at 2:13 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

Deliberative Process/AC/AWP Ex. 5

From: Schwab, Justin
Sent: Thursday, April 20, 2017 1:11 PM
To: Bowman, Liz <Bowman.Liz@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Subject: Re: Media Request re: dental amalgam rule

Deliberative Process/AC/AWP Ex. 5

Sent from my iPhone

On Apr 20, 2017, at 1:05 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

> Yes, sorry..I meant litigation, not legislation.

From: Dravis, Samantha
Sent: Thursday, April 20, 2017 1:02 PM
To: Bowman, Liz <Bowman.Liz@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Subject: RE: Media Request re: dental amalgam rule

I think what Liz means is that we want to be sure any response here does not run afoul of or impact in any way ongoing litigation related to this rule.

From: Bowman, Liz
Sent: Thursday, April 20, 2017 1:01 PM
To: Fotouhi, David <fotouhi.david@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Media Request re: dental amalgam rule

Hi Justin/David – I spoke with Sam about this and would suggest the following as a response, but let me know if I need to tell her that we can't comment on pending legislation:

Deliberative Process/Attorney Client Ex. 5

From: Saiyid, Amena [mailto:ASaiyid@bna.com]
Sent: Thursday, April 20, 2017 11:55 AM
To: Bowman, Liz <Bowman.Liz@epa.gov>
Subject: Trying in vain to get a response from EPA on the status of the dental amalgam rule that wasn't published because the new administration wanted to review it
[WARNING: DKIM validation failed]

Good Morning or Afternoon Liz,
I am writing to you since I see you responding to most press queries regarding the agency. I have two questions to ask the agency.
The first question I sent to the EPA two weeks ago and haven't received any response. The second one stems from my conversations with folks.

1. What is the status of the dental amalgam rule that the agency didn't publish because it fell under the review of rules the Trump administration wanted to conduct.
2. Will the rewrite and eventual promulgation of the wotus rule fall under the "two rules out, one rule in" executive order. If that is the case, would the dental rule be one of those that falls under this order's domain.

Appreciate any insight or explanation you can send my way. I may be mixing apples and oranges here and am ready to be corrected if that is the case.
Sincerely,
Amena

Amena H. Saiyid
Water Pollution Reporter
Bloomberg BNA
Direct 703.341.3695

Mobile 571.319.6682
asaiyid@bna.com
twitter: amenasaiyid

Message

From: Bennett, Tate [Bennett.Tate@epa.gov]
Sent: 4/5/2017 12:58:20 AM
To: Jackson, Ryan [jackson.ryan@epa.gov]
CC: Fotouhi, David [fotouhi.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Freire, JP [Freire.JP@epa.gov]; Lyons, Troy [lyons.troy@epa.gov]
Subject: McAuliffe Letter
Attachments: McAuliffe.CPP.docx

Hey Ryan! Per last Sunday's e-mail chain, attached and below is the draft letter to McAuliffe (attached version is formatted per our trusty "how to format letters for SP manual"). We are seeking your signoff, then ultimately SP for final approval (maybe you can help there!).

April 5, 2017

The Honorable Terry McAuliffe
Office of the Governor
P.O. Box 1475
Henrico, VA 23233

Dear Governor McAuliffe:

Deliberative Process/AC Ex. 5

Respectfully yours,

E. Scott Pruitt

Appointment

From: Veney, Carla [Veney.Carla@epa.gov]
Sent: 3/21/2017 4:17:40 PM
To: Schwab, Justin [schwab.justin@epa.gov]; Schmidt, Lorie [Schmidt.Lorie@epa.gov]; Talty, Mark [Talty.Mark@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Zenick, Elliott [Zenick.Elliott@epa.gov]; Jordan, Scott [Jordan.Scott@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]
CC: Greenwalt, Sarah [greenwalt.sarah@epa.gov]

Subject: CPP (Call in number: Conference Line/Code / Ex. 6
Location: DCRoomARN4045/DC-Ariel-Rios-OGC

Start: 3/21/2017 5:30:00 PM
End: 3/21/2017 6:00:00 PM
Show Time As: Tentative

Message

From: Ferguson, Michael A. [mferguson@bakerlaw.com]
Sent: 3/29/2017 12:24:55 AM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: Re: BIO Fly-In Meeting request for April 4

Ok thx for trying

Hon. Michael A. Ferguson
Senior Advisor
Federal Policy Team Leader
Member of Congress, 2001 - 2009

BakerHostetler
Washington Square
1050 Connecticut Ave, N.W. | Suite 1100
Washington, DC 20036-5304
T 202.861.1663
F 202.861.1783

mferguson@bakerlaw.com
bakerlaw.com

On Mar 28, 2017, at 6:54 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:

> Have pushed but the 4th looks pretty booked
>
> Sent from my iPhone
>
> On Mar 28, 2017, at 8:53 AM, Ferguson, Michael A. <mferguson@bakerlaw.com> wrote:
>
> > Hi Justin – can you pass this along to the COS to see if we can make this happen? I have not heard from the COS, FYI. Many thanks.
> >
> > **Hon. Michael A. Ferguson**
> > Senior Advisor
> > Federal Policy Team Leader
> > Member of Congress, 2001 - 2009
> >
> > <image013.jpg>
> > Washington Square
> > 1050 Connecticut Ave, N.W. | Suite 1100
> > Washington, DC 20036-5304
> > T 202.861.1663
> > F 202.861.1783
> >
> > mferguson@bakerlaw.com
> > bakerlaw.com
> > <image014.jpg><image015.jpg><image016.jpg>
> >
> > **From:** Ferguson, Michael A.
> > **Sent:** Tuesday, March 28, 2017 8:53 AM

To: 'scheduling@epa.gov'; 'hupp.sydney@epa.gov'
Cc: 'Schwab.justin@epa.gov'
Subject: BIO Fly-In Meeting request for April 4

Good morning Sydney:

Please find the attached invitation request letter from the Biotechnology Innovation Organization (BIO), which will have a number of CEOs of member companies in DC next week. This group would very much like to meet with Administrator Pruitt on April 4th if he has any availability that afternoon. Please feel free to contact me if you have any questions or would like to discuss further. Many thanks for your consideration.

Best regards,
Mike Ferguson

Hon. Michael A. Ferguson
Senior Advisor
Federal Policy Team Leader
Member of Congress, 2001 - 2009

<image009.jpg>
Washington Square
1050 Connecticut Ave, N.W. | Suite 1100
Washington, DC 20036-5304
T 202.861.1663
F 202.861.1783

mferguson@bakerlaw.com
bakerlaw.com
<image014.jpg><image015.jpg><image016.jpg>

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Any tax advice in this email is for information purposes only. The content of this email is limited to the matters specifically addressed herein and may not contain a full description of all relevant facts or a complete analysis of all relevant issues or authorities.

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<EPA Administrator Scott Pruitt.pdf>

Message

From: Fotouhi, David [fotouhi.david@epa.gov]
Sent: 4/11/2017 1:26:46 AM
To: Bowman, Liz [Bowman.Liz@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]
CC: Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Freire, JP [Freire.JP@epa.gov]; Graham, Amy [graham.amy@epa.gov]; Ferguson, Lincoln [ferguson.lincoln@epa.gov]; Wilcox, Jahan [wilcox.jahan@epa.gov]; Konkus, John [konkus.john@epa.gov]; Brown, Byron [brown.byron@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]
Subject: Re: For Review: EPA Accomplishments for 8am WH Meeting

Thanks for looping me in. Attorney Client/Deliberative Process Ex. 5

Attorney Client/Deliberative Process Ex. 5

A few additional thoughts for your consideration:

Attorney Client/Deliberative Process Ex. 5

Sent from my iPhone

On Apr 10, 2017, at 8:50 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:

Attorney Client/Deliberative Process Ex. 5

Attorney Client/Deliberative Process Ex. 5

Sent from my iPhone

On Apr 10, 2017, at 8:27 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

All – I apologize for the ! email, but can you please review the attached list of SP's accomplishments, for SP's 8 a.m. meeting tomorrow with POTUS. It lists a summary of the accomplishments at the top, with supporting points, including a few details and statements of support from outside organizations underneath. It isn't meant to be comprehensive or overly detailed, but it lays out our accomplishments with regard to implementing the President's agenda. In the future, we will be updating this weekly, as well as using it to create a more visual document (infographic, or graph of some kind).

Please take a look to make sure the facts are accurate. Even though it's an internal draft, we still want to make sure our legal ducks are in a row.

Can you all send any edits to JP (either in an email copying the group to avoid duplication of efforts or in tracked changes)? And, JP, can you please do a detailed proof (including checking links, etc.) and then send the final over to Ryan Jackson when it's completed?

Thank you all for your help and effort!

<2017-04-09 EPA Rx.docx>

Message

From: Schmidt, Lorie [Schmidt.Lorie@epa.gov]
Sent: 4/15/2017 3:12:15 PM
To: Schwab, Justin [schwab.justin@epa.gov]
CC: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Zenick, Elliott [Zenick.Elliott@epa.gov]
Subject: Re: CPP status check

Attorney Work Product / Attorney-Client / Attorney Work Product Ex. 5

Sent from my iPhone

> On Apr 14, 2017, at 7:35 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:
>

Attorney Work Product / Attorney-Client / Attorney Work Product Ex. 5

> Sent from my iPhone
>
>> On Apr 13, 2017, at 11:58 AM, Schwab, Justin <schwab.justin@epa.gov> wrote:
>>
>> How's the second draft coming along?
>>
>> Sent from my iPhone

Message

From: Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]
Sent: 3/31/2017 2:18:59 PM
To: Schwab, Justin [schwab.justin@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]
CC: Dunham, Sarah [Dunham.Sarah@epa.gov]; Schmidt, Lorie [Schmidt.Lorie@epa.gov]; Rees, Sarah [rees.sarah@epa.gov]
Subject: RE: Title for ADP

Nice - thanks all.

-----Original Message-----
From: Schwab, Justin
Sent: Friday, March 31, 2017 10:12 AM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Cc: Dunham, Sarah <Dunham.Sarah@epa.gov>; Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Rees, Sarah <rees.sarah@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: Title for ADP

Attorney Client / Ex. 5

Sent from my iPhone

Message

From: Neugeboren, Steven [Neugeboren.Steven@epa.gov]
Sent: 4/26/2017 12:45:30 PM
To: Schwab, Justin [schwab.justin@epa.gov]
CC: Wehling, Carrie [Wehling.Carrie@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]
Subject: Re: Justin - could you give me a call regarding your comments? number below. thx

Flag: Flag for follow up

I'm at the breakfast if you come by. You could try calling Carrie too. 564-5492.

Sent from my iPhone

Steven Neugeboren
Associate General Counsel
United States Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington DC. 20460
202-564-5488

On Apr 25, 2017, at 8:27 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:

> Should be free before the 10 am wotus meeting
>
> Sent from my iPhone
>
> On Apr 25, 2017, at 5:06 PM, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:
>
> > You can try to me tonight at my work phone and my cell will ring, Personal Matters / Ex. 6 Personal Matters / Ex. 6 Or you're going to be at the breakfast we can touch base then.
> >
> > Steven Neugeboren
> > Associate General Counsel
> > Water Law Office
> > Environmental Protection Agency
> > 202-564-5488
> >
> > **From:** Schwab, Justin
> > **Sent:** Tuesday, April 25, 2017 5:04 PM
> > **To:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>
> > **Cc:** Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
> > **Subject:** Re: Justin - could you give me a call regarding your comments? number below. thx
> >
> > I will be tied up for a while unfortunately. Can talk later tonight. Or we can talk tomorrow morning.
> >
> > Sent from my iPhone
> >
> > On Apr 25, 2017, at 4:59 PM, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

Message

From: Minoli, Kevin [Minoli.Kevin@epa.gov]
Sent: 1/31/2017 2:11:07 AM
To: Starfield, Lawrence [Starfield.Lawrence@epa.gov]
CC: Schwab, Justin [schwab.justin@epa.gov]
Subject: RE: DOJ visit on Tuesday

Hi Larry- I am sorry I am just now getting back to you… it was another chaotic day at points. Jeff is coming with Bruce Gelber, Jean Williams, and Brandon Middleton. I had not recognized Brandon's name and so googled him. I located the following on the Ohio State University Law School website (obviously now outdated):

> Brandon Middleton, 2007
>
> Brandon Middleton '07 recently joined the Republican staff of the U.S. Senate Committee on Environment and Public Works as Senior Clean Water Act Counsel. He previously served as a staff attorney for Pacific Legal Foundation and as an associate attorney for a litigation boutique in Sacramento.

As you noted earlier, Jeff has one hour, so we really need to just treat these as quick introductory meetings. I can bring him to your office (or wherever you would like) at 3:00. At 3:20, if you could walk him over to 4045 (OGC's conference room), I will have my folks waiting there. Leaving five minutes for transit/delay, we will chat with him until 3:45. At that point, Justin and I did want to raise a few specific cases to him in the last 15 minutes.

I hope that works and apologize for not sending this note sooner.

Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

From: Starfield, Lawrence
Sent: Monday, January 30, 2017 3:58 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>
Subject: FW: DOJ

Kevin,

Any word on the meeting tomorrow?

Larry

From: Starfield, Lawrence
Sent: Sunday, January 29, 2017 9:26 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>
Subject: RE: DOJ

Kevin,

3 pm (or 3:15 pm) is perfect. I'll probably include a few of my Office Directors. If Jeff has time, 20-30 minutes would be ideal, but if he's tight on time, we can make 15 minutes work.

Thanks.

Larry

Sent from my Windows Phone

From: Minoli, Kevin
Sent: 1/29/2017 9:08 PM
To: Starfield, Lawrence
Subject: Re: DOJ

Hi Larry- Jeff is going to come over to EPA. He's coming for 3:00 on Tuesday. I defer to you on what the best use of his time is for the enforcement program, so if that is a meeting with you and Dave only that works. Could you guys do it at 3:00 or 3:15? How much time would you like? 15 minutes? More? Just let me know.

Kevin.

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Jan 28, 2017, at 4:52 PM, Starfield, Lawrence <Starfield.Lawrence@epa.gov> wrote:

> Thanks.
>
> If he comes over here, rather than meet with senior staff who are not deeply engaged in litigation, it might be more productive if he could meet with you on defensive case issues, then meet for a few minutes with Dave Cozad and me on enforcement issues, and then visit with Catherine on her priorities. Just a thought.
>
> Please let me know what you decide. Thanks.
>
> Larry
>
> Sent from my Windows Phone
>
> ---
>
> **From:** Minoli, Kevin
> **Sent:** 1/28/2017 4:21 PM
> **To:** Starfield, Lawrence
> **Subject:** Re: DOJ
>
> Hey Larry, I had included our meeting with Jeff on my weekly report yesterday. I am more than happy to have you and Catherine and others join us and meet Jeff. I wonder, though, whether we may want to invite him over to EPA to meet us. For example, I could invite him over earlier in the day on Tuesday to meet all of our managers at our senior staff meeting. I will see if he has a preference.

We did have plans to have a little bit of a substantive discussion with him, but we could easily do that another time or, as you suggest, after others head back to the building if we go over to DOJ. I will let you know.

Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Jan 28, 2017, at 2:09 PM, Starfield, Lawrence <Starfield.Lawrence@epa.gov> wrote:

> Kevin,
>
> Catherine mentioned that you, Catherine, and Justin Schwab are planning to go over to DOJ on Tuesday to meet with Jeff Wood, and she asked if I would like to attend as well.
>
> Although Justin and I had an introductory phone call with Jeff Wood and Bruce Gelber, I'd appreciate the chance to meet Jeff in person. If you and Justin had also planned to have a substantive discussion of OGC issues, I'm happy to leave after the general introductory portion. (Catherine said if there are plans to talk about options for the CPP or WOTUS, she would like to participate so that she is prepared to react quickly if the WH asks for action on those topics before Scott Pruitt is confirmed.)
>
> Can you let me know what is planned for the meeting?
>
> Thanks.
>
> Larry
>
> This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

Message

From: Lorie Schmidt [Schmidt.Lorie@epamail.epa.gov]
Sent: 4/12/2017 1:56:31 PM
To: David Fotouhi [Fotouhi.David@epamail.epa.gov]
CC: Prabhu, Aditi [Prabhu.Aditi@epa.gov]; Veney, Carla [Veney.Carla@epa.gov]; Jones, Gail-R [Jones.Gail-R@epa.gov]; Justin Schwab [Schwab.Justin@epamail.epa.gov]; Patrick, Monique [Patrick.Monique@epa.gov]; Trudeau, Shaun [Trudeau.Shaun@epa.gov]
Subject: **Attorney Client / Ex. 5** >> DAVID FOTOUHI'S (approver 2 of 3) << Approval by 04/12/2017

Scott Jordan has submitted a package with the case name/subject of **Attorney Client / Ex. 5**

Attorney Client / Ex. 5

Please click the link below to see the routing and transmittal record for this package. After reviewing the package please:

* go to the Routed To section;
* route 2 line; and
* select the Add Comments button, or the Make Decision button.

LINK -> Notes://DCOGCLN1/FrontOff/OGCCTS.nsf/0/1B58A8A91D28DA1E852580FF00712025

Message

From: U.S. EPA Media Relations [noreply-subscriptions@epa.gov]
Sent: 3/28/2017 10:58:52 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: EPA to Review the Clean Power Plan under President Trump's Executive Order

CONTACT:
press@epa.gov

FOR IMMEDIATE RELEASE
March 28, 2017

EPA to Review the Clean Power Plan under President Trump's Executive Order

WASHINGTON – Today, at the Environmental Protection Agency surrounded by American energy workers, public employees and members of Congress, President Donald Trump signed the Energy Independence Executive Order to protect thousands of jobs and strengthen energy security, while also ensuring that our policies provide clean air and clean water for all of our citizens.

The Energy Independence Executive Order directs agencies responsible for regulating domestic energy production to submit plans to the White House, which will identify, and propose measures to revise or rescind, regulatory barriers that impede progress towards energy independence. Moreover, the Order rescinds several Obama executive orders and policies related to climate change. It also directs the Administrator of the Environmental Protection Agency and the Secretary of the Interior to review, and if necessary, revise or rescind, several regulations that may place unnecessary, costly burdens on coal-fired electric utilities, coal miners, and oil and gas producers.

"The American people deserve an EPA that works to protect both the environment and enables a growing economy," said Administrator Pruitt. "Our EPA puts America first. President Trump has a clear vision to create jobs and his vision is completely compatible with a clean and healthy environment. By taking these actions today, the EPA is returning the Agency to its core mission of protecting public health while also being pro-energy independence."

You can see the Executive Order here: https://www.whitehouse.gov/the-press-office/2017/03/28/presidential-executive-order-promoting-energy-independence-and-economi-1

Administrator Scott Pruitt's Remarks

Thank you, thank you very much. Welcome to the EPA.

Perhaps this is your first visit to the EPA for some of you; it's good to see some coal miners here at the EPA. So, welcome to you, here.

We are gathered in the map room here at the EPA. Maps are intended to help you navigate; maps are intended to help you work toward a destination, journey toward a destination, and as we gather here today, the President is setting a new journey, a new pathway forward on how we are going to do business in this country, with respect to energy and the environment.

Number one, the president, by his signature today is rejecting the narrative that this country cannot be both pro-energy and pro-environment. We have done that throughout our history. We can actually achieve good jobs, good growth and pro-energy policies at the same time as protecting our environment. The president is sending that message today, by his signature today on this executive order.

But, number two, he's also setting a pathway forward, a journey to say that we are no longer going to have regulatory assault on any given sector of our economy. That is going to end by the signing of this executive order. We are not going

to allow regulations here at the EPA to pick winners and losers. And that is going to be very important as we chart the pathway forward.

But, the third thing is that we are going to play within the rules. The EPA should pass rules that are within the framework that Congress has established. That sounds pretty novel, but that is exactly what should occur. We shouldn't reimagine our authority to pick winners and losers. We are going to provide regulatory certainty. So, the president is setting a new pathway forward that is going to literally make sure that we transform our economy, grow jobs and also protect our environment. And it's an exciting day and I appreciate his leadership.

I now have the opportunity to introduce a good friend, a patriot, a partner in this process to make sure we are achieving the president's objectives – the Vice President of the United States, Michael Pence.

R043

If you would rather not receive future communications from Environmental Protection Agency, let us know by clicking here.
Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460 United States

Message

From: Gelber, Bruce (ENRD) [Bruce.Gelber@usdoj.gov]
Sent: 3/27/2017 12:54:47 PM
To: Schwab, Justin [schwab.justin@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Cozad, David [Cozad.David@epa.gov]; Shinkman, Susan [Shinkman.Susan@epa.gov]
CC: Wood, Jeffrey (ENRD) [Jeffrey.Wood@usdoj.gov]; Middleton, Brandon (ENRD) [Brandon.Middleton@usdoj.gov]
Subject: DOJ Proposed Items for Weekly ENRD/OGC-OECA Meeting

Justin, Kevin, Larry, David, Susan:

Here's a list of cases we would like to discuss during our weekly gathering today. Most of the items will require only a brief update or status report.

Because Jeff will be heading west this afternoon, we have asked that we meet at noon today, immediately following the Murray Energy meeting. We look forward to seeing you then.

Bruce

Bruce S. Gelber
Deputy Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W., Room 2609
Washington, D.C. 20530-0001
Phone: (202) 514-4624
Facsimile: (202) 514-0557

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DOJ's Proposed Items for Weekly ENRD/EPA Call

March 27, 2017

Enforcement Cases

Attorney Client/AWP Ex. 5

Attorney Client/AWP Ex. 5

Mandatory Duty and other Defensive Cases

Attorney Client/AWP Ex. 5

Petitions for Review

Attorney Client/AWP Ex. 5

Attorney Client/AWP Ex. 5

Message

From: Freire, JP [Freire.JP@epa.gov]
Sent: 4/11/2017 1:20:31 AM
To: Schwab, Justin [schwab.justin@epa.gov]
CC: Bowman, Liz [Bowman.Liz@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Graham, Amy [graham.amy@epa.gov]; Ferguson, Lincoln [ferguson.lincoln@epa.gov]; Wilcox, Jahan [wilcox.jahan@epa.gov]; Konkus, John [konkus.john@epa.gov]; Brown, Byron [brown.byron@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]
Subject: Re: For Review: EPA Accomplishments for 8am WH Meeting

I'll be reviewing this evening.

J.P. Freire
Environmental Protection Agency
Associate Administrator for Public Affairs
Mobile: (202) 309-6781

On Apr 10, 2017, at 8:50 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:

Attorney Client/DP Ex. 5

Sent from my iPhone

On Apr 10, 2017, at 8:27 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

All – I apologize for the ! email, but can you please review the attached list of SP's accomplishments, for SP's 8 a.m. meeting tomorrow with POTUS. It lists a summary of the accomplishments at the top, with supporting points, including a few details and statements of support from outside organizations underneath. It isn't meant to be comprehensive or overly detailed, but it lays out our accomplishments with regard to implementing the President's agenda. In the future, we will be updating this weekly, as well as using it to create a more visual document (infographic, or graph of some kind).

Please take a look to make sure the facts are accurate. Even though it's an internal draft, we still want to make sure our legal ducks are in a row.

Can you all send any edits to JP (either in an email copying the group to avoid duplication of efforts or in tracked changes)? And, JP, can you please do a detailed proof (including checking links, etc.) and then send the final over to Ryan Jackson when it's completed?

Thank you all for your help and effort!

<2017-04-09 EPA Rx.docx>

Message

From: Schmidt, Lorie [Schmidt.Lorie@epa.gov]
Sent: 4/14/2017 11:35:18 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: Automatic reply: CPP status check

I will be out of the office this afternoon and not checking emails until tomorrow. If you need immediate assistance, please call me at Personal Phone / Ex. 6

Lorie

Message

From: Dravis, Samantha [dravis.samantha@epa.gov]
Sent: 4/28/2017 6:24:34 PM
To: Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]
CC: Bolen, Brittany [bolen.brittany@epa.gov]
Subject: CPP and WOTUS

Could you please send me the latest and greatest drafts of both CPP and WOTUS for this 4pm meeting we are having?

Message

From: Dubois, Roland [Dubois.Roland@epa.gov]
Sent: 4/4/2017 10:18:25 PM
To: Schwab, Justin [schwab.justin@epa.gov]
CC: Schmidt, Lorie [Schmidt.Lorie@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]; Orlin, David [Orlin.David@epa.gov]; Fugh, Justina [Fugh.Justina@epa.gov]
Subject: RE: RFS Oral Argument -- deadline COB today

OK. I will add you, Justin, and David to our tally of folks that would like a reserved seat.

Roland

From: Schwab, Justin
Sent: Tuesday, April 4, 2017 4:41 PM
To: Dubois, Roland <Dubois.Roland@epa.gov>
Cc: Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: RFS Oral Argument -- deadline COB today

Justina advises that I am not recused from attending oral argument.

David Fotouhi is not recused at all, and would also like to attend oral argument.

From: Schwab, Justin
Sent: Tuesday, April 4, 2017 10:45 AM
To: Dubois, Roland <Dubois.Roland@epa.gov>
Cc: Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Re: RFS Oral Argument -- deadline COB today

Thank you.

The question for Justina (now added here) then becomes: assuming I am recused from participation in a matter d/t a covered relationship w/one of the parties to the matter, does merely attending oral argument constitute participation?

Sent from my iPhone

On Apr 4, 2017, at 10:43 AM, Dubois, Roland <Dubois.Roland@epa.gov> wrote:

> Justin, I can provide information on the parties, but will defer to others on your recusal question.
>
> AFPM is indeed one of the petitioners. Other petitioners include the American Petroleum institute, a coalition of small refiners (Alon, American Refining, Calumet, Lion Oil, Ergon-West Virginia, Hunt, Placid, Wyoming and U.S. Oil & Refining) , Monroe Energy, Valero, National Farmers Union, National Biodiesel Board, Americans for Clean Energy, Biotechnology Innovation Organization, Growth Energy, National Corn Growers, National Sorghum Producers and the Renewable Fuel Association. Dupont has also intervened.
>
> Roland Dubois

From: Schwab, Justin
Sent: Tuesday, April 4, 2017 10:32 AM
To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>
Cc: Fotouhi, David <fotouhi.david@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Dubois, Roland <Dubois.Roland@epa.gov>
Subject: Re: RFS Oral Argument -- deadline COB today

Without knowing the parties to the matter I can't be sure there is no recusal issue for me (AFPM would be the most likely - chevron, Sunoco as well)

If I am not recused, however, I would like to come (and in fact, even if am barred from personally and substantially participating I would like to attend the argument if that does not by itself constitute P&SP)

Sent from my iPhone

On Apr 4, 2017, at 10:18 AM, Schmidt, Lorie <Schmidt.Lorie@epa.gov> wrote:

> Justin and David
>
> The DC Circuit oral argument on the 2014-2016 RFS standards is scheduled for April 24 at 9:30. It is the only argument on the calendar. We expect that it will last 60-90 minutes.
>
> **Attorney Client/AWP Ex. 5**
>
> The clerk's office has asked us if we want to reserve some seats for the government (they do that sometimes). For whichever one of you is going to handle this issue going forward, it would probably be a good idea to attend the oral argument if you have time. Justin – I don't know what your recusal situation is with respect to this case or this issue.
>
> **Please let me know by COB today if you would like a seat reserved – and we'll see if we can get one for you.** (We often do a two-pronged response to DOJ – the minimum number of seats we need and the additional ones we would like if we can get them. It would be helpful to know if you want to be in the minimum number we need or in the extra seats we would like if possible.)
>
> Lorie
>
> Lorie Schmidt
> Associate General Counsel, Air and Radiation
> Office of General Counsel
> US Environmental Protection Agency
> (202)564-1681

Message

From: Lorie Schmidt [Schmidt.Lorie@epamail.epa.gov]
Sent: 4/12/2017 1:56:18 PM
To: David Fotouhi [Fotouhi.David@epamail.epa.gov]
CC: Prabhu, Aditi [Prabhu.Aditi@epa.gov]; Veney, Carla [Veney.Carla@epa.gov]; Jones, Gail-R [Jones.Gail-R@epa.gov]; Justin Schwab [Schwab.Justin@epamail.epa.gov]; Patrick, Monique [Patrick.Monique@epa.gov]; Trudeau, Shaun [Trudeau.Shaun@epa.gov]
Subject: **Attorney Client / Ex. 5** >> DAVID FOTOUHI'S (approver 2 of 3) << Approval by 04/12/2017

Scott Jordan has submitted a package with the case name/subject of **Attorney Client / Ex. 5** **Attorney Client / Ex. 5**

Please click the link below to see the routing and transmittal record for this package. After reviewing the package please:

* go to the Routed To section;
* route 2 line; and
* select the Add Comments button, or the Make Decision button.

LINK -> Notes://DCOGCLN1/FrontOff/OGCCTS.nsf/0/3BDFFD72CE78BAFD8525810000471483

Message

From: Minoli, Kevin [Minoli.Kevin@epa.gov]
Sent: 3/27/2017 12:49:42 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: Re: may not be at front office meeting this morning

Not a problem. We will catch up if you aren't there.

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Mar 27, 2017, at 8:48 AM, Schwab, Justin <schwab.justin@epa.gov> wrote:

> Meeting with Ryan and others at 9 for general purposes and OP to discuss WOTUS process at 10 – will come if I am free at all between that, otherwise please convey my apologies to those in attendance

Message

From: Bowman, Liz [Bowman.Liz@epa.gov]
Sent: 4/11/2017 1:19:57 AM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: Re: For Review: EPA Accomplishments for 8am WH Meeting

Thank you!

Sent from my iPhone

On Apr 10, 2017, at 8:50 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:

Attorney Client/DP Ex. 5

Sent from my iPhone

On Apr 10, 2017, at 8:27 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

All – I apologize for the ! email, but can you please review the attached list of SP's accomplishments, for SP's 8 a.m. meeting tomorrow with POTUS. It lists a summary of the accomplishments at the top, with supporting points, including a few details and statements of support from outside organizations underneath. It

isn't meant to be comprehensive or overly detailed, but it lays out our accomplishments with regard to implementing the President's agenda. In the future, we will be updating this weekly, as well as using it to create a more visual document (infographic, or graph of some kind).

Please take a look to make sure the facts are accurate. Even though it's an internal draft, we still want to make sure our legal ducks are in a row.

Can you all send any edits to JP (either in an email copying the group to avoid duplication of efforts or in tracked changes)? And, JP, can you please do a detailed proof (including checking links, etc.) and then send the final over to Ryan Jackson when it's completed?

Thank you all for your help and effort!

<2017-04-09 EPA Rx.docx>

Message

From: Dravis, Samantha [dravis.samantha@epa.gov]
Sent: 4/28/2017 6:12:03 PM
To: McGartland, Al [McGartland.Al@epa.gov]
CC: Schwab, Justin [schwab.justin@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]
Subject: RE: RIA CPP

I don't know, I think these are all good questions and I think the meeting with the Administrator might be a little bit premature today.

I never saw the draft RIA, did you send that? Are you here today, Al?

From: McGartland, Al
Sent: Friday, April 28, 2017 1:57 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Schwab, Justin <schwab.justin@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: RIA CPP

Good. I wouldn't mind getting a quick debrief on the order and how this affects our schedule and a discussion of whether we need to do more analysis or just enrich the one we completed.

Deliberative Process/AC Ex. 5

From: Dravis, Samantha
Sent: Friday, April 28, 2017 12:42 PM
To: McGartland, Al <McGartland.Al@epa.gov>
Cc: Schwab, Justin <schwab.justin@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: RIA CPP

Sorry I mis-read this. **Deliberative Process/AC Ex. 5**. Justin, Mandy?

From: McGartland, Al
Sent: Friday, April 28, 2017 12:37 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RIA CPP

Deliberative Process / Ex. 5

Message

From: Minoli, Kevin [Minoli.Kevin@epa.gov]
Sent: 3/31/2017 2:14:01 AM
To: Weekly Report Group [Weekly_Report_Group@epa.gov]
CC: Knapp, Kristien [Knapp.Kristien@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]; Shapiro, Mike [Shapiro.Mike@epa.gov]; Cleland-Hamnett, Wendy [Cleland-Hamnett.Wendy@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]
Subject: OGC's Weekly Report
Attachments: OGC Weekly Report 3.30.17.docx

All- Attached is OGC's Weekly Report for March 30th. For any items listed, please feel free to contact me, Elise, Justin, or David for more information. Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Office Line: 202-564-8040
Direct Dial: 202-564-5551

Message

From: Curtin, James [curtin.james@epa.gov]
Sent: 4/20/2017 7:10:23 PM
To: Minoli, Kevin [Minoli.Kevin@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Prabhu, Aditi [Prabhu.Aditi@epa.gov]
CC: Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Schroer, Lee [schroer.lee@epa.gov]; Wade, Alexis [Wade.Alexis@epa.gov]
Subject: Oregon Temperature WQS, TMDL and ESA Decisions
Attachments: Attorney Client / Ex. 5
Flag: Flag for follow up

Here are the relevant decisions in the 14-year long (and counting) Oregon temperature WQS, TMDL and ESA litigation saga:

Attorney Client / Ex. 5

Jim

Jim Curtin
USEPA Office of General Counsel
Water Law Office
202-564-5482
William Jefferson Clinton North Rm. 7451

Message

From: So, Katherine [so.katherine@epa.gov]
Sent: 2/17/2017 6:03:38 PM
To: McGonagle, Kevin [mcgonagle.kevin@epa.gov]; Mccabe, Catherine [McCabe.Catherine@epa.gov]; Reeder, John [Reeder.John@epa.gov]; Flynn, Mike [Flynn.Mike@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Hull, George [Hull.George@epa.gov]; Slotkin, Ron [slotkin.ron@epa.gov]; Sowell, Sarah [Sowell.Sarah@epa.gov]; Hart, Daniel [Hart.Daniel@epa.gov]; Orquina, Jessica [Orquina.Jessica@epa.gov]; Actadmmccabe, Catherine17 [Actadmmccabe.catherine17@epa.gov]; Benton, Donald [benton.donald@epa.gov]; Bangerter, Layne [bangerter.layne@epa.gov]; Davis, Patrick [davis.patrick@epa.gov]; Ericksen, Doug [ericksen.doug@epa.gov]; Konkus, John [konkus.john@epa.gov]; Greaves, Holly [greaves.holly@epa.gov]; Kreutzer, David [kreutzer.david@epa.gov]; Munoz, Charles [munoz.charles@epa.gov]; Schnare, David [schnare.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Sugiyama, George [sugiyama.george@epa.gov]; Valentine, Julia [Valentine.Julia@epa.gov]; AO OPA Media Relations [AO_OPA_Media_Relations@epa.gov]
CC: So, Katherine [so.katherine@epa.gov]
Subject: RE: Pruitt Pre-vote Clips 2/17/17

Below: Reuters, E&E News, Wall Street Journal, The Hill, CNN, AP, Politico, Politico Pro, Bloomberg BNA, E&E News (2), Politico Pro, LA Times, Washington Times, Huffington Post, The Hill (2/16)

Reuters
http://www.reuters.com/article/us-usa-congress-epa-idUSKBN15W131'
Senate set to approve Trump's EPA pick as White House targets regulation
By Timothy Gardner 2/17/17, 11:32AM

The U.S. Senate is expected to approve President Donald Trump's pick to run the Environmental Protection Agency on Friday over the objections of Democrats and green groups worried he will gut the agency, as the administration readies executive orders to ease regulation on drillers and miners.

Trump's nominee, Oklahoma Attorney General Scott Pruitt, is likely to pass the vote, which is scheduled for 1 p.m. EST (1800 GMT) on Friday, with the support of nearly all the Republicans in the Republican-controlled Senate.

Pruitt's nomination has been controversial in progressive circles. He sued the agency he intends to lead more than a dozen times while top prosecutor of his oil and gas producing state, and has expressed doubts about the science behind climate change. But many Republican lawmakers view him as a welcome change at the EPA, an agency they say declared war on the coal industry during Barack Obama's presidency with rules against carbon emissions.

Democratic Senator Ben Cardin said on Thursday he was concerned Pruitt's opposition to Obama's landmark Clean Power Plan to reduce emissions from coal and natural gas burning plants would hurt the environment and U.S. leadership in international efforts to curb climate change.

Other opponents of Pruitt's nomination have expressed concerns about his ties to the energy industry. An Oklahoma court this week ruled Pruitt will have to turn over 3,000 emails between his office and energy companies by Tuesday after a watchdog group, the Center for Media and Democracy, sued for their release.

Democrats said the Senate would vote at 12:30 p.m. EST on extending the debate over Pruitt until Feb. 27, a move expected to fail.

Senate Minority Leader Chuck Schumer told reporters Majority Leader Senator Mitch McConnell had moved to "strap blinders" on his fellow Republicans by not waiting for the release of Pruitt's emails.

Pruitt needs 51 votes in the 100-member chamber to be approved. Nearly all 52 Republicans, except Senator Susan Collins, who announced her opposition on Wednesday, are expected to vote for him.

Two Democrats from energy-producing states, Joe Manchin of West Virginia and Heidi Heitkamp of North Dakota, are expected to vote for Pruitt.

Trump likely will issue executive orders to reshape the EPA if his pick is approved, sources said.

Trump has promised to slash environmental rules as a way to bolster drilling and coal mining but has vowed to do so without compromising air and water quality.

(Additional reporting by Richard Cowan; Editing by Richard Valdmanis and Bill Trott)

E&E News
http://www.eenews.net/greenwire/2017/02/17/stories/1060050273
Invoking Benghazi, Democrats fail to delay Pruitt vote
By Kevin Bogardus and Geoff Koss 2/17/17

Senate Democrats unloaded on Republicans for refusing to delay a vote on U.S. EPA administrator nominee Scott Pruitt during a morning news conference today.

Invoking the yearslong GOP investigation into the Benghazi incident and the flap over emails related to former Secretary of State Hillary Clinton's private server, Senate Environment and Public Works ranking member Tom Carper (D-Del.) asked, "What if the shoe was on the other foot?"

He said, "Do you think they would go quietly into the night, taking 'no' for an answer? No way."

Democrats want to stall the vote on the Republican Oklahoma attorney general until senators can review more records, including emails between Pruitt and fossil fuel companies and groups. Under an Oklahoma district court order, Pruitt's office has until Tuesday to turn them over.

Environmental groups have heavily lobbied against the confirmation of Pruitt. He has been a vocal EPA critic who has led or joined litigation against the agency over several of its rules, including the Clean Power Plan.

Minority Leader Chuck Schumer (D-N.Y.) said Republicans are not holding Pruitt to the same standards they held for EPA leaders picked by President Obama.

Schumer noted GOP outrage over former EPA Administrator Lisa Jackson's email alias and Republicans stalling Gina McCarthy's 2013 nomination for the job "because they felt she wasn't honoring a commitment to transparency."

"Surely my Republican colleagues would be concerned about a similar lack of transparency from the soon-to-be EPA administrator," Schumer said.

"But what is the Republican leadership response? Strap blinders on their members, and rush Pruitt through. The absolute height of hypocrisy," he said. "The same standard they had for Lisa Jackson and Gina McCarthy they ought to have for Scott Pruitt."

Sen. Jeff Merkley (D-Ore.) said his proposal to delay Pruitt's vote until the Monday after the weeklong Presidents Day recess "is a very responsible motion."

"Delaying this vote until the Monday we return would not delay the business of the Senate at all," Merkley said. "And it would greatly honor the responsibility of the Senate under the advice-and-consent clause of the Constitution to determine if Scott Pruitt is fit or unfit to hold this particular office."

Senate Majority Leader Mitch McConnell (R-Ky.) objected to Merkley's request this morning for unanimous consent to delay the vote. The chamber will instead hold a roll call on the motion, and likely defeat it.

Also this morning, McConnell asked for unanimous consent to accelerate consideration of nominees to lead the Interior and Energy departments. Democrats objected.

Schumer said he offered Republicans the opportunity to confirm another unnamed Cabinet official today to avoid further delaying the seating of Trump's team. He said GOP leaders rebuffed his entreaty.

"They're ashamed of them," Schumer said of Trump's picks. "What's happening with Pruitt is a metaphor for the whole Cabinet. Rush it through, no daylight; the disinfectant of sunlight might bring most of these Cabinet members down. ... We have done America a service by showing who this people are."

McConnell dismissed Democrats' concerns, saying that if it weren't Pruitt's emails, the minority party would come up with a different excuse to stall a vote on the EPA nominee.

"If it wasn't one thing, it would be another," McConnell said during a briefing today with reporters. "The effort has been to delay the nomination that they have made controversial in order to play to their left-wing base, which will not accept the results of the election."

The Senate's confirmation vote on Pruitt is expected at around 1 p.m. today. He is expected to be approved on a mostly party-line vote.

Two Democrats, Sens. Heidi Heitkamp of North Dakota and Joe Manchin of West Virginia, have said they will vote for Pruitt. One Republican, Sen. Susan Collins of Maine, has said she will vote against him. Sen. John McCain (R-Ariz.) may not be at the vote.

If confirmed, Pruitt is expected to be sworn in as EPA administrator at 5 p.m. today in the Eisenhower Executive Office Building's Secretary of War suite, according to a White House spokeswoman.

The Wall Street Journal
https://www.wsj.com/articles/senate-set-to-confirm-scott-pruitt-as-epa-chief-1487348089
Senate Set to Confirm Scott Pruitt as EPA Chief
By Amy Harder 2/17/17, 11:14AM

WASHINGTON—The Senate is set to confirm Scott Pruitt on Friday to be President Donald Trump's administrator of the Environmental Protection Agency, a move that will kick off in earnest Mr. Trump's push to roll back Obama-era climate and environmental regulations.

Mr. Pruitt, currently attorney general of Oklahoma, faces opposition from most Democrats, who say the nominee hasn't sufficiently addressed concerns about his close ties to fossil-fuel companies in Oklahoma.

Democrats have prolonged the confirmation processes for a number of Mr. Trump's nominees with procedural tactics at the committee level and on the Senate floor, including Mr. Pruitt.

But given Republicans' 52-48 Senate majority, the Democrats' tactics have failed to derail most of the nominees, including Mr. Pruitt. At least one Republican, Sen. Susan Collins of Maine, has said she intends to oppose his nomination, but most if not all other Republicans are expected to vote in support, along with at least two Democrats from states with big fossil-fuel interests: Joe Manchin of West Virginia and Heidi Heitkamp of North Dakota.

Upon Mr. Pruitt's confirmation, the Trump administration intends to waste little time issuing directives scaling back high-profile EPA regulations, including a rule cutting carbon emissions from power plants and another bringing more bodies of water under federal jurisdiction, according to several people close to the administration.

Former President Barack Obama mounted an ambitious push to enact rules aimed at the environment, especially climate change, during his last years in office. The next few years are likely to see an all-out war over how much of that legacy will be preserved, including U.S. participation in a landmark climate change accord reached in Paris in 2015.

The top concern raised by Senate Democrats is Mr. Pruitt's alleged lack of response to requests for some 3,000 emails between him and fossil-fuel companies during his time as Oklahoma attorney general, which Democrats say are likely to reveal he would have major conflicts of interest as EPA administrator.

Senate Minority Leader Chuck Schumer (D., N.Y.) likened his party's insistence that Mr. Pruitt disclose those emails to Republicans' insistence that former Secretary of State Hillary Clinton disclose her emails from her private server.

"Now that the shoe is on the other foot, Republicans aren't outraged by secret emails; instead, they are fast-tracking Pruitt's nomination," Mr. Schumer said recently. "Congress and the public deserve to know what Mr. Pruitt is hiding."

A spokesman for Mr. Pruitt said the Democrats are asking for documents that belong to the state of Oklahoma, whose officials must follow the law, which requires those seeking such documents to file open records requests.

Democrats are "deliberately asking for more documentation than they could ever truly want, just to further gum up the confirmation process," said a spokesman for Mr. Pruitt.

A state judge in Oklahoma on Thursday ordered the attorney general's office to release the emails by next Tuesday in response to an advocacy group's lawsuit, prompting Democrats and environmentalists to say Mr. Pruitt's confirmation vote should be delayed until at least then.

But the Senate by then had already cast a procedural vote to begin debate on the nominee and Republicans say they aren't going to delay the process, despite a last-minute delay effort by Democrats Friday morning.

Mr. Pruitt is part of a coalition of about two dozen mostly Republican state attorneys general who sued the Obama administration over many of its environmental rules. He often joined lawsuits with energy companies that have also contributed to his campaigns to be attorney general.

Mr. Pruitt's backers say that shows he is representing his state's interests and understands the challenges of industries affected by environmental regulations. To critics, his record shows a disregard for public health and an allegiance to deep-pocketed fossil fuel companies.

In an unusual move, almost 800 former EPA employees have signed a letter to senators opposing Mr. Pruitt's nomination. "Mr. Pruitt's record and public statements strongly suggest that he does not agree with the underlying principles of our environmental statutes," it says.

The Hill
http://thehill.com/policy/energy-environment/320108-democrats-want-pruitt-vote-delayed-over-emails
Democrats want Pruitt vote delayed over emails
By Jordain Carney 2/17/17, 11:49AM

Senate Democrats want to delay a Friday vote on Scott Pruitt's nomination to lead the Environmental Protection Agency (EPA) after a judge ordered the Oklahoma attorney general's records to be released next week.

"We don't have all the information we need to make an informed vote on this nomination," Sen. Jeff Merkley (D-Ore.) told reporters during a press conference.

He added that delaying the nomination until Feb. 27 "wouldn't delay the businesses of the Senate at all" because lawmakers are out of town next week.

The Senate is expected to take a final vote Friday afternoon on Pruitt after the Senate voted 54-46 a day earlier to advance his nomination.

The final vote comes days before Pruitt's office is expected to have to turn over documents requested roughly two years go.

Judge Aletia Haynes Timmons, based in Oklahoma City, ordered the release of up to 3,000 documents by Tuesday in response to a request by the Center for Media and Democracy (CMD) under Oklahoma's Open Records Act, E&E News reported.

Democrats argue the emails could shed new light on Pruitt's ties to the oil and gas industry that he will be tasked with helping regulate as EPA administrator.

Democrats pulled an all-night protest from the Senate floor to voice their opposition to Pruitt ahead of the final vote.

They tried to paint Republicans as flip-flopping, noting that they are ignoring Pruitt's emails while spending the presidential campaign focused on Hillary Clinton's private email server.

Sen. Chuck Schumer (D-N.Y.) said Republicans had spent months talking about "emails, emails, emails."

Sen. Sheldon Whitehouse (D-R.I.) added that Majority Leader Mitch McConnell is asking for Republicans to engage in "willful blindness."

"The majority leader is asking his people to vote aye on a very, very difficult case," he said.

But McConnell quickly shut down any speculation that he would delay the vote, arguing that Democrats were trying to buy more time in an effort to sink Pruitt's nomination.

"The effort has been to delay the nominations that they have made controversial as long as possible," he said. "They want to have Pruitt out there over the recess so all their supporters can express themselves."

CNN
http://www.cnn.com/2017/02/17/politics/senate-epa-scott-pruitt/
Senate set to confirm EPA nominee Scott Pruitt over Democratic objections
By Ted Barrett 2/17/17, 11:19AM

Washington (CNN) The Senate is set Friday to confirm Scott Pruitt to head the Environmental Protection Agency, an agency Republicans desperately want to rein in after what they charge was eight years of dangerous activism under the Obama administration that hurt businesses, jobs and the economy.

Pruitt maybe just the person to do it. As Oklahoma attorney general he sued the agency many times in that pursuit and has vowed to curb the EPA's regulatory reach once in office.

"He's exceptionally qualified," said Senate Majority Leader Mitch McConnell. "He's dedicated to environmental protection. And, as someone with state government experience, he understands the real-world consequences of EPA actions and knows that balance is the key to making policies that are sustainable over the long-term."

The 12:30 p.m. Senate vote comes a day after a federal judge ruled the Oklahoma attorney general's office must turn over thousands of emails related to Pruitt's communications with fossil fuel companies, which have a large presence in his state.
Environmental activists and many Democrats wanted to delay the confirmation vote until those emails are released -- probably sometime next week -- but Republicans had no interest in a delay, especially after Democrats deliberately slow-walked the confirmation process for many of President Donald Trump's Cabinet.

"This transparency is essential to fair consideration of Pruitt's nomination," said Sen. Jeff Merkley, D-Oregon, a vocal Pruitt critic. "This is an egregious cover up that must not stand."

In a last fit of protest, Democrats kept the Senate in session overnight so they could make speeches about their concerns with Pruitt and his close ties to the oil and gas industry.

At a press conference Friday, Merkley repeated calls to delay the vote. He said the first batch of emails will be released on Tuesday, with a second batch released on February 26. They scanned documents will be transferred to the Center for Media and Democracy, then the Senate will get copies. So Democrats originally requesting the vote be postponed until March 3, but that request was denied.

Democrats are also looking to extend debate until February 27, when they return from recess, a motion that is expected to be defeated.

In an extraordinary lobbying blitz against Pruitt, the labor union that represents EPA employees urged their members to call senators and urge them to vote against Pruitt.

Pruitt is expected to be confirmed on a largely party line vote with just three senators crossing over. Democratic senators Heidi Heitkamp of North Dakota and Joe Manchin of West Virginia, who both the represent energy producing states, will vote for him. While moderate Republican Susan Collins of Maine will vote against.
The Senate is scheduled to begin a week long recess after votes Friday and will return to confirm more Cabinet nominees when they return.

AP
http://hosted.ap.org/dynamic/stories/U/US_SENATE_TRUMP_CABINET?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT

Senate on track to confirm Scott Pruitt as EPA administrator
By Michael Biesecker 2/17/17, 11:53AM

WASHINGTON (AP) -- Senate Republicans are poised to use their majority to confirm President Donald Trump's nominee to lead the Environmental Protection Agency, despite calls from Democrats to delay until requested emails are released.

A vote on Scott Pruitt's nomination is set for Friday afternoon. As part of a public records lawsuit, a state judge in Oklahoma on Thursday ordered Pruitt to release thousands of emails that he exchanged with oil and gas executives by next week. Pruitt, who is Oklahoma's attorney general, has refused to release the emails for more than two years.

Democrats boycotted a committee vote on Pruitt's nomination last month, citing his refusal to hand over the emails, and on Thursday called on Senate Majority Leader Mitch McConnell, R-Ky., to delay Pruitt's confirmation vote until the nominee turns over the thousands of requested emails from his time as attorney general.

Senate Democratic Leader Chuck Schumer of New York tried to draw a direct line between Pruitt's withheld emails and last year's demands from Trump and congressional Republicans during the presidential campaign.

"Emails! Remember emails?" Schumer asked on the Senate floor. "'We should get them out!' they said about Hillary Clinton. ... If they weren't worried about them, then why rush?"

Republican leaders, however, have shown no signs they intend to wait for the documents to be released before voting to confirm him.

"Scott Pruitt is the most thoroughly vetted nominee we've ever had to lead this agency," said Sen. John Barrasso, R-Wyo., chairman of the Senate Environment and Public Works Committee. "These boycotts and these delay tactics do nothing to protect our environment or the health of Americans."

So far, Sen. Susan Collins of Maine is the lone Republican saying she will vote against Pruitt. Her no vote could be canceled out by Democratic Sen. Joe Manchin of coal-dependent West Virginia, who is expected to cross party lines to support Trump's pick.

To dramatize their cause, Senate Democrats kept the Senate in session through the night with a series of speeches opposing his confirmation. Democrats were still marching to the floor at daybreak.

Trump has tapped some of the wealthiest Americans to serve in his Cabinet, and ethics reviews have slowed the confirmation process. So have Senate Democrats, who have mostly opposed all the nominees and forced hours of debate.

So far, the Senate has confirmed 13 out of 22 Trump Cabinet or Cabinet-level picks requiring confirmation.

Pruitt's nomination was strongly opposed by environmental groups and hundreds of former EPA employees, who predict he will roll back the agency's environmental enforcement efforts. During his Senate confirmation hearing last month, Pruitt said he disagreed with Trump's past statements that global warming is a hoax. However, Pruitt has previously cast doubt on the extensive body of scientific evidence showing that the planet is warming and man-made carbon emissions are to blame.

The 48-year-old Republican is closely aligned in his home state with oil and gas companies, whose executives have backed his political campaigns. Though Pruitt ran unopposed for a second term in 2014, public campaign finance reports show he raised more than $700,000, much of it from people in the energy and utility industries.

The Center for Media and Democracy filed multiple public records requests for Pruitt's emails to coal, oil and gas corporations going back to 2015. It sued him last week.

In a hearing Thursday, Oklahoma District Court Judge Aletia Haynes Timmons concluded "there really is no reasonable explanation" for why Pruitt's office hasn't complied with the request for his emails. Timmons ordered Pruitt to turn over the records by Tuesday and to comply with other open records requests by the group in 2015 and 2016 within 10 days.

Pruitt's office says about 400 documents were turned over on Feb. 10, but Timmons says more than 3,000 have been withheld.

As attorney general, Pruitt filed 14 lawsuits challenging EPA regulations. He joined a multistate lawsuit opposing the Obama administration's plan to limit planet-warming carbon emissions from coal-fired power plants. Pruitt also sued over the EPA's recent expansion of water bodies regulated under the Clean Water Act. It has been opposed by industries that would be forced to clean up polluted wastewater.

Politico
http://www.politico.com/story/2017/02/scott-pruitt-democrats-emails-oil-gas-235140
Democrats: GOP will 'rue the day' it pushed Pruitt vote for EPA
By Alex Guillen 2/17/17, 11:16AM

The Senate is set to confirm Oklahoma Attorney General Scott Pruitt as the head of the Environmental Protection Agency Friday, installing one of the agency's fiercest critics as the nation's leading environmental regulator just hours after an Oklahoma judge ordered the release of his email conversations with oil, gas and coal groups.

On the eve of his confirmation, the state judge ordered Pruitt's office release the potentially thousands of emails relating to the energy companies he will soon be regulating — but not until Tuesday, days after his confirmation vote.

Pruitt is among the group of President Donald Trump's most controversial nominees, including Education Secretary Betsy DeVos, Health and Human Services Secretary Tom Price and Attorney General Jeff Sessions. And like those others tapped by Trump, Pruitt's nomination is likely to narrowly pass in the Senate — with the help of a pair of Democrats.

The controversy around Pruitt's contacts with oil, natural gas and coal companies has given Democrats a rallying point to call for a delay of his final vote on the Senate floor, but which Majority Leader Mitch McConnell has insisted will take place Friday.

"This is an egregious cover-up that must not stand," said Sen. Jeff Merkley (D-Ore.), who is planning to ask for another 10 days of debate on Pruitt — a move that's almost certain to be rejected.

It's not clear whether Pruitt's unreleased emails contain any damaging surprises, particularly since his ties to the oil and gas industry are well known. But Democrats — already incensed that Pruitt had told them to go through the public records request process if they wanted his emails or other documents from his time as attorney general — were apoplectic Thursday night when GOP leaders said Pruitt's vote would take place Friday as scheduled.

Sen. Sheldon Whitehouse (D-R.I.) called the Pruitt vote "an epic ram job," and said Pruitt himself is "the tool and the minion of the fossil fuel industry."

Given Pruitt's industry ties, "I don't see any way his tenure at the Environmental Protection Agency ends well," Whitehouse said. "Time will tell and facts will [come] out, but I believe our Republican friends will rue the day that they had this nomination rammed through the Senate on the very day that the emails were being litigated in Oklahoma, in order to get ahead of any counterpressure."

Sen. Tom Carper (D-Del.), who led a boycott of Pruitt earlier this month before the Environment and Public Works Committee, warned that Republicans could be tying themselves to a time bomb.

"Sometime — a week from now, maybe days from now — my fear is that a number of members, especially on the other side, will have been put in a very bad position and asked to vote for a nominee that they otherwise may not have supported had they known," Carper told reporters shortly before the judge ordered the emails released.

Republican leadership, with 52 votes secured to approve Pruitt, including Democratic Sens. Joe Manchin of West Virginia and Heidi Heitkamp of North Dakota, have no plans to change course on confirming him.

"Despite Democrat efforts to delay his confirmation vote, we need to be responsible and move forward to confirm Attorney General Pruitt," Sen. Jim Inhofe (R-Okla.) said on the Senate floor shortly before the judge's order came down. "The longer we postpone this vote, the longer it is going to take for things to get done at the EPA, which will not help anyone."

Speaking on the floor Friday morning, McConnell said Democrats have engaged in "truly historic, unprecedented and harmful obstruction" over Pruitt and other candidates.

"Democrats' obstruction has just kept many of our nation's most critical agencies without a leader for too long — needlessly delaying the president from fully standing up this new administration," he said.

Whitehouse argued that prior to the election, Republicans "had a fixation with emails," particularly Hillary Clinton's, National Oceanic and Atmospheric Administration scientists' message on climate change and the Obama administration's EPA administrators.

"They were desperate for emails. But now, suddenly emails between a nominee's office and the major players in the industry that he will be regulating as EPA administrator, all they do is look at the ceiling tiles," he said.

The judge who ordered the emails released, Aletia Haynes Timmons, said the two-year delay in releasing emails sought by the left-leaning watchdog Center for Media and Democracy was an "abject failure to provide prompt and reasonable access to documents" by Pruitt's office. Pruitt's lawyers had argued that his office processes requests in the order they are filed, indicating at least a two-year backlog.

She ordered Pruitt's office turn over up to 2,500 emails that are in dispute in CMD's oldest request, and said any documents thought to be privileged be brought to her for review by close of business Tuesday.

Timmons also ordered Pruitt's office to release emails responsive to five more records requests filed by CMD before Pruitt was nominated to run EPA within 10 days.

"The Office of Attorney General remains committed to following the letter and spirit of the Open Records Act," Pruitt spokesman Lincoln Ferguson said in a statement. "In light of that, we are reviewing all of our options in order to ensure fairness to all requestors rather than elevating the importance of some requests over others."

Pruitt's coordination with oil and gas companies is already well known since a 2014 New York Times story that detailed his "secretive alliance" with fossil fuel interests to combat Obama administration rules. Pruitt defended that alliance as in the best interest of Oklahomans who live in one of the biggest oil- and gas-producing states.

He also belonged to groups, including the Republican Attorneys General Association, that received major contributions from energy interests, although Pruitt denied ever soliciting the donations himself.

Politico Pro
https://www.politicopro.com/energy/whiteboard/2017/02/democrats-move-to-delay-pruitt-vote-after-email-release-083913
Democrats move to delay Pruitt vote after email release
BY Alex Guillen 2/17/17, 10:39 AM

Senate Democrats plan to push for another 10 days of debate time on EPA nominee Scott Pruitt in an effort to delay today's nomination vote until after potentially thousands of his emails with oil and gas interests are released by the Oklahoma attorney general's office.

However, Republicans appear prepared to stop Democrats' delay effort in its tracks.

Sen. Jeff Merkley will make a motion ahead of Pruitt's planned vote early this afternoon seeking 248 more hours of debate on Pruitt. A state judge on Thursday said delays by Pruitt's office in answering records requests was an "abject failure" and ordered as many as 3,000 emails turned over by Tuesday, with more due within 10 days.

But it will take only a simple majority to override Merkley's motion, and Republicans are counting 52 votes in support of Pruitt, including two Democratic cross-overs.

Speaking on the floor this morning, Majority Leader Mitch McConnell said Democrats have engaged in "truly historic, unprecedented and harmful obstruction" over Pruitt and other candidates.

"Democrats' obstruction has just kept many of our nation's most critical agencies without a leader for too long — needlessly delaying the President from fully standing up this new administration," he said.

Bloomberg BNA
http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=105762276&vname=dennotallissues&wsn=498799000&searchid=29386767&doctypeid=2&type=date&mode=doc&split=0&scm=1245&pg=0
GOP Moves Ahead on Pruitt Despite Oklahoma E-mail Release Ruling
By Brian Dabbs 2/17/17

A vast set of e-mails traded between Oklahoma Attorney General Scott Pruitt's office and a range of fossil fuel companies must be released in the coming days, an Oklahoma judge ruled late Feb. 16, Bob Nelon, an attorney representing the watchdog group that requested the release, told Bloomberg BNA.

Senate Democrats, the vast majority of which oppose Pruitt, are already using the ruling as firepower to continue to pressure a delay on the Feb. 17-scheduled confirmation vote for the Pruitt nomination as EPA administrator.

But Republicans rejected a postponement in the immediate wake of the ruling. "[Pruitt] has fully cooperated with our committee, and the Office of Government and Ethics has determined that he has complied with all laws," Mike Danylak, spokesman for Senate Environment and Public Works (EPW) Committee Chairman John Barrasso (R-Wy.), told Bloomberg BNA. "Democrats have stalled nominees across the Senate—the EPA needs an administrator. It is time to confirm him."

Oklahoma Ruling

The watchdog, named the Center for Media and Democracy (CMD), and the Oklahoma chapter of the American Civil Liberties Union, sued the attorney general's office roughly a week ago to require disclosure of years of e-mails before Pruitt's office and companies such as Murray Energy Corp. and Devon Energy Corp. CMD lodged the request in January 2015.

At the hearing Feb. 17, Judge Aletia Haynes Timmons called the delay an "abject failure," according to Nelon, who is attorney with the Hall Estill law firm.

"The judge repeatedly asked the [attorney general's] office to explain why it would take as long as it has to respond to the request, and the attorney general's lawyers couldn't respond. They basically said we take requests in order and we're busy," said Nelon. "That was not persuasive for the judge, and she kept saying 'I'm still waiting for an explanation for why this was taking so long.'" Timmons ordered the release by Feb. 21, Nelon said.

Sen. Ed Markey (D-Mass.) pounced on the judge's ruling. "Senate Majority Leader Mitch McConnell is forcing the Senate to vote tomorrow on Pruitt even though his e-mails won't be released until Tuesday. This is an egregious cover up that must not stand," Markey said in a statement.

Repeated Delay Calls

Earlier Feb. 17, EPW Ranking Member Tom Carper (D-Del.) and other committee Democrats said the release of the e-mails are necessary for the Senate to fully vet Pruitt.

"In my gut, I feel that these e-mails, the nature of these e-mails and the entities with whom they were sent and received, will help us understand the truth," Carper said. "That opportunity is going to be denied to us." Carper, Markey and other Democrats plan to denounce Pruitt on the Senate floor through the night of Feb. 16.

Meanwhile, thirty Senate Democrats, roughly two-thirds of the caucus, urged Pruitt Feb. 16 to recuse himself from issues that he litigated as attorney general.

Pruitt is still involved in several active lawsuits against the agency, including challenges to the Clean Water Rule, Clean Power Plan, ozone air quality standards, mercury standards and methane limits for the oil and natural gas industry.

Partisan Trade-Off

Despite the rancor, a pair of Senate Democrats from energy-producing states vowed to support Pruitt's confirmation as EPA administrator, those lawmakers announced Feb. 16 as they voted to advance the Pruitt nomination to a final vote.

The endorsements from Sens. Joe Manchin (D-W.Va.) and Heidi Heitkamp (D-N.D.), both up for re-election in 2018, bolster Pruitt's chances of confirmation by the Senate. Heitkamp pledged to hold Pruitt accountable.

A spokesman for McConnell, Don Stewart, said the preliminary vote justifies quick confirmation. "A bipartisan majority of the Senate voted today to move forward with the vote," he said. That vote, which passed 54-46, limited debate and teed up the confirmation vote.

Meanwhile, Sen. Susan Collins (R-Maine) made waves after announcing her opposition to Pruitt, pointing to her support for the Clean Power Plan and bedrock environmental statutes.

"I have significant concerns that Mr. Pruitt has actively opposed and sued EPA on numerous issues that are of great importance to the state of Maine," Collins said. "His actions leave me with considerable doubts about whether his vision for the EPA is consistent with the agency's critical mission to protect human health and the environment."

More Republican Opposition Unlikely

Two Republican senators indicated to Bloomberg BNA Feb. 17 they aren't yet fully committed to endorsing Pruitt.

Asked whether he is a "yes" vote on the nomination, Sen. Cory Gardner (R-Colo.) said he was "looking forward to the debate over the next couple hours." Sen. Tim Scott (R-S.C.), said he would "probably" support Pruitt, suggesting he doesn't "see any reason why not."

Collins said she did not know if other Republicans would oppose him. FreedomWorks, an influential conservative advocacy group, skewered Collins for her opposition.

Sen. Roy Blunt (R-Mo.), a member of the Republican leadership team in the Senate, told Bloomberg BNA Republicans will fall in line to confirm Pruitt. And Sen. John Barrasso (R-Wyo.) took to the Senate floor to encourage support.

"When the Environmental Protection Agency overstepped its mission, Attorney General Pruitt led the charge to rein in government overreach," said Barrasso. "Time after time, Scott Pruitt worked with other states to challenge the agency when it exceeded its authority. Under his leadership, this agency will respect the rule of law."

E&E News
http://www.eenews.net/energywire/2017/02/17/stories/1060050244
Pruitt's missing emails color Democrats' talk-a-thon
By Mike Lee and Joel Kirkland 2/17/17

OKLAHOMA CITY — The Oklahoma attorney general's office will have until Tuesday to turn over as many as 3,000 documents related to Attorney General Scott Pruitt's communications with oil, gas and coal groups, a state district judge ruled yesterday.

The legal action happened as Democrats vowed to talk all night, and they did, on the Republican attorney general's nomination to be President Trump's U.S. EPA administrator.

Yesterday, Democrats who boycotted an initial vote on Pruitt in the Senate Environment and Public Works Committee failed in their quixotic bid to delay a full Senate confirmation vote scheduled for this afternoon. Senate Majority Leader Mitch McConnell (R-Ky.) refused to put the brakes on the process, as Republicans teed up the partisan battle to get Pruitt through the door before the Senate's Presidents Day recess.

Democrats read letters from constituents and talked about missing emails, global warming, oil, ethanol standards and fearful EPA staffers.

Pruitt angered Democrats during the confirmation process when he said senators should file a state freedom-of-information (FOI) records request with the Oklahoma attorney general's office, which he controls, if they wanted to read his email communications with energy companies, conservative groups and lawyers hostile to EPA.

In press conferences and floor speeches during the day and into the night, Senate Democrats rapped Pruitt for his role as a coordinator of like-minded attorneys general and fossil fuel companies that repeatedly sued to overturn tougher EPA air and water rules under President Obama. Pruitt has his signature on more than a dozen lawsuits against the agency.

"Are you kidding me?" said Sen. Elizabeth Warren of Massachusetts. "If those emails show corruption, every senator should have that information before, not after, they put someone in charge of EPA."

In tone and focus, Pruitt's legal challenges against EPA reflected the priorities of right-leaning groups with close ties to the oil industry's Koch brothers and represented the interests of Oklahoma-based gas giant Devon Energy Corp. and politically powerful coal companies such as Peabody Energy Corp. The suits sought to stop the agency from enforcing limits on power plant emissions of carbon dioxide, a contributor to climate change, and mercury, a neurotoxin, and took aim at the Clean Water Act.

Pruitt's supporters point to his commitment to preserving state supremacy over environmental regulation and say he will rein in EPA's overreaching tendencies.

Senate Democrats, led by Sen. Tom Carper of Delaware, pinned much of their hope of stirring up opposition to Pruitt through the timely release of his office's emails with energy companies sought by the liberal-leaning Center for Media and Democracy, based in Madison, Wis.

Other than a 400-page batch of emails released last Friday, in response to the center's original unanswered request two years ago, the Senate isn't likely to see the fuller 3,000-page response to nine FOI requests for documents out of Pruitt's office before the confirmation vote.

Under the ruling, the attorney general's office will have to turn the material over to the Center for Media and Democracy or provide it to the court for inspection, Judge Aletia Haynes Timmons said at the end of a 25-minute hearing.

"The court rules there was an abject failure to provide prompt, reasonable access," Timmons said from the bench.

She ordered the state to turn over other documents, from separate requests in 2015 and 2016, within 10 days. The attorney general's office can appeal the ruling, attorneys in the case said.

Brady Henderson, an attorney for the Oklahoma Chapter of the American Civil Liberties Union, said the Senate should view the documents before voting on Pruitt's nomination. Henderson assisted other Oklahoma attorneys to represent the Center for Media and Democracy in the case.

The state's legal staff left the court building without speaking to reporters. But the attorney general's office said in a statement that it is "committed to following the letter and spirit" of the state's open records law. The statement also alluded to the office's first-come, first-served process for handling records requests, a process issue that has become a focal point of the case.

"In light of that, we are reviewing all of our options in order to ensure fairness to all requestors rather than elevating the importance of some requests over others," said the AG's office.

An unusual process

The Wisconsin group has said the unusual process of handling government records requests has been a handy tool for delaying releases. The Center for Media and Democracy made its first documents request in January 2015, along with eight new requests since then, for emails and documents dating to 2013.

Pruitt's staff have continued to say they answer open records requests in the order in which they're received and that they've been overwhelmed with requests since he was nominated to lead EPA (*Energywire*, Dec. 20, 2016).

Pruitt has been Oklahoma's attorney general since 2011 and has forged close ties with energy companies. *The New York Times* reported in 2014 that he had pulled language directly from letters and legal briefs written by industry lawyers as part of his campaign to challenge federal regulations (*Greenwire*, Dec. 8, 2014).

Like most states, Oklahoma allows government agencies to withhold some documents from the public in narrowly tailored circumstances, but lawyers for the attorney general's office couldn't immediately explain why the documents hadn't been produced for more than two years.

At one point during the 25-minute hearing, Timmons interrupted Assistant Attorney General Jeb Joseph and read aloud from the state open-records statute, which says, "The people are invested with the inherent right to know and be fully informed about their government."

Among the missing documents were letters and emails that the state had previously provided to *The New York Times*, which the center said was evidence that the state withheld material in its response.

E&E News
http://www.eenews.net/climatewire/2017/02/17/stories/1060050246
Dems rail all night against Pruitt; vote still set for 1 p.m.
By Niina Heikkinen and Kavya Balaraman 2/17/17

Democrats staged an all-night fight in the Senate in a final play to delay a vote on the nominee they say is unfit to lead U.S. EPA.

Scott Pruitt, the Republican attorney general of Oklahoma, has been a controversial pick to lead the agency since his selection in December. In the days leading up to the full Senate vote on his nomination, Pruitt's opponents have stepped up efforts to stall or even derail it. In the final hours before his expected confirmation today, Democrats continued to press their case that Pruitt's record disqualified him from the top environmental enforcement job.

One of their main concerns: that Pruitt is not committed to EPA's goal of protecting the environment and public health.

Pruitt's statements through his confirmation that though humans affect climate change in "some manner," the science is still "unsettled" also didn't sit well with Democratic senators. Several suggested that Pruitt's rejection of climate science and attacks on environmental regulations were a direct result of the "dark money" he had received from fossil fuel donors such as Murray Energy Corp.

Sen. Sheldon Whitehouse (D-R.I.) displayed a diagram he called "The Denial Beast," which marked out the reach of the fossil fuel industry in perpetuating climate denial. He called it a "visual description of the complex matrix of fossil fuel interests that [Pruitt] has been so closely involved with."

"This is a very, very significant matrix of fossil fuel interests, and that is what Scott Pruitt has been serving, not the public and not his duties," he said.

Whitehouse and other Democrats called for a delay in the vote on Pruitt until they had a chance to carefully review records of Pruitt's communication with the fossil fuel industry. The correspondence was the subject of a lawsuit brought against the attorney general by the Center for Media and Democracy. Lawmakers noted that emailed correspondence would be available in a matter of days following a recent court ruling.

"Maybe this is just an empty concern. But over and over and over again, emails have been really important at breaking investigations open, and certainly our friends on the other side, until the election in November, had a fascination with emails," said Whitehouse. "Now, suddenly, everybody is looking at the ceiling, examining the ceiling tiles, when it's time to wonder about these emails."

Yesterday afternoon, an Oklahoma judge ruled that Pruitt would have to produce the first batch of roughly 2,500 outstanding emails that the Oklahoma attorney general had not sent in response to nine outstanding public records requests submitted by the Center for Media and Democracy (*Greenwire* Feb. 16; *Climatewire*, Feb. 15).

These first emails will include correspondence between Pruitt and fossil fuel donors, such as Devon Energy Corp., Peabody Energy Corp. and the American Petroleum Institute, to be delivered by Tuesday. The next batch, slated to come out in 10 days, will include email correspondence with the American Legislative Exchange Council, or ALEC, which supports partisan policy, according to Whitehouse.

Following the court ruling, Senate Republicans continued to deny calls to delay the vote for Pruitt, scheduled for 1 p.m. today.

"Now, that smells to the high heavens. The American people have the right to know what's in those emails," said Sen. Ed Markey (D-Mass.). He dubbed the GOP the "Gas and Oil Party."

Democrats noted that failure to analyze the emails prior to a vote could come back to bite Republicans, who would have to answer to their voters if the emails do reveal evidence of illegal activity.

Markey compared the concerns about Pruitt to those surrounding President Reagan's controversial picks to lead the Department of the Interior and EPA — James Watt and Anne Gorsuch Burford, respectively. Both Watt and Burford, the mother of current Supreme Court nominee Judge Neil Gorsuch, resigned from their posts.

Sen. Cory Booker (D-N.J.) said it is unfortunate that Republicans have chosen not allow a delay in the vote.

"We are finally getting some transparency after stonewalling for week after week and month after month. Now we are going to see what kind of potential collusion went on," he said.

Dems: Questioning climate change a disqualifier

Beginning yesterday afternoon and continuing through the night, Democrats came to the Senate floor armed with charts and anecdotes from Pruitt's record as Oklahoma attorney general to argue against his appointment.

Pruitt has filed more than a dozen legal cases against EPA regulations, including those restricting mercury pollution, smog and carbon dioxide emissions. Many cited his stance on climate change as an important factor in influencing their vote, especially since it has affected their own states.

From threatened blue crab fisheries in Maryland to warming temperatures hurting maple syrup production in New England, senators outlined how climate change is already affecting natural resources, wildlife and infrastructure across the country.

"As a result of climate change, we have seen 40 percent reduction in the moose population," said Sen. Jeanne Shaheen (D) of New Hampshire. "Because of milder winters, ticks don't die off; they multiply on moose, they ravage it and eventually kill."

Sen. Bill Nelson (D-Fla.) called his state "ground zero" for sea-level rise, citing measurements in South Florida over the past four decades that have shown a 5- to 8-inch increase in sea levels.

"Oh, and by the way, where is three-quarters of the population in Florida? It's along the coast," he said.

Sen. Al Franken (D-Minn.) pointed out that while Pruitt did not follow Trump's example in calling climate change a "hoax," his denial was more "subtle" and "intentionally deceptive."

"If we look at Mr. Pruitt's record, it shows that he has been steadfastly against action on climate change — including a suit to block the first requirements of power plants to reduce their carbon emissions," he said.

He also criticized Pruitt's implication that imposing regulations on the environment would reduce employment and economic prosperity, saying that Minnesota has managed to balance both: The state adopted a renewable energy standard in 2007, and the clean energy economy currently employs around 54,000 of its residents.

Sen. Richard Blumenthal (D-Conn.) summed up his opposition to Pruitt with one sentence.

"We have enough foxes guarding henhouses as it is in this administration," he said.

He went on to criticize Pruitt's lack of transparency, in terms of contributions from the energy industry, and his refusal to accept the scientific evidence of climate change.

"I'm not here to argue climate change. I'm here to argue that Scott Pruitt is unqualified to fight climate change because he denies it as a problem, and he denies the mission and purpose of the EPA," he said.

GOP: Stop the 'blind obstruction'

Sen. Amy Klobuchar (D-Minn.) said that she disagreed with Pruitt's claim that the "debate" on climate change is "far from settled," citing national climate assessments as well as the impacts that shifting weather patterns are having on the Midwest.

"We may not have tsunamis, but in the Midwest, what we see is major unpredictable weather, which is just as dangerous. We've seen the devastating impact of natural disasters like Hurricane Matthew, and we've seen flooding from Cedar Rapids [Iowa] to Duluth. We now know the risk of climate change to Minnesota, to the country and to our planet," she said, adding that she also opposed Pruitt's nomination on the basis of his record on the renewable fuel standard.

Sen. Elizabeth Warren (D-Mass.) spent nearly an hour on the floor issuing scorching criticisms of Pruitt, including of his "flippant, evasive and outright misleading" responses during his confirmation hearing.

"Scott Pruitt has the nerve to say that the cause of climate change is 'subject to debate.' More debate? We had that debate — in the 1980s, in the 1990s, in the 2000s. Maybe Mr. Pruitt missed it, buried under a pile of Big Oil money," she said.

Meanwhile, Republican senators scolded their Democratic counterparts for what they described as "blind obstruction" of Pruitt's confirmation process.

"These boycotts and these delay tactics do nothing to protect our environment or the health of Americans. Democrats are engaged in nothing more than political theater. They are wasting time while the Environmental Protection Agency needs a new administrator," said Sen. John Barrasso (R-Wyo.), chairman of the Environment and Public Works Committee.

Barrasso described Pruitt as the "right man for the job" to lead EPA.

"I would plead with our colleagues across the aisle: Stop the dysfunction," said Sen. John Cornyn (R-Texas). "Instead, let us fight for the people we represent and find common ground where we can and put forward legislation that represents them well."

Politico Pro
https://www.politicopro.com/tipsheets/morning-energy/2017/02/seismic-shift-to-hit-epa-with-pruitt-confirmation-021443
Seismic shift to hit EPA with Pruitt confirmation
By Anthony Adragna 2/17/17. 5:46AM

MR. PRUITT GOES TO EPA: Scott Pruitt is set to be confirmed today as the 14th EPA administrator, marking a massive change in the agency's direction and ushering in a new era of regulatory rollbacks. A confirmation vote is expected around 1:00 p.m. — over howls of protest from Democrats clamoring to see copies of emails Pruitt and his staff exchanged with fossil fuel lobbyists, Republican donors and others while he was Oklahoma's attorney general. A state judge Thursday afternoon ordered Pruitt to cough up as many as 3,000 emails by Tuesday in response to a liberal watchdog's longstanding public records request. As Democrats planned to hold the Senate floor all night speaking against the nomination, top Environment and Public Works Committee Democrat Tom Carper said the court's ruling "should finally give my Republican colleagues pause" and that it would "wholly irresponsible to vote on this nominee this week knowing that we don't have the full picture" of potential conflicts of interest Pruitt would bring to the job.

Anyone who has been paying attention to President Donald Trump's campaign or transition knows what to expect from Pruitt: A major reduction in EPA's emphasis on federal oversight in favor of giving more control to the states; a severely reduced, if not reversed, focus on climate change and other clean air and water initiatives; and long-term moves to decrease funding and staff.

Welcome, boss: Meanwhile, EPA employees are already responding with unhappiness about the new jefe. A few dozen current employees publicly protested his nomination, and 773 former EPA employees have signed onto a letter opposing him. Unions organized drives for workers to call and urge their senators to vote against him, a first, according to the New York Times. And at least a few EPA employees have started using an encrypted app in case they need a private way to communicate, drawing ire from House Republicans who say they are skirting recordkeeping laws.

What's next: It has long been expected that once Pruitt is installed, Trump will sign one or more executive orders directing the agency to roll back climate change work, limit its enforcement powers or otherwise apply a lighter touch to regulation. Pruitt has a major to-do list, including shifting gear in the dozens of ongoing lawsuits challenging EPA rules and actions, starting the years-long process to repeal regulations like the Clean Power Plan and searching for the dozens of political staff required to operate EPA. Trump leaves for South Carolina this morning and Vice President Mike Pence heads to Europe in the morning as well. ME hears EPA is preparing for a Tuesday swearing in for Pruitt, but plans remain up in the air.

Sen. Jim Inhofe **(R-Okla.),** a close Pruitt ally, said he and Pruitt have had many discussions in the past about the challenges EPA presents to the agriculture and energy industries. "But not since he's gotten this close, I don't think he's thinking about it now," Inhofe told ME Thursday evening, explaining that he had not been given a heads up on what Pruitt's first order of business would be. "He wants to get properly staffed, and then watch him roll."

LA Times
http://www.latimes.com/politics/la-na-pol-trump-epa-pruitt-20180217-story.html
After bruising confirmation battle, EPA nominee Scott Pruitt expected to clear Senate vote
By Evan Halper 2/17/17

Donald Trump's embattled nominee to run the Environmental Protection Agency is expected to get final approval from the Senate on Friday after withstanding a prolonged assault from environmentalists who warn he is a menace to clean air and water.

The likely approval of Oklahoma Atty. Gen. Scott Pruitt for the post exposed an internal rift in the Democratic Party as two senators from coal country signaled they would give their support to the longtime ally of the Koch brothers and unabashed climate-change skeptic.

The Pruitt nomination has been one of the most bitterly fought since Trump took office last month, pitting a crusader for fossil fuel interests who has sued the agency he will take over 14 times against an environmental movement that is scrambling to preserve what it can of actions President Obama took to curb climate change and protect natural resources.

Pruitt will be inheriting an agency of 15,000 employees where much of the workforce will likely be openly hostile to his agenda. Nearly 800 former EPA employees signed a letter imploring lawmakers to reject his nomination, and many current employees joined the ranks of activists demonstrating against him at rallies and deluging the switchboards of congressional offices.

He distinguished himself in Oklahoma by battling many of the signature environmental protections implemented by Obama, arguing they were a federal intrusion on the states. He does not accept the mainstream scientific consensus on climate change, and has been described by the National Resources Defense Council and the Environmental Working Group as the worst nominee selected to run the EPA in history.

Washington Times
http://www.washingtontimes.com/news/2017/feb/17/senate-dems-hold-floor-demand-delay-epa-nominee-sc/
Senate Dems hold floor, demand delay on EPA nominee Scott Pruitt until his emails are released
By Ben Wolfgang 2/17/17

Holding the Senate floor for a talk-a-thon that will last into Friday afternoon, Democrats are demanding that the chamber delay its planned vote on Scott Pruitt's nomination to head the EPA, saying lawmakers can afford to wait a few days and learn more about his ties to the oil and gas industry.

Mr. Pruitt, Oklahoma's attorney general, was ordered by an Oklahoma judge late Thursday to turn over nearly 3,000 emails related to his communications with the oil and gas sector. The nominee has until Tuesday to turn over those

documents, which Democrats argue will show that Mr. Pruitt is in the pocket of the fossil fuel industry and is unfit to lead the EPA.

Sen, Richard Durbin, Illinois Democrat, took to the Senate floor about 8:30 a.m. Friday and said Republicans who vote in favor of Mr. Pruitt will be sorry after they see the emails next week.

"Be careful about the vote you cast at 1 o'clock today because by 1 o'clock on Tuesday or Wednesday in the following week you may regret that vote," he said. "The Republican senators and Mitch McConnell said we don't want to read [the emails]. We don't care what's in them. … Scott Pruitt can wait 10 days and we can wait for the truth, can't we?"

Senate Majority Leader Mitch McConnell's office said Thursday night the final vote on Mr. Pruitt will go ahead Friday afternoon as scheduled, despite the Oklahoma judge's ruling.

Democrats held the Senate floor all night Thursday and into the morning Friday to protest that decision, though their efforts likely will fail.

"It would be wholly irresponsible to vote on this nominee this week knowing that we don't have the full picture," Sen. Tom Carper, Delaware Democrat and his party's ranking member on the Senate Environment and Public Works Committee, said Thursday night. "If we are going to do the job that the American people sent us here to do, we must carefully review this new information in order to better evaluate just what kind of EPA Administrator Scott Pruitt would be."

In raising concerns about what could be in the emails, Democrats point to a 2011 letter sent by Mr. Pruitt to the EPA, raising questions about the agency's conclusions regarding harmful emissions from natural gas wells. The majority of the language in the letter was lifted directly from documents written by Devon Energy, an Oklahoma oil and gas company.

During testimony before a Senate panel last month, Mr. Pruitt didn't deny using the company's language, but said it was his job as Oklahoma attorney general to advocate on behalf of his state's interests, including the interests of major industries in the state like the oil and gas sector.

Democrats have blasted Mr. Pruitt's logic in that particular situation and believe the looming email trove will show other examples of collusion between the two sides.

Despite the uproar, Mr. Pruitt almost surely will be approved in Friday's vote. While one Republican, Sen. Susan Collins of Maine, has said she'll vote against him, two Democrats will back Mr. Pruitt.

Sen. Joe Manchin of West Virginia and Sen. Heidi Heitkamp of North Dakota have said they'll vote in favor of the nomination, likely ensuring Mr. Pruitt's approval, unless Republican leaders change course and delay the vote.

Huffington Post
http://www.huffingtonpost.com/entry/elizabeth-warren-scott-pruitt_us_58a6881ae4b07602ad53435c
Sen. Elizabeth Warren Slams Pruitt: 'Big Polluters Have Their Fantasy EPA Nominee'
By Nick Visser 2/17/17

Sen. Elizabeth Warren (D-Mass.) denounced President Donald Trump's nominee to head the Environmental Protection Agency, Scott Pruitt, just hours before the Senate was scheduled to vote on his approval.

Warren spent nearly an hour on the floor Thursday evening to voice her "strong opposition" to Pruitt, the Oklahoma attorney general who has sued the EPA 13 times. The excoriation came hours after a state judge ordered Pruitt's office to release more than 2,500 documents and emails about his communications with energy companies during his tenure.

"I rise today to express my strong opposition to President Trump's nomination of Scott Pruitt," Warren said at the outset of her speech. "The reason is simple: In a choice between corporate polluters and people who want to breathe air and drink water, Scott Pruitt sides with the corporate polluters. He has no business as head of the EPA."

The Senate is scheduled to vote on Pruitt's nomination Friday afternoon, just days before the documents and emails are made public. An incredulous Warren demanded senators be given access to the communications to make an informed decision on the nomination and called for a bipartisan effort to ensure "access to clean air and clean water [as] a basic right for all Americans."

"Their plan is to jam this nomination through tomorrow, four days before the emails are slated to become public. Are you kidding me?" she asked. "If those emails show corruption, every senator should have that information before, not after, they vote to put someone in charge of the EPA who may be there for years."

She continued:

Clean air and clean water used to be a nonpartisan issue. In earlier decades, leaders in both parties had the courage to say no to suffocating smog and towering plumes of toxic chemicals poisoning our children. Republicans and Democrats came together, and together they declared that access to clean air and clean water is a basic right for all Americans We passed the Clean Air Act, we passed the Clean Water Act ... we did those things together.

Many leading Democrats have also expressed outrage over the vote.

Pruitt's nomination has prompted widespread fear among environmentalists and staff currently at the EPA. Since 2002, Pruitt has received more than $300,000 in contributions from the fossil fuel industry, and on his LinkedIn page, he lists himself as "a leading advocate against the EPA's activist agenda."

This week, nearly 800 former agency staffers signed a letter in protest of his nomination. The letter called Pruitt "a close ally of the oil and gas industry [who] has made a career of suing EPA and attacking the idea of federal action to reduce pollution — while simultaneously failing to enforce environmental laws in his own state and shutting down the Environmental Protection Unit in the Oklahoma Attorney General's Office."

Warren echoed these fears and what she called Pruitt's continual support for "his friends in the oil industry ... to heck with everybody else."

"Those big polluters have their fantasy EPA nominee, someone who will work on their side and not on the side of the American people."

The Hill
http://thehill.com/policy/energy-environment/320041-epa-employees-call-on-senators-to-reject-trump-epa-pick
EPA Employees call on senators to reject Trump EPA pick: report
By Max Greenwood 2/16/17, 9:19PM

In an unusual show of opposition for federal employees, Environmental Protection Agency workers have been calling their senators to urge them to reject President Trump's pick to lead their agency, The New York Times reported Thursday.

Scott Pruitt, the attorney general of Oklahoma, has sued the EPA more than a dozen times in his current post, alarming many of the agency's employees, who fear that, if confirmed, he will work to dismantle its work.

On the campaign trail, Trump railed against the environmental agency, calling it a "disgrace" and vowing to undo federal environmental rules and regulations.

"Mr. Pruitt's background speaks for itself, and it comes on top of what the president wants to do to EPA," John O'Grady, a longtime EPA employee and president of the union representing its workers, told The Times.

Still, the effort to rally the opposition of enough senators to reject Pruitt during his confirmation vote on Friday is a longshot. Only one GOP senator, Susan Collins (Maine), has said she will vote against Trump's EPA pick. And Democratic Sens. Joe Manchin (W.V.) and Heidi Heitkamp (N.D.) have both said they will support Pruitt.

Even with the expected absence of Sen. John McCain (R-Ariz.), who is set to attend a security conference in Germany on Friday, Pruitt will likely win the support of 52 senators, securing confirmation.

It is unusual for civil servants, such as EPA employees, to so actively oppose a Cabinet appointee. What is more, The Times reports, the move signifies that Pruitt will likely face strong pushback from his own employees once he takes office.

"What it means is that it's going to be a blood bath when Pruitt gets in there," former New Jersey Gov. and past EPA administrator Christine Todd Whitman (R) told The Times.

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Message

From: Flynn, Mike [Flynn.Mike@epa.gov]
Sent: 4/3/2017 10:52:46 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: Re: tomorrow's EMC meeting

Thanks Justin

Mike Flynn
Acting Deputy Administrator
U.S. Environmental Protection Agency
(202) 564-4711

On Apr 3, 2017, at 4:39 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:

In response to Ryan's prompt below:

- <!--[if !supportLists]--><!--[endif]-->Justin has been with the agency since the inauguration, first as part of the transition's "beachhead" team, serving as legal advisor and point of contact for both OGC and OECA.
- <!--[if !supportLists]--><!--[endif]-->More recently, he has moved into the Office of General Counsel as Deputy General Counsel.
- <!--[if !supportLists]--><!--[endif]-->Prior to joining the government, he practiced at BakerHostetler in DC, focusing his practice in environmental law.
- <!--[if !supportLists]--><!--[endif]-->Justin is a graduate of Yale Law School, clerked for the Second Circuit and the Utah Supreme Court, and has a doctorate from Berkeley.

See you tomorrow!

Best,

Justin

From: Jackson, Ryan
Sent: Monday, April 3, 2017 3:27 PM
To: Flynn, Mike <Flynn.Mike@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Hale, Michelle <hale.michelle@epa.gov>; Hupp, Sydney <hupp.sydney@epa.gov>; Hupp, Millan <hupp.millan@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Freire, JP <Freire.JP@epa.gov>; Graham, Amy <graham.amy@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Wagner, Kenneth <wagner.kenneth@epa.gov>; Konkus, John <konkus.john@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Davis, Patrick <davis.patrick@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Subject: tomorrow's EMC meeting

Tomorrow morning, I was planning to introduce much of the political staff to the EMC meeting with the RA and AA at 8am. However, some need to be in a briefing with the Administrator at 8am.

In lieu of that, Mike will introduce much of the political staff at the 8am and we'll introduce the remainder later.

For the 8am, Byron, Samantha, Sarah, David, and I will need to brief up the Administrator for a meeting later in the day. The remainder Mike will introduce. Please provide Mike a couple of bullets of background information so he can reference not only what role you have here, but where you've come from. Thanks.

Ryan Jackson
Chief of Staff
U.S. Environmental Protection Agency
(202) 564-6999

Message

From: DCOGCLN1/DC/USEPA/US [DCOGCLN1/DC/USEPA/US@epamail.epa.gov]
Sent: 4/12/2017 9:30:35 AM
To: Prabhu, Aditi [Prabhu.Aditi@epa.gov]; Dolph, Becky [Dolph.Becky@epa.gov]; Veney, Carla [Veney.Carla@epa.gov]; Fort, Daniel [Fort.Daniel@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]; Jones, Gail-R [Jones.Gail-R@epa.gov]; Duross, Jeanne [Duross.Jeanne@epa.gov]; Keith, Jennie [Keith.Jennie@epa.gov]; Justin Schwab [Schwab.Justin@epamail.epa.gov]; Fugh, Justina [Fugh.Justina@epa.gov]; Minoli, Kevin [Minoli.Kevin@epa.gov]; Patrick, Monique [Patrick.Monique@epa.gov]; Rich Lumley [Lumley.Rich@epamail.epa.gov]; Albores, Richard [Albores.Richard@epa.gov]; David Fotouhi [Fotouhi.David@epamail.epa.gov]
Subject: CTS Pending Items Newsletter

CTS Pending Items - Your goal is to make this list EMPTY! Click a link at the left and follow-up on every item.

Current Approver [Due Date] Showing Pending Items Only

Deliberative Process / Ex. 5

Message

From: So, Katherine [so.katherine@epa.gov]
Sent: 2/17/2017 5:30:52 PM
To: McGonagle, Kevin [mcgonagle.kevin@epa.gov]; Mccabe, Catherine [McCabe.Catherine@epa.gov]; Reeder, John [Reeder.John@epa.gov]; Flynn, Mike [Flynn.Mike@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Hull, George [Hull.George@epa.gov]; Slotkin, Ron [slotkin.ron@epa.gov]; Sowell, Sarah [Sowell.Sarah@epa.gov]; Hart, Daniel [Hart.Daniel@epa.gov]; Orquina, Jessica [Orquina.Jessica@epa.gov]; Actadmmccabe, Catherine17 [Actadmmccabe.catherine17@epa.gov]; Benton, Donald [benton.donald@epa.gov]; Bangerter, Layne [bangerter.layne@epa.gov]; Davis, Patrick [davis.patrick@epa.gov]; Ericksen, Doug [ericksen.doug@epa.gov]; Konkus, John [konkus.john@epa.gov]; Greaves, Holly [greaves.holly@epa.gov]; Kreutzer, David [kreutzer.david@epa.gov]; Munoz, Charles [munoz.charles@epa.gov]; Schnare, David [schnare.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Sugiyama, George [sugiyama.george@epa.gov]; Valentine, Julia [Valentine.Julia@epa.gov]; AO OPA Media Relations [AO_OPA_Media_Relations@epa.gov]
CC: So, Katherine [so.katherine@epa.gov]
Subject: RE: Pruitt Pre-vote Clips 2/17/17

Below: Wall Street Journal, The Hill, CNN, AP, Politico, Politico Pro, Reuters, Bloomberg BNA, E&E News (2), Politico Pro, LA Times, Washington Times, Huffington Post, The Hill (2/16)

The Wall Street Journal
https://www.wsj.com/articles/senate-set-to-confirm-scott-pruitt-as-epa-chief-1487348089
Senate Set to Confirm Scott Pruitt as EPA Chief
By Amy Harder 2/17/17, 11:14AM

WASHINGTON—The Senate is set to confirm Scott Pruitt on Friday to be President Donald Trump's administrator of the Environmental Protection Agency, a move that will kick off in earnest Mr. Trump's push to roll back Obama-era climate and environmental regulations.

Mr. Pruitt, currently attorney general of Oklahoma, faces opposition from most Democrats, who say the nominee hasn't sufficiently addressed concerns about his close ties to fossil-fuel companies in Oklahoma.

Democrats have prolonged the confirmation processes for a number of Mr. Trump's nominees with procedural tactics at the committee level and on the Senate floor, including Mr. Pruitt.

But given Republicans' 52-48 Senate majority, the Democrats' tactics have failed to derail most of the nominees, including Mr. Pruitt. At least one Republican, Sen. Susan Collins of Maine, has said she intends to oppose his nomination, but most if not all other Republicans are expected to vote in support, along with at least two Democrats from states with big fossil-fuel interests: Joe Manchin of West Virginia and Heidi Heitkamp of North Dakota.

Upon Mr. Pruitt's confirmation, the Trump administration intends to waste little time issuing directives scaling back high-profile EPA regulations, including a rule cutting carbon emissions from power plants and another bringing more bodies of water under federal jurisdiction, according to several people close to the administration.

Former President Barack Obama mounted an ambitious push to enact rules aimed at the environment, especially climate change, during his last years in office. The next few years are likely to see an all-out war over how much of that legacy will be preserved, including U.S. participation in a landmark climate change accord reached in Paris in 2015.

The top concern raised by Senate Democrats is Mr. Pruitt's alleged lack of response to requests for some 3,000 emails between him and fossil-fuel companies during his time as Oklahoma attorney general, which Democrats say are likely to reveal he would have major conflicts of interest as EPA administrator.

Senate Minority Leader Chuck Schumer (D., N.Y.) likened his party's insistence that Mr. Pruitt disclose those emails to Republicans' insistence that former Secretary of State Hillary Clinton disclose her emails from her private server.

"Now that the shoe is on the other foot, Republicans aren't outraged by secret emails; instead, they are fast-tracking Pruitt's nomination," Mr. Schumer said recently. "Congress and the public deserve to know what Mr. Pruitt is hiding."

A spokesman for Mr. Pruitt said the Democrats are asking for documents that belong to the state of Oklahoma, whose officials must follow the law, which requires those seeking such documents to file open records requests.

Democrats are "deliberately asking for more documentation than they could ever truly want, just to further gum up the confirmation process," said a spokesman for Mr. Pruitt.

A state judge in Oklahoma on Thursday ordered the attorney general's office to release the emails by next Tuesday in response to an advocacy group's lawsuit, prompting Democrats and environmentalists to say Mr. Pruitt's confirmation vote should be delayed until at least then.

But the Senate by then had already cast a procedural vote to begin debate on the nominee and Republicans say they aren't going to delay the process, despite a last-minute delay effort by Democrats Friday morning.

Mr. Pruitt is part of a coalition of about two dozen mostly Republican state attorneys general who sued the Obama administration over many of its environmental rules. He often joined lawsuits with energy companies that have also contributed to his campaigns to be attorney general.

Mr. Pruitt's backers say that shows he is representing his state's interests and understands the challenges of industries affected by environmental regulations. To critics, his record shows a disregard for public health and an allegiance to deep-pocketed fossil fuel companies.

In an unusual move, almost 800 former EPA employees have signed a letter to senators opposing Mr. Pruitt's nomination. "Mr. Pruitt's record and public statements strongly suggest that he does not agree with the underlying principles of our environmental statutes," it says.

The Hill
http://thehill.com/policy/energy-environment/320108-democrats-want-pruitt-vote-delayed-over-emails
Democrats want Pruitt vote delayed over emails
By Jordain Carney 2/17/17, 11:49AM

Senate Democrats want to delay a Friday vote on Scott Pruitt's nomination to lead the Environmental Protection Agency (EPA) after a judge ordered the Oklahoma attorney general's records to be released next week.

"We don't have all the information we need to make an informed vote on this nomination," Sen. Jeff Merkley (D-Ore.) told reporters during a press conference.

He added that delaying the nomination until Feb. 27 "wouldn't delay the businesses of the Senate at all" because lawmakers are out of town next week.

The Senate is expected to take a final vote Friday afternoon on Pruitt after the Senate voted 54-46 a day earlier to advance his nomination.

The final vote comes days before Pruitt's office is expected to have to turn over documents requested roughly two years go.

Judge Aletia Haynes Timmons, based in Oklahoma City, ordered the release of up to 3,000 documents by Tuesday in response to a request by the Center for Media and Democracy (CMD) under Oklahoma's Open Records Act, E&E News reported.

Democrats argue the emails could shed new light on Pruitt's ties to the oil and gas industry that he will be tasked with helping regulate as EPA administrator.

Democrats pulled an all-night protest from the Senate floor to voice their opposition to Pruitt ahead of the final vote.

They tried to paint Republicans as flip-flopping, noting that they are ignoring Pruitt's emails while spending the presidential campaign focused on Hillary Clinton's private email server.

Sen. Chuck Schumer (D-N.Y.) said Republicans had spent months talking about "emails, emails, emails."

Sen. Sheldon Whitehouse (D-R.I.) added that Majority Leader Mitch McConnell is asking for Republicans to engage in "willful blindness."

"The majority leader is asking his people to vote aye on a very, very difficult case," he said.

But McConnell quickly shut down any speculation that he would delay the vote, arguing that Democrats were trying to buy more time in an effort to sink Pruitt's nomination.

"The effort has been to delay the nominations that they have made controversial as long as possible," he said. "They want to have Pruitt out there over the recess so all their supporters can express themselves."

CNN
http://www.cnn.com/2017/02/17/politics/senate-epa-scott-pruitt/
Senate set to confirm EPA nominee Scott Pruitt over Democratic objections
By Ted Barrett 2/17/17, 11:19AM

Washington (CNN) The Senate is set Friday to confirm Scott Pruitt to head the Environmental Protection Agency, an agency Republicans desperately want to rein in after what they charge was eight years of dangerous activism under the Obama administration that hurt businesses, jobs and the economy.

Pruitt maybe just the person to do it. As Oklahoma attorney general he sued the agency many times in that pursuit and has vowed to curb the EPA's regulatory reach once in office.

"He's exceptionally qualified," said Senate Majority Leader Mitch McConnell. "He's dedicated to environmental protection. And, as someone with state government experience, he understands the real-world consequences of EPA actions and knows that balance is the key to making policies that are sustainable over the long-term."

The 12:30 p.m. Senate vote comes a day after a federal judge ruled the Oklahoma attorney general's office must turn over thousands of emails related to Pruitt's communications with fossil fuel companies, which have a large presence in his state.
Environmental activists and many Democrats wanted to delay the confirmation vote until those emails are released -- probably sometime next week -- but Republicans had no interest in a delay, especially after Democrats deliberately slow-walked the confirmation process for many of President Donald Trump's Cabinet.

"This transparency is essential to fair consideration of Pruitt's nomination," said Sen. Jeff Merkley, D-Oregon, a vocal Pruitt critic. "This is an egregious cover up that must not stand."

In a last fit of protest, Democrats kept the Senate in session overnight so they could make speeches about their concerns with Pruitt and his close ties to the oil and gas industry.

At a press conference Friday, Merkley repeated calls to delay the vote. He said the first batch of emails will be released on Tuesday, with a second batch released on February 26. They scanned documents will be transferred to the Center for Media and Democracy, then the Senate will get copies. So Democrats originally requesting the vote be postponed until March 3, but that request was denied.

Democrats are also looking to extend debate until February 27, when they return from recess, a motion that is expected to be defeated.

In an extraordinary lobbying blitz against Pruitt, the labor union that represents EPA employees urged their members to call senators and urge them to vote against Pruitt.

Pruitt is expected to be confirmed on a largely party line vote with just three senators crossing over. Democratic senators Heidi Heitkamp of North Dakota and Joe Manchin of West Virginia, who both the represent energy producing states, will vote for him. While moderate Republican Susan Collins of Maine will vote against.
The Senate is scheduled to begin a week long recess after votes Friday and will return to confirm more Cabinet nominees when they return.

AP
http://hosted.ap.org/dynamic/stories/U/US_SENATE_TRUMP_CABINET?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT
Senate on track to confirm Scott Pruitt as EPA administrator
By Michael Biesecker 2/17/17, 11:53AM

WASHINGTON (AP) -- Senate Republicans are poised to use their majority to confirm President Donald Trump's nominee to lead the Environmental Protection Agency, despite calls from Democrats to delay until requested emails are released.

A vote on Scott Pruitt's nomination is set for Friday afternoon. As part of a public records lawsuit, a state judge in Oklahoma on Thursday ordered Pruitt to release thousands of emails that he exchanged with oil and gas executives by next week. Pruitt, who is Oklahoma's attorney general, has refused to release the emails for more than two years.

Democrats boycotted a committee vote on Pruitt's nomination last month, citing his refusal to hand over the emails, and on Thursday called on Senate Majority Leader Mitch McConnell, R-Ky., to delay Pruitt's confirmation vote until the nominee turns over the thousands of requested emails from his time as attorney general.

Senate Democratic Leader Chuck Schumer of New York tried to draw a direct line between Pruitt's withheld emails and last year's demands from Trump and congressional Republicans during the presidential campaign.

"Emails! Remember emails?" Schumer asked on the Senate floor. "'We should get them out!' they said about Hillary Clinton. ... If they weren't worried about them, then why rush?"

Republican leaders, however, have shown no signs they intend to wait for the documents to be released before voting to confirm him.

"Scott Pruitt is the most thoroughly vetted nominee we've ever had to lead this agency," said Sen. John Barrasso, R-Wyo., chairman of the Senate Environment and Public Works Committee. "These boycotts and these delay tactics do nothing to protect our environment or the health of Americans."

So far, Sen. Susan Collins of Maine is the lone Republican saying she will vote against Pruitt. Her no vote could be canceled out by Democratic Sen. Joe Manchin of coal-dependent West Virginia, who is expected to cross party lines to support Trump's pick.

To dramatize their cause, Senate Democrats kept the Senate in session through the night with a series of speeches opposing his confirmation. Democrats were still marching to the floor at daybreak.

Trump has tapped some of the wealthiest Americans to serve in his Cabinet, and ethics reviews have slowed the confirmation process. So have Senate Democrats, who have mostly opposed all the nominees and forced hours of debate.

So far, the Senate has confirmed 13 out of 22 Trump Cabinet or Cabinet-level picks requiring confirmation.

Pruitt's nomination was strongly opposed by environmental groups and hundreds of former EPA employees, who predict he will roll back the agency's environmental enforcement efforts. During his Senate confirmation hearing last month, Pruitt said he disagreed with Trump's past statements that global warming is a hoax. However, Pruitt has previously cast doubt on the extensive body of scientific evidence showing that the planet is warming and man-made carbon emissions are to blame.

The 48-year-old Republican is closely aligned in his home state with oil and gas companies, whose executives have backed his political campaigns. Though Pruitt ran unopposed for a second term in 2014, public campaign finance reports show he raised more than $700,000, much of it from people in the energy and utility industries.

The Center for Media and Democracy filed multiple public records requests for Pruitt's emails to coal, oil and gas corporations going back to 2015. It sued him last week.

In a hearing Thursday, Oklahoma District Court Judge Aletia Haynes Timmons concluded "there really is no reasonable explanation" for why Pruitt's office hasn't complied with the request for his emails. Timmons ordered Pruitt to turn over the records by Tuesday and to comply with other open records requests by the group in 2015 and 2016 within 10 days.

Pruitt's office says about 400 documents were turned over on Feb. 10, but Timmons says more than 3,000 have been withheld.

As attorney general, Pruitt filed 14 lawsuits challenging EPA regulations. He joined a multistate lawsuit opposing the Obama administration's plan to limit planet-warming carbon emissions from coal-fired power plants. Pruitt also sued over the EPA's recent expansion of water bodies regulated under the Clean Water Act. It has been opposed by industries that would be forced to clean up polluted wastewater.

Politico
http://www.politico.com/story/2017/02/scott-pruitt-democrats-emails-oil-gas-235140
Democrats: GOP will 'rue the day' it pushed Pruitt vote for EPA
By Alex Guillen 2/17/17, 11:16AM

The Senate is set to confirm Oklahoma Attorney General Scott Pruitt as the head of the Environmental Protection Agency Friday, installing one of the agency's fiercest critics as the nation's leading environmental regulator just hours after an Oklahoma judge ordered the release of his email conversations with oil, gas and coal groups.

On the eve of his confirmation, the state judge ordered Pruitt's office release the potentially thousands of emails relating to the energy companies he will soon be regulating — but not until Tuesday, days after his confirmation vote.

Pruitt is among the group of President Donald Trump's most controversial nominees, including Education Secretary Betsy DeVos, Health and Human Services Secretary Tom Price and Attorney General Jeff Sessions. And like those others tapped by Trump, Pruitt's nomination is likely to narrowly pass in the Senate — with the help of a pair of Democrats.

The controversy around Pruitt's contacts with oil, natural gas and coal companies has given Democrats a rallying point to call for a delay of his final vote on the Senate floor, but which Majority Leader Mitch McConnell has insisted will take place Friday.

"This is an egregious cover-up that must not stand," said Sen. Jeff Merkley (D-Ore.), who is planning to ask for another 10 days of debate on Pruitt — a move that's almost certain to be rejected.

It's not clear whether Pruitt's unreleased emails contain any damaging surprises, particularly since his ties to the oil and gas industry are well known. But Democrats — already incensed that Pruitt had told them to go through the public records request process if they wanted his emails or other documents from his time as attorney general — were apoplectic Thursday night when GOP leaders said Pruitt's vote would take place Friday as scheduled.

Sen. Sheldon Whitehouse (D-R.I.) called the Pruitt vote "an epic ram job," and said Pruitt himself is "the tool and the minion of the fossil fuel industry."

Given Pruitt's industry ties, "I don't see any way his tenure at the Environmental Protection Agency ends well," Whitehouse said. "Time will tell and facts will [come] out, but I believe our Republican friends will rue the day that they had this nomination rammed through the Senate on the very day that the emails were being litigated in Oklahoma, in order to get ahead of any counterpressure."

Sen. Tom Carper (D-Del.), who led a boycott of Pruitt earlier this month before the Environment and Public Works Committee, warned that Republicans could be tying themselves to a time bomb.

"Sometime — a week from now, maybe days from now — my fear is that a number of members, especially on the other side, will have been put in a very bad position and asked to vote for a nominee that they otherwise may not have supported had they known," Carper told reporters shortly before the judge ordered the emails released.

Republican leadership, with 52 votes secured to approve Pruitt, including Democratic Sens. Joe Manchin of West Virginia and Heidi Heitkamp of North Dakota, have no plans to change course on confirming him.

"Despite Democrat efforts to delay his confirmation vote, we need to be responsible and move forward to confirm Attorney General Pruitt," Sen. Jim Inhofe (R-Okla.) said on the Senate floor shortly before the judge's order came down. "The longer we postpone this vote, the longer it is going to take for things to get done at the EPA, which will not help anyone."

Speaking on the floor Friday morning, McConnell said Democrats have engaged in "truly historic, unprecedented and harmful obstruction" over Pruitt and other candidates.

"Democrats' obstruction has just kept many of our nation's most critical agencies without a leader for too long — needlessly delaying the president from fully standing up this new administration," he said.

Whitehouse argued that prior to the election, Republicans "had a fixation with emails," particularly Hillary Clinton's, National Oceanic and Atmospheric Administration scientists' message on climate change and the Obama administration's EPA administrators.

"They were desperate for emails. But now, suddenly emails between a nominee's office and the major players in the industry that he will be regulating as EPA administrator, all they do is look at the ceiling tiles," he said.

The judge who ordered the emails released, Aletia Haynes Timmons, said the two-year delay in releasing emails sought by the left-leaning watchdog Center for Media and Democracy was an "abject failure to provide prompt and reasonable access to documents" by Pruitt's office. Pruitt's lawyers had argued that his office processes requests in the order they are filed, indicating at least a two-year backlog.

She ordered Pruitt's office turn over up to 2,500 emails that are in dispute in CMD's oldest request, and said any documents thought to be privileged be brought to her for review by close of business Tuesday.

Timmons also ordered Pruitt's office to release emails responsive to five more records requests filed by CMD before Pruitt was nominated to run EPA within 10 days.

"The Office of Attorney General remains committed to following the letter and spirit of the Open Records Act," Pruitt spokesman Lincoln Ferguson said in a statement. "In light of that, we are reviewing all of our options in order to ensure fairness to all requestors rather than elevating the importance of some requests over others."

Pruitt's coordination with oil and gas companies is already well known since a 2014 New York Times story that detailed his "secretive alliance" with fossil fuel interests to combat Obama administration rules. Pruitt defended that alliance as in the best interest of Oklahomans who live in one of the biggest oil- and gas-producing states.

He also belonged to groups, including the Republican Attorneys General Association, that received major contributions from energy interests, although Pruitt denied ever soliciting the donations himself.

Politico Pro
https://www.politicopro.com/energy/whiteboard/2017/02/democrats-move-to-delay-pruitt-vote-after-email-release-083913
Democrats move to delay Pruitt vote after email release
BY Alex Guillen 2/17/17, 10:39 AM

Senate Democrats plan to push for another 10 days of debate time on EPA nominee Scott Pruitt in an effort to delay today's nomination vote until after potentially thousands of his emails with oil and gas interests are released by the Oklahoma attorney general's office.

However, Republicans appear prepared to stop Democrats' delay effort in its tracks.

Sen. Jeff Merkley will make a motion ahead of Pruitt's planned vote early this afternoon seeking 248 more hours of debate on Pruitt. A state judge on Thursday said delays by Pruitt's office in answering records requests was an "abject failure" and ordered as many as 3,000 emails turned over by Tuesday, with more due within 10 days.

But it will take only a simple majority to override Merkley's motion, and Republicans are counting 52 votes in support of Pruitt, including two Democratic cross-overs.

Speaking on the floor this morning, Majority Leader Mitch McConnell said Democrats have engaged in "truly historic, unprecedented and harmful obstruction" over Pruitt and other candidates.

"Democrats' obstruction has just kept many of our nation's most critical agencies without a leader for too long — needlessly delaying the President from fully standing up this new administration," he said.

Reuters
http://www.reuters.com/article/us-usa-congress-epa-idUSKBN15W131'
Senate set to approve Trump's EPA pick as White House targets regulation
By Timothy Gardner 2/17/17

The U.S. Senate is expected to approve President Donald Trump's pick to run the Environmental Protection Agency on Friday over the objections of Democrats and green groups worried he will gut the agency, as the administration readies executive orders to ease regulation on drillers and miners.

Trump's nominee, Oklahoma Attorney General Scott Pruitt, is likely to pass the vote scheduled for midday with the support of nearly all the Republicans in the Republican-controlled Senate. The vote could take place earlier in the day.

Pruitt's nomination has been controversial in progressive circles: he sued the agency he intends to lead more than a dozen times while top prosecutor of his oil and gas producing state, and has expressed doubts about the science behind climate change. But many Republican lawmakers view him as a welcome change at the top of the EPA, an agency they say declared war on the coal industry during Barack Obama's presidency with its rules against carbon emissions.

Democratic Senator Ben Cardin said on Thursday he was concerned Pruitt's opposition to Obama's landmark Clean Power Plan to reduce emissions from coal and natural gas burning plants would hurt the domestic environment and international efforts to curb climate change.

"He has not been at all committed to the United States' programs on dealing with climate change let alone our international responsibilities to lead other countries to do what they need to do," Cardin said on the Senate floor.

Pruitt only needs 51 votes in the 100-member chamber to be approved. Nearly all 52 Republicans, except Senator Susan Collins, who announced her opposition on Wednesday, are expected to vote for him.

In addition, one Democrat, Heidi Heitkamp, said on Thursday she would vote for Pruitt despite her concerns about his support for renewable energy like wind and solar power, and for cutting emissions blamed for global warming. If there were a tie, Vice President Mike Pence would vote to break it.

If Pruitt is approved, Trump is expected to quickly issue two to five executive orders to reshape the EPA, sources said.

Trump has promised to slash environmental rules as a way to bolster the drilling and coal mining industries, but has vowed to do so without compromising air and water quality. The White House web site says lifting policies such as Obama's Climate Action Plan would help U.S. workers and raise wages.

Bloomberg BNA
http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=105762276&vname=dennotallissues&wsn=498799000&searchid=29386767&doctypeid=2&type=date&mode=doc&split=0&scm=1245&pg=0
GOP Moves Ahead on Pruitt Despite Oklahoma E-mail Release Ruling
By Brian Dabbs 2/17/17

A vast set of e-mails traded between Oklahoma Attorney General Scott Pruitt's office and a range of fossil fuel companies must be released in the coming days, an Oklahoma judge ruled late Feb. 16, Bob Nelon, an attorney representing the watchdog group that requested the release, told Bloomberg BNA.

Senate Democrats, the vast majority of which oppose Pruitt, are already using the ruling as firepower to continue to pressure a delay on the Feb. 17-scheduled confirmation vote for the Pruitt nomination as EPA administrator.

But Republicans rejected a postponement in the immediate wake of the ruling. "[Pruitt] has fully cooperated with our committee, and the Office of Government and Ethics has determined that he has complied with all laws," Mike Danylak, spokesman for Senate Environment and Public Works (EPW) Committee Chairman John Barrasso (R-Wy.), told Bloomberg BNA. "Democrats have stalled nominees across the Senate—the EPA needs an administrator. It is time to confirm him."

Oklahoma Ruling

The watchdog, named the Center for Media and Democracy (CMD), and the Oklahoma chapter of the American Civil Liberties Union, sued the attorney general's office roughly a week ago to require disclosure of years of e-mails before Pruitt's office and companies such as Murray Energy Corp. and Devon Energy Corp. CMD lodged the request in January 2015.

At the hearing Feb. 17, Judge Aletia Haynes Timmons called the delay an "abject failure," according to Nelon, who is attorney with the Hall Estill law firm.

"The judge repeatedly asked the [attorney general's] office to explain why it would take as long as it has to respond to the request, and the attorney general's lawyers couldn't respond. They basically said we take requests in order and we're busy," said Nelon. "That was not persuasive for the judge, and she kept saying 'I'm still waiting for an explanation for why this was taking so long.'" Timmons ordered the release by Feb. 21, Nelon said.

Sen. Ed Markey (D-Mass.) pounced on the judge's ruling. "Senate Majority Leader Mitch McConnell is forcing the Senate to vote tomorrow on Pruitt even though his e-mails won't be released until Tuesday. This is an egregious cover up that must not stand," Markey said in a statement.

Repeated Delay Calls

Earlier Feb. 17, EPW Ranking Member Tom Carper (D-Del.) and other committee Democrats said the release of the e-mails are necessary for the Senate to fully vet Pruitt.

"In my gut, I feel that these e-mails, the nature of these e-mails and the entities with whom they were sent and received, will help us understand the truth," Carper said. "That opportunity is going to be denied to us." Carper, Markey and other Democrats plan to denounce Pruitt on the Senate floor through the night of Feb. 16.

Meanwhile, thirty Senate Democrats, roughly two-thirds of the caucus, urged Pruitt Feb. 16 to recuse himself from issues that he litigated as attorney general.

Pruitt is still involved in several active lawsuits against the agency, including challenges to the Clean Water Rule, Clean Power Plan, ozone air quality standards, mercury standards and methane limits for the oil and natural gas industry.

Partisan Trade-Off

Despite the rancor, a pair of Senate Democrats from energy-producing states vowed to support Pruitt's confirmation as EPA administrator, those lawmakers announced Feb. 16 as they voted to advance the Pruitt nomination to a final vote.

The endorsements from Sens. Joe Manchin (D-W.Va.) and Heidi Heitkamp (D-N.D.), both up for re-election in 2018, bolster Pruitt's chances of confirmation by the Senate. Heitkamp pledged to hold Pruitt accountable.

A spokesman for McConnell, Don Stewart, said the preliminary vote justifies quick confirmation. "A bipartisan majority of the Senate voted today to move forward with the vote," he said. That vote, which passed 54-46, limited debate and teed up the confirmation vote.

Meanwhile, Sen. Susan Collins (R-Maine) made waves after announcing her opposition to Pruitt, pointing to her support for the Clean Power Plan and bedrock environmental statutes.

"I have significant concerns that Mr. Pruitt has actively opposed and sued EPA on numerous issues that are of great importance to the state of Maine," Collins said. "His actions leave me with considerable doubts about whether his vision for the EPA is consistent with the agency's critical mission to protect human health and the environment."

More Republican Opposition Unlikely

Two Republican senators indicated to Bloomberg BNA Feb. 17 they aren't yet fully committed to endorsing Pruitt.

Asked whether he is a "yes" vote on the nomination, Sen. Cory Gardner (R-Colo.) said he was "looking forward to the debate over the next couple hours." Sen. Tim Scott (R-S.C.), said he would "probably" support Pruitt, suggesting he doesn't "see any reason why not."

Collins said she did not know if other Republicans would oppose him. FreedomWorks, an influential conservative advocacy group, skewered Collins for her opposition.

Sen. Roy Blunt (R-Mo.), a member of the Republican leadership team in the Senate, told Bloomberg BNA Republicans will fall in line to confirm Pruitt. And Sen. John Barrasso (R-Wyo.) took to the Senate floor to encourage support.

"When the Environmental Protection Agency overstepped its mission, Attorney General Pruitt led the charge to rein in government overreach," said Barrasso. "Time after time, Scott Pruitt worked with other states to challenge the agency when it exceeded its authority. Under his leadership, this agency will respect the rule of law."

E&E News
http://www.eenews.net/energywire/2017/02/17/stories/1060050244
Pruitt's missing emails color Democrats' talk-a-thon
By Mike Lee and Joel Kirkland 2/17/17

OKLAHOMA CITY — The Oklahoma attorney general's office will have until Tuesday to turn over as many as 3,000 documents related to Attorney General Scott Pruitt's communications with oil, gas and coal groups, a state district judge ruled yesterday.

The legal action happened as Democrats vowed to talk all night, and they did, on the Republican attorney general's nomination to be President Trump's U.S. EPA administrator.

Yesterday, Democrats who boycotted an initial vote on Pruitt in the Senate Environment and Public Works Committee failed in their quixotic bid to delay a full Senate confirmation vote scheduled for this afternoon. Senate Majority Leader Mitch McConnell (R-Ky.) refused to put the brakes on the process, as Republicans teed up the partisan battle to get Pruitt through the door before the Senate's Presidents Day recess.

Democrats read letters from constituents and talked about missing emails, global warming, oil, ethanol standards and fearful EPA staffers.

Pruitt angered Democrats during the confirmation process when he said senators should file a state freedom-of-information (FOI) records request with the Oklahoma attorney general's office, which he controls, if they wanted to read his email communications with energy companies, conservative groups and lawyers hostile to EPA.

In press conferences and floor speeches during the day and into the night, Senate Democrats rapped Pruitt for his role as a coordinator of like-minded attorneys general and fossil fuel companies that repeatedly sued to overturn tougher EPA air and water rules under President Obama. Pruitt has his signature on more than a dozen lawsuits against the agency.

"Are you kidding me?" said Sen. Elizabeth Warren of Massachusetts. "If those emails show corruption, every senator should have that information before, not after, they put someone in charge of EPA."

In tone and focus, Pruitt's legal challenges against EPA reflected the priorities of right-leaning groups with close ties to the oil industry's Koch brothers and represented the interests of Oklahoma-based gas giant Devon Energy Corp. and politically powerful coal companies such as Peabody Energy Corp. The suits sought to stop the agency from enforcing limits on power plant emissions of carbon dioxide, a contributor to climate change, and mercury, a neurotoxin, and took aim at the Clean Water Act.

Pruitt's supporters point to his commitment to preserving state supremacy over environmental regulation and say he will rein in EPA's overreaching tendencies.

Senate Democrats, led by Sen. Tom Carper of Delaware, pinned much of their hope of stirring up opposition to Pruitt through the timely release of his office's emails with energy companies sought by the liberal-leaning Center for Media and Democracy, based in Madison, Wis.

Other than a 400-page batch of emails released last Friday, in response to the center's original unanswered request two years ago, the Senate isn't likely to see the fuller 3,000-page response to nine FOI requests for documents out of Pruitt's office before the confirmation vote.

Under the ruling, the attorney general's office will have to turn the material over to the Center for Media and Democracy or provide it to the court for inspection, Judge Aletia Haynes Timmons said at the end of a 25-minute hearing.

"The court rules there was an abject failure to provide prompt, reasonable access," Timmons said from the bench.

She ordered the state to turn over other documents, from separate requests in 2015 and 2016, within 10 days. The attorney general's office can appeal the ruling, attorneys in the case said.

Brady Henderson, an attorney for the Oklahoma Chapter of the American Civil Liberties Union, said the Senate should view the documents before voting on Pruitt's nomination. Henderson assisted other Oklahoma attorneys to represent the Center for Media and Democracy in the case.

The state's legal staff left the court building without speaking to reporters. But the attorney general's office said in a statement that it is "committed to following the letter and spirit" of the state's open records law. The statement also alluded to the office's first-come, first-served process for handling records requests, a process issue that has become a focal point of the case.

"In light of that, we are reviewing all of our options in order to ensure fairness to all requestors rather than elevating the importance of some requests over others," said the AG's office.

An unusual process

The Wisconsin group has said the unusual process of handling government records requests has been a handy tool for delaying releases. The Center for Media and Democracy made its first documents request in January 2015, along with eight new requests since then, for emails and documents dating to 2013.

Pruitt's staff have continued to say they answer open records requests in the order in which they're received and that they've been overwhelmed with requests since he was nominated to lead EPA (*Energywire*, Dec. 20, 2016).

Pruitt has been Oklahoma's attorney general since 2011 and has forged close ties with energy companies. *The New York Times* reported in 2014 that he had pulled language directly from letters and legal briefs written by industry lawyers as part of his campaign to challenge federal regulations (*Greenwire*, Dec. 8, 2014).

Like most states, Oklahoma allows government agencies to withhold some documents from the public in narrowly tailored circumstances, but lawyers for the attorney general's office couldn't immediately explain why the documents hadn't been produced for more than two years.

At one point during the 25-minute hearing, Timmons interrupted Assistant Attorney General Jeb Joseph and read aloud from the state open-records statute, which says, "The people are invested with the inherent right to know and be fully informed about their government."

Among the missing documents were letters and emails that the state had previously provided to *The New York Times*, which the center said was evidence that the state withheld material in its response.

E&E News
http://www.eenews.net/climatewire/2017/02/17/stories/1060050246
Dems rail all night against Pruitt; vote still set for 1 p.m.
By Niina Heikkinen and Kavya Balaraman 2/17/17

Democrats staged an all-night fight in the Senate in a final play to delay a vote on the nominee they say is unfit to lead U.S. EPA.

Scott Pruitt, the Republican attorney general of Oklahoma, has been a controversial pick to lead the agency since his selection in December. In the days leading up to the full Senate vote on his nomination, Pruitt's opponents have stepped up efforts to stall or even derail it. In the final hours before his expected confirmation today, Democrats continued to press their case that Pruitt's record disqualified him from the top environmental enforcement job.

One of their main concerns: that Pruitt is not committed to EPA's goal of protecting the environment and public health.

Pruitt's statements through his confirmation that though humans affect climate change in "some manner," the science is still "unsettled" also didn't sit well with Democratic senators. Several suggested that Pruitt's rejection of climate science and attacks on environmental regulations were a direct result of the "dark money" he had received from fossil fuel donors such as Murray Energy Corp.

Sen. Sheldon Whitehouse (D-R.I.) displayed a diagram he called "The Denial Beast," which marked out the reach of the fossil fuel industry in perpetuating climate denial. He called it a "visual description of the complex matrix of fossil fuel interests that [Pruitt] has been so closely involved with."

"This is a very, very significant matrix of fossil fuel interests, and that is what Scott Pruitt has been serving, not the public and not his duties," he said.

Whitehouse and other Democrats called for a delay in the vote on Pruitt until they had a chance to carefully review records of Pruitt's communication with the fossil fuel industry. The correspondence was the subject of a lawsuit brought against the attorney general by the Center for Media and Democracy. Lawmakers noted that emailed correspondence would be available in a matter of days following a recent court ruling.

"Maybe this is just an empty concern. But over and over and over again, emails have been really important at breaking investigations open, and certainly our friends on the other side, until the election in November, had a fascination with emails," said Whitehouse. "Now, suddenly, everybody is looking at the ceiling, examining the ceiling tiles, when it's time to wonder about these emails."

Yesterday afternoon, an Oklahoma judge ruled that Pruitt would have to produce the first batch of roughly 2,500 outstanding emails that the Oklahoma attorney general had not sent in response to nine outstanding public records requests submitted by the Center for Media and Democracy (*Greenwire* Feb. 16; *Climatewire*, Feb. 15).

These first emails will include correspondence between Pruitt and fossil fuel donors, such as Devon Energy Corp., Peabody Energy Corp. and the American Petroleum Institute, to be delivered by Tuesday. The next batch, slated to come out in 10 days, will include email correspondence with the American Legislative Exchange Council, or ALEC, which supports partisan policy, according to Whitehouse.

Following the court ruling, Senate Republicans continued to deny calls to delay the vote for Pruitt, scheduled for 1 p.m. today.

"Now, that smells to the high heavens. The American people have the right to know what's in those emails," said Sen. Ed Markey (D-Mass.). He dubbed the GOP the "Gas and Oil Party."

Democrats noted that failure to analyze the emails prior to a vote could come back to bite Republicans, who would have to answer to their voters if the emails do reveal evidence of illegal activity.

Markey compared the concerns about Pruitt to those surrounding President Reagan's controversial picks to lead the Department of the Interior and EPA — James Watt and Anne Gorsuch Burford, respectively. Both Watt and Burford, the mother of current Supreme Court nominee Judge Neil Gorsuch, resigned from their posts.

Sen. Cory Booker (D-N.J.) said it is unfortunate that Republicans have chosen not allow a delay in the vote.

"We are finally getting some transparency after stonewalling for week after week and month after month. Now we are going to see what kind of potential collusion went on," he said.

Dems: Questioning climate change a disqualifier

Beginning yesterday afternoon and continuing through the night, Democrats came to the Senate floor armed with charts and anecdotes from Pruitt's record as Oklahoma attorney general to argue against his appointment.

Pruitt has filed more than a dozen legal cases against EPA regulations, including those restricting mercury pollution, smog and carbon dioxide emissions. Many cited his stance on climate change as an important factor in influencing their vote, especially since it has affected their own states.

From threatened blue crab fisheries in Maryland to warming temperatures hurting maple syrup production in New England, senators outlined how climate change is already affecting natural resources, wildlife and infrastructure across the country.

"As a result of climate change, we have seen 40 percent reduction in the moose population," said Sen. Jeanne Shaheen (D) of New Hampshire. "Because of milder winters, ticks don't die off; they multiply on moose, they ravage it and eventually kill."

Sen. Bill Nelson (D-Fla.) called his state "ground zero" for sea-level rise, citing measurements in South Florida over the past four decades that have shown a 5- to 8-inch increase in sea levels.

"Oh, and by the way, where is three-quarters of the population in Florida? It's along the coast," he said.

Sen. Al Franken (D-Minn.) pointed out that while Pruitt did not follow Trump's example in calling climate change a "hoax," his denial was more "subtle" and "intentionally deceptive."

"If we look at Mr. Pruitt's record, it shows that he has been steadfastly against action on climate change — including a suit to block the first requirements of power plants to reduce their carbon emissions," he said.

He also criticized Pruitt's implication that imposing regulations on the environment would reduce employment and economic prosperity, saying that Minnesota has managed to balance both: The state adopted a renewable energy standard in 2007, and the clean energy economy currently employs around 54,000 of its residents.

Sen. Richard Blumenthal (D-Conn.) summed up his opposition to Pruitt with one sentence.

"We have enough foxes guarding henhouses as it is in this administration," he said.

He went on to criticize Pruitt's lack of transparency, in terms of contributions from the energy industry, and his refusal to accept the scientific evidence of climate change.

"I'm not here to argue climate change. I'm here to argue that Scott Pruitt is unqualified to fight climate change because he denies it as a problem, and he denies the mission and purpose of the EPA," he said.

GOP: Stop the 'blind obstruction'

Sen. Amy Klobuchar (D-Minn.) said that she disagreed with Pruitt's claim that the "debate" on climate change is "far from settled," citing national climate assessments as well as the impacts that shifting weather patterns are having on the Midwest.

"We may not have tsunamis, but in the Midwest, what we see is major unpredictable weather, which is just as dangerous. We've seen the devastating impact of natural disasters like Hurricane Matthew, and we've seen flooding from Cedar Rapids [Iowa] to Duluth. We now know the risk of climate change to Minnesota, to the country and to our planet," she said, adding that she also opposed Pruitt's nomination on the basis of his record on the renewable fuel standard.

Sen. Elizabeth Warren (D-Mass.) spent nearly an hour on the floor issuing scorching criticisms of Pruitt, including of his "flippant, evasive and outright misleading" responses during his confirmation hearing.

"Scott Pruitt has the nerve to say that the cause of climate change is 'subject to debate.' More debate? We had that debate — in the 1980s, in the 1990s, in the 2000s. Maybe Mr. Pruitt missed it, buried under a pile of Big Oil money," she said.

Meanwhile, Republican senators scolded their Democratic counterparts for what they described as "blind obstruction" of Pruitt's confirmation process.

"These boycotts and these delay tactics do nothing to protect our environment or the health of Americans. Democrats are engaged in nothing more than political theater. They are wasting time while the Environmental Protection Agency needs a new administrator," said Sen. John Barrasso (R-Wyo.), chairman of the Environment and Public Works Committee.

Barrasso described Pruitt as the "right man for the job" to lead EPA.

"I would plead with our colleagues across the aisle: Stop the dysfunction," said Sen. John Cornyn (R-Texas). "Instead, let us fight for the people we represent and find common ground where we can and put forward legislation that represents them well."

Politico Pro
https://www.politicopro.com/tipsheets/morning-energy/2017/02/seismic-shift-to-hit-epa-with-pruitt-confirmation-021443
Seismic shift to hit EPA with Pruitt confirmation
By Anthony Adragna 2/17/17. 5:46AM

MR. PRUITT GOES TO EPA: Scott Pruitt is set to be confirmed today as the 14th EPA administrator, marking a massive change in the agency's direction and ushering in a new era of regulatory rollbacks. A confirmation vote is expected around 1:00 p.m. — over howls of protest from Democrats clamoring to see copies of emails Pruitt and his staff exchanged with fossil fuel lobbyists, Republican donors and others while he was Oklahoma's attorney general. A state judge Thursday afternoon ordered Pruitt to cough up as many as 3,000 emails by Tuesday in response to a liberal watchdog's longstanding public records request. As Democrats planned to hold the Senate floor all night speaking against the nomination, top Environment and Public Works Committee Democrat Tom Carper said the court's ruling "should finally give my Republican colleagues pause" and that it would "wholly irresponsible to vote on this nominee this week knowing that we don't have the full picture" of potential conflicts of interest Pruitt would bring to the job.

Anyone who has been paying attention to President Donald Trump's campaign or transition knows what to expect from Pruitt: A major reduction in EPA's emphasis on federal oversight in favor of giving more control to the states; a severely reduced, if not reversed, focus on climate change and other clean air and water initiatives; and long-term moves to decrease funding and staff.

Welcome, boss: Meanwhile, EPA employees are already responding with unhappiness about the new jefe. A few dozen current employees publicly protested his nomination, and 773 former EPA employees have signed onto a letter opposing him. Unions organized drives for workers to call and urge their senators to vote against him, a first, according to the New York Times. And at least a few EPA employees have started using an encrypted app in case they need a private way to communicate, drawing ire from House Republicans who say they are skirting recordkeeping laws.

What's next: It has long been expected that once Pruitt is installed, Trump will sign one or more executive orders directing the agency to roll back climate change work, limit its enforcement powers or otherwise apply a lighter touch to regulation. Pruitt has a major to-do list, including shifting gear in the dozens of ongoing lawsuits challenging EPA rules and actions, starting the years-long process to repeal regulations like the Clean Power Plan and searching for the dozens of political staff required to operate EPA. Trump leaves for South Carolina this morning and Vice President Mike Pence heads to Europe in the morning as well. ME hears EPA is preparing for a Tuesday swearing in for Pruitt, but plans remain up in the air.

Sen. Jim Inhofe **(R-Okla.),** a close Pruitt ally, said he and Pruitt have had many discussions in the past about the challenges EPA presents to the agriculture and energy industries. "But not since he's gotten this close, I don't think he's thinking about it now," Inhofe told ME Thursday evening, explaining that he had not been given a heads up on what Pruitt's first order of business would be. "He wants to get properly staffed, and then watch him roll."

LA Times
http://www.latimes.com/politics/la-na-pol-trump-epa-pruitt-20180217-story.html
After bruising confirmation battle, EPA nominee Scott Pruitt expected to clear Senate vote
By Evan Halper 2/17/17

Donald Trump's embattled nominee to run the Environmental Protection Agency is expected to get final approval from the Senate on Friday after withstanding a prolonged assault from environmentalists who warn he is a menace to clean air and water.

The likely approval of Oklahoma Atty. Gen. Scott Pruitt for the post exposed an internal rift in the Democratic Party as two senators from coal country signaled they would give their support to the longtime ally of the Koch brothers and unabashed climate-change skeptic.

The Pruitt nomination has been one of the most bitterly fought since Trump took office last month, pitting a crusader for fossil fuel interests who has sued the agency he will take over 14 times against an environmental movement that is scrambling to preserve what it can of actions President Obama took to curb climate change and protect natural resources.

Pruitt will be inheriting an agency of 15,000 employees where much of the workforce will likely be openly hostile to his agenda. Nearly 800 former EPA employees signed a letter imploring lawmakers to reject his nomination, and many current employees joined the ranks of activists demonstrating against him at rallies and deluging the switchboards of congressional offices.

He distinguished himself in Oklahoma by battling many of the signature environmental protections implemented by Obama, arguing they were a federal intrusion on the states. He does not accept the mainstream scientific consensus on climate change, and has been described by the National Resources Defense Council and the Environmental Working Group as the worst nominee selected to run the EPA in history.

Washington Times
http://www.washingtontimes.com/news/2017/feb/17/senate-dems-hold-floor-demand-delay-epa-nominee-sc/
Senate Dems hold floor, demand delay on EPA nominee Scott Pruitt until his emails are released
By Ben Wolfgang 2/17/17

Holding the Senate floor for a talk-a-thon that will last into Friday afternoon, Democrats are demanding that the chamber delay its planned vote on Scott Pruitt's nomination to head the EPA, saying lawmakers can afford to wait a few days and learn more about his ties to the oil and gas industry.

Mr. Pruitt, Oklahoma's attorney general, was ordered by an Oklahoma judge late Thursday to turn over nearly 3,000 emails related to his communications with the oil and gas sector. The nominee has until Tuesday to turn over those documents, which Democrats argue will show that Mr. Pruitt is in the pocket of the fossil fuel industry and is unfit to lead the EPA.

Sen, Richard Durbin, Illinois Democrat, took to the Senate floor about 8:30 a.m. Friday and said Republicans who vote in favor of Mr. Pruitt will be sorry after they see the emails next week.

"Be careful about the vote you cast at 1 o'clock today because by 1 o'clock on Tuesday or Wednesday in the following week you may regret that vote," he said. "The Republican senators and Mitch McConnell said we don't want to read [the emails]. We don't care what's in them. … Scott Pruitt can wait 10 days and we can wait for the truth, can't we?"

Senate Majority Leader Mitch McConnell's office said Thursday night the final vote on Mr. Pruitt will go ahead Friday afternoon as scheduled, despite the Oklahoma judge's ruling.

Democrats held the Senate floor all night Thursday and into the morning Friday to protest that decision, though their efforts likely will fail.

"It would be wholly irresponsible to vote on this nominee this week knowing that we don't have the full picture," Sen. Tom Carper, Delaware Democrat and his party's ranking member on the Senate Environment and Public Works Committee, said Thursday night. "If we are going to do the job that the American people sent us here to do, we must carefully review this new information in order to better evaluate just what kind of EPA Administrator Scott Pruitt would be."

In raising concerns about what could be in the emails, Democrats point to a 2011 letter sent by Mr. Pruitt to the EPA, raising questions about the agency's conclusions regarding harmful emissions from natural gas wells. The majority of the language in the letter was lifted directly from documents written by Devon Energy, an Oklahoma oil and gas company.

During testimony before a Senate panel last month, Mr. Pruitt didn't deny using the company's language, but said it was his job as Oklahoma attorney general to advocate on behalf of his state's interests, including the interests of major industries in the state like the oil and gas sector.

Democrats have blasted Mr. Pruitt's logic in that particular situation and believe the looming email trove will show other examples of collusion between the two sides.

Despite the uproar, Mr. Pruitt almost surely will be approved in Friday's vote. While one Republican, Sen. Susan Collins of Maine, has said she'll vote against him, two Democrats will back Mr. Pruitt.

Sen. Joe Manchin of West Virginia and Sen. Heidi Heitkamp of North Dakota have said they'll vote in favor of the nomination, likely ensuring Mr. Pruitt's approval, unless Republican leaders change course and delay the vote.

Huffington Post
http://www.huffingtonpost.com/entry/elizabeth-warren-scott-pruitt_us_58a6881ae4b07602ad53435c
Sen. Elizabeth Warren Slams Pruitt: 'Big Polluters Have Their Fantasy EPA Nominee'
By Nick Visser 2/17/17

Sen. Elizabeth Warren (D-Mass.) denounced President Donald Trump's nominee to head the Environmental Protection Agency, Scott Pruitt, just hours before the Senate was scheduled to vote on his approval.

Warren spent nearly an hour on the floor Thursday evening to voice her "strong opposition" to Pruitt, the Oklahoma attorney general who has sued the EPA 13 times. The excoriation came hours after a state judge ordered Pruitt's office to release more than 2,500 documents and emails about his communications with energy companies during his tenure.

"I rise today to express my strong opposition to President Trump's nomination of Scott Pruitt," Warren said at the outset of her speech. "The reason is simple: In a choice between corporate polluters and people who want to breathe air and drink water, Scott Pruitt sides with the corporate polluters. He has no business as head of the EPA."

The Senate is scheduled to vote on Pruitt's nomination Friday afternoon, just days before the documents and emails are made public. An incredulous Warren demanded senators be given access to the communications to make an informed decision on the nomination and called for a bipartisan effort to ensure "access to clean air and clean water [as] a basic right for all Americans."

"Their plan is to jam this nomination through tomorrow, four days before the emails are slated to become public. Are you kidding me?" she asked. "If those emails show corruption, every senator should have that information before, not after, they vote to put someone in charge of the EPA who may be there for years."

She continued:

Clean air and clean water used to be a nonpartisan issue. In earlier decades, leaders in both parties had the courage to say no to suffocating smog and towering plumes of toxic chemicals poisoning our children. Republicans and Democrats came together, and together they declared that access to clean air and clean water is a basic right for all Americans We passed the Clean Air Act, we passed the Clean Water Act ... we did those things together.

Many leading Democrats have also expressed outrage over the vote.

Pruitt's nomination has prompted widespread fear among environmentalists and staff currently at the EPA. Since 2002, Pruitt has received more than $300,000 in contributions from the fossil fuel industry, and on his LinkedIn page, he lists himself as "a leading advocate against the EPA's activist agenda."

This week, nearly 800 former agency staffers signed a letter in protest of his nomination. The letter called Pruitt "a close ally of the oil and gas industry [who] has made a career of suing EPA and attacking the idea of federal action to reduce pollution — while simultaneously failing to enforce environmental laws in his own state and shutting down the Environmental Protection Unit in the Oklahoma Attorney General's Office."

Warren echoed these fears and what she called Pruitt's continual support for "his friends in the oil industry ... to heck with everybody else."

"Those big polluters have their fantasy EPA nominee, someone who will work on their side and not on the side of the American people."

The Hill
http://thehill.com/policy/energy-environment/320041-epa-employees-call-on-senators-to-reject-trump-epa-pick
EPA Employees call on senators to reject Trump EPA pick: report
By Max Greenwood 2/16/17, 9:19PM

In an unusual show of opposition for federal employees, Environmental Protection Agency workers have been calling their senators to urge them to reject President Trump's pick to lead their agency, The New York Times reported Thursday.

Scott Pruitt, the attorney general of Oklahoma, has sued the EPA more than a dozen times in his current post, alarming many of the agency's employees, who fear that, if confirmed, he will work to dismantle its work.

On the campaign trail, Trump railed against the environmental agency, calling it a "disgrace" and vowing to undo federal environmental rules and regulations.

"Mr. Pruitt's background speaks for itself, and it comes on top of what the president wants to do to EPA," John O'Grady, a longtime EPA employee and president of the union representing its workers, told The Times.

Still, the effort to rally the opposition of enough senators to reject Pruitt during his confirmation vote on Friday is a longshot. Only one GOP senator, Susan Collins (Maine), has said she will vote against Trump's EPA pick. And Democratic Sens. Joe Manchin (W.V.) and Heidi Heitkamp (N.D.) have both said they will support Pruitt.

Even with the expected absence of Sen. John McCain (R-Ariz.), who is set to attend a security conference in Germany on Friday, Pruitt will likely win the support of 52 senators, securing confirmation.

It is unusual for civil servants, such as EPA employees, to so actively oppose a Cabinet appointee. What is more, The Times reports, the move signifies that Pruitt will likely face strong pushback from his own employees once he takes office.

"What it means is that it's going to be a blood bath when Pruitt gets in there," former New Jersey Gov. and past EPA administrator Christine Todd Whitman (R) told The Times.

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Message

From: Bowman, Liz [Bowman.Liz@epa.gov]
Sent: 3/31/2017 1:07:22 AM
To: Schwab, Justin [schwab.justin@epa.gov]
CC: Freire, JP [Freire.JP@epa.gov]
Subject: Re: For Legal Review: RMP News Release

Thank you

Sent from my iPhone

On Mar 30, 2017, at 7:34 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:

> Hello Liz - I think I have a recusal issue on this one but have passed it along to the right folks for review. Please let me know if you don't hear back and it's nearing go time and I will make sure you get the right review.
>
> Sent from my iPhone
>
> On Mar 30, 2017, at 7:30 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:
>
> Hi Justin – Attorney Client / Ex. 5
>
> Attorney Client / Ex. 5
>
> Attorney Client / Ex. 5 Thank you – Liz (202-564-3293 - office)

Attorney Client/DP Ex. 5

Attorney Client/DP Ex. 5

Attorney Client/DP Ex. 5

Message

From: U.S. EPA Media Relations [noreply-subscriptions@epa.gov]
Sent: 3/26/2017 9:30:26 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: EPA Administrator Pruitt Previews President Trump's Executive Order on Energy Independence

CONTACT:
press@epa.gov

FOR IMMEDIATE RELEASE
March 26, 2017

EPA Administrator Pruitt Previews President Trump's Executive Order on Energy Independence

"We have made tremendous progress on our environment, we can be both pro-jobs and pro-environment."

WASHINGTON – During an interview on "This Week with George Stephanopoulos," U.S. EPA Administrator Scott Pruitt previewed the President's upcoming executive order on the American Energy Independence. Administrator Pruitt laid out the core message of the pending action, saying that job growth and a healthy environment aren't at odds.

"George, the President is keeping his promise to the American people this week with respect to the Executive Order coming down on Tuesday--. the Energy Independence Executive Order. We need a pro-growth and pro-environment approach for how we do regulations in this country. For too long, we have accepted a narrative that if you're pro-growth, pro-jobs, you're anti-environment. That's not where we have been as a country. We have made tremendous progress on our environment, we can be both pro-jobs and pro-environment. The Executive Order will address the past administration's effort to kill jobs throughout the country through the Clean Power Plan."

Watch the interview here: http://abcnews.go.com/topics/news/whitehouse/scott-pruitt.htm

R042

If you would rather not receive future communications from Environmental Protection Agency, let us know by clicking here.
Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460 United States

Message

From: Fotouhi, David [fotouhi.david@epa.gov]
Sent: 4/14/2017 9:43:46 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: FW: Request for an Appointment-April 25 or 26

Flag: Flag for follow up

Please see below (not urgent). Could we discuss on Monday?

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Tammy Dennee [mailto:tammy.dennee@oregondairyfarmers.org]
Sent: Friday, April 14, 2017 5:40 PM
To: Fotouhi, David <fotouhi.david@epa.gov>
Subject: Re: Request for an Appointment-April 25 or 26

David,

Could we meet with you at 1:00 pm on the 25th? Our issues would include the recent CIRCLA/EPCRA reversal (air quality issues for Dairy), and WOTUS. Mostly, we would like to establish relationship with you and your colleagues as the new Administrator gets settled together with the new Administration.

I will look forward to your confirmation.

Easter blessings,

Tammy L. Dennee, CMP, CAE
LEGISLATIVE DIRECTOR

OREGON DAIRY FARMERS ASSOCIATION
1320 Capitol Street NE, Suite 160
Salem, OR 97301

Phone: (971) 599-5269
Fax: (541) 647-6487
Mobile: (541) 980-6887
E-Mail: tammy.dennee@oregondairyfarmers.org

www.oregondairyfarmers.org

"Proudly Serving Oregon's Dairy Farmers Since 1892"

On Fri, Apr 14, 2017 at 2:24 PM, Fotouhi, David <fotouhi.david@epa.gov> wrote:

Tammy:

I would be glad to meet with you and your team. It might be helpful if you could provide me with a few details regarding the topics that you would like to discuss in order for me to ensure that we are joined by the right people. Regarding times, the afternoon of Tuesday the 25th is relatively open for me; let me know if a time in that window would work for you.

Best regards,

David

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

-----Original Message-----
From: Tammy Dennee [mailto:tammy.dennee@oregondairyfarmers.org]
Sent: Thursday, April 13, 2017 12:32 PM
To: Fotouhi, David <fotouhi.david@epa.gov>
Subject: Request for an Appointment-April 25 or 26

David,
My name is Tammy Dennee. I serve as the Legislative Director for the Oregon Dairy Farmers Association. I will be bringing two of our board member/dairy farmers to D.C the week of April 24. Would you have time to meet with our small team?

Thank you, in advance, for your consideration.

Tammy Dennee, CMP, CAE- Legislative Director Oregon Dairy Farmers Association
541.980.6887
Tammy.dennee@oregondairyfarmers.org

Message

From: Minoli, Kevin [Minoli.Kevin@epa.gov]
Sent: 3/14/2017 10:03:36 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: FW: Draft energy EO FR notices
Attachments: Deliberative Process / Attorney-Client / Ex. 5

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

From: Schmidt, Lorie
Sent: Tuesday, March 07, 2017 11:48 AM
To: Schnare, David <schnare.david@epa.gov>
Cc: Packard, Elise <Packard.Elise@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>
Subject: Draft energy EO FR notices

David

Kevin asked me to send you these two draft FR notices to Deliberative Process / Attorney-Client / Ex. 5

Deliberative Process / Attorney-Client / Ex. 5

Sarah Dunham has reviewed these.

Let us know if you need something else.

Lorie

Lorie Schmidt
Associate General Counsel for Air and Radiation
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

Message

From: Hupp, Sydney [hupp.sydney@epa.gov]
Sent: 4/3/2017 10:05:49 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]; Wagner, Kenneth [wagner.kenneth@epa.gov]; Hupp, Millan [hupp.millan@epa.gov]; Hale, Michelle [hale.michelle@epa.gov]; Willis, Sharnett [Willis.Sharnett@epa.gov]; Martin, JohnC [Martin.JohnC@epa.gov]; Bowman, Liz [Bowman.Liz@epa.gov]; Ferguson, Lincoln [ferguson.lincoln@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]; Bennett, Tate [Bennett.Tate@epa.gov]; Freire, JP [Freire.JP@epa.gov]; Konkus, John [konkus.john@epa.gov]; Munoz, Charles [munoz.charles@epa.gov]; Reeder, John [Reeder.John@epa.gov]; Flynn, Mike [Flynn.Mike@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Brown, Byron [brown.byron@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Perrotta, Pasquale [Perrotta.Pasquale@epa.gov]; Woodward, Cheryl [Woodward.Cheryl@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Richardson, RobinH [Richardson.RobinH@epa.gov]; Gray, Doris [Gray.Doris@epa.gov]
Subject: April 4-9, 2017 | Line x Line
Attachments: April 4-9, 2017 Line x Line .docx

Sydney Hupp
Office of the Administrator- Scheduling
202.816.1659

Message

From: Cozad, David [Cozad.David@epa.gov]
Sent: 1/30/2017 5:43:58 PM
To: Schwab, Justin [schwab.justin@epa.gov]
CC: Shinkman, Susan [Shinkman.Susan@epa.gov]
Subject: Need 15 minutes
Attachments: Attorney Client / Ex. 5

Hi Justin,

Hope you had a good weekend.

Wondering if you have 15-20 minutes this afternoon to briefly discuss two enforcement actions that are ready to go. Attorney Client / Ex. 5 Attorney Client / Ex. 5 I will make myself available at any time that works for you.

Attorney Client / Ex. 5

Attorney Client / Ex. 5 See attached

Thanks,

Dave

Message

From: Dravis, Samantha [dravis.samantha@epa.gov]
Sent: 3/26/2017 8:44:16 PM
To: Greenwalt, Sarah [greenwalt.sarah@epa.gov]
CC: Schwab, Justin [schwab.justin@epa.gov]
Subject: RE: Waters of the US activity

Let me see if Robin can schedule us some time. I just think we want to have a really clear understanding of what kind of analysis we are doing and if it is complete

---

From: Greenwalt, Sarah
Sent: Sunday, March 26, 2017 4:37 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Schwab, Justin <schwab.justin@epa.gov>
Subject: Re: Waters of the US activity

Of course. Is there a time that works best for you?

On Mar 26, 2017, at 4:29 PM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

> Talk tmrw?
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** "McGartland, Al" <McGartland.Al@epa.gov>
> > **Date:** March 26, 2017 at 4:28:06 PM EDT
> > **To:** "Dravis, Samantha" <dravis.samantha@epa.gov>
> > **Cc:** "Nickerson, William" <Nickerson.William@epa.gov>
> > **Subject: Waters of the US activity**
> >
> > Hi Samantha.
> >
> > As promised, last Friday, the Office of Water provided a short description of the analysis they would do for the WOTUS rulemaking Deliberative Process / Ex. 5
> >
> > Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I think I mentioned I assigned this to two of my best people. One of them, Matt Massey, was on the phone with me.

Message

From: Minoli, Kevin [Minoli.Kevin@epa.gov]
Sent: 3/14/2017 10:02:45 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject:
Attachments: Attorney Client / Ex. 5

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

From: Schmidt, Lorie
Sent: Sunday, March 05, 2017 4:49 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>
Cc: Jordan, Scott <Jordan.Scott@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>
Subject: CPP and CPS NOI

Kevin

Attorney Client/DP Ex. 5

Thanks to Scott and Elliott for making themselves available this week-end on no notice to draft and edit this.

Lorie

Message

From: Minoli, Kevin [Minoli.Kevin@epa.gov]
Sent: 2/28/2017 12:18:42 AM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: Attorney Client / Ex. 5

Attorney Client / Ex. 5

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Feb 27, 2017, at 7:15 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:

Attorney Client / Ex. 5

Sent from my iPhone

On Feb 27, 2017, at 7:13 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

See below. Attorney Client / Ex. 5

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Begin forwarded message:

From: "Wendelowski, Karyn" <wendelowski.karyn@epa.gov>
Date: February 27, 2017 at 7:06:59 PM EST
To: "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>
Cc: "Siciliano, CarolAnn" <Siciliano.CarolAnn@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Simons, Andrew" <Simons.Andrew@epa.gov>, "Prabhu, Aditi" <Prabhu.Aditi@epa.gov>, "Packard, Elise" <Packard.Elise@epa.gov>, "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>
Subject: Attorney Client / Ex. 5

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Karyn

From: Minoli, Kevin
Sent: Monday, February 27, 2017 6:36 PM
To: Neugeboren, Steven
Cc: Siciliano, CarolAnn; Wehling, Carrie; Wendelowski, Karyn; Simons, Andrew; Prabhu, Aditi; Packard, Elise; Shapiro, Mike; Campbell, Ann
Subject: RE: Monday night version of the FR Notice

Got it. Thanks!

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

From: Neugeboren, Steven
Sent: Monday, February 27, 2017 6:35 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>
Cc: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn

<wendelowski.karyn@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Attorney Client / Ex. 5

Attorney Client / Ex. 5

Sent from my iPhone

Steven Neugeboren
Associate General Counsel
United States Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington DC. 20460
202-564-5488

On Feb 27, 2017, at 6:21 PM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:

All- Attorney Client / Ex. 5

Attorney Client / Ex. 5

Carol Ann- Attorney Client / Ex. 5

Karyn- Attorney Client / Ex. 5

Attorney Client / Ex. 5

Thanks again for all of the help. Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Attorney Client / Ex. 5

Message

From: Bowman, Liz [Bowman.Liz@epa.gov]
Sent: 4/20/2017 5:25:15 PM
To: Schwab, Justin [schwab.justin@epa.gov]
CC: Dravis, Samantha [dravis.samantha@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]
Subject: RE: Media Request re: dental amalgam rule

Thank you

From: Schwab, Justin
Sent: Thursday, April 20, 2017 1:11 PM
To: Bowman, Liz <Bowman.Liz@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Subject: Re: Media Request re: dental amalgam rule

Attorney Client/DP/AWP Ex. 5

Sent from my iPhone

On Apr 20, 2017, at 1:05 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

Attorney Client/DP Ex. 5

From: Dravis, Samantha
Sent: Thursday, April 20, 2017 1:02 PM
To: Bowman, Liz <Bowman.Liz@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Subject: RE: Media Request re: dental amalgam rule

Attorney Client/DP Ex. 5

From: Bowman, Liz
Sent: Thursday, April 20, 2017 1:01 PM
To: Fotouhi, David <fotouhi.david@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Media Request re: dental amalgam rule

Hi Justin/David – **Attorney Client/DP Ex. 5**

Attorney Client/DP Ex. 5

From: Saiyid, Amena [mailto:ASaiyid@bna.com]
Sent: Thursday, April 20, 2017 11:55 AM
To: Bowman, Liz <Bowman.Liz@epa.gov>
Subject: Trying in vain to get a response from EPA on the status of the dental amalgam rule that wasn't published because the new administration wanted to review it [WARNING: DKIM validation failed]

Good Morning or Afternoon Liz,
I am writing to you since I see you responding to most press queries regarding the agency. I have two questions to ask the agency.
The first question I sent to the EPA two weeks ago and haven't received any response. The second one stems from my conversations with folks.

1. What is the status of the dental amalgam rule that the agency didn't publish because it fell under the review of rules the Trump administration wanted to conduct.
2. Will the rewrite and eventual promulgation of the wotus rule fall under the "two rules out, one rule in" executive order. If that is the case, would the dental rule be one of those that falls under this order's domain.

Appreciate any insight or explanation you can send my way. I may be mixing apples and oranges here and am ready to be corrected if that is the case.
Sincerely,
Amena

>>>>>>>>>>>>>>>>>>>>>>>>>>>>

Amena H. Saiyid
Water Pollution Reporter
Bloomberg BNA
Direct 703.341.3695
Mobile 571.319.6682
asaiyid@bna.com
twitter: amenasaiyid

Message

From: Minoli, Kevin [Minoli.Kevin@epa.gov]
Sent: 2/8/2017 2:50:46 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: Fwd: CMS ASSIGNMENT
Attachments: AX-17-000-3904.pdf; ATT00001.htm; AX-17-000-3904_Routing Slip.pdf; ATT00002.htm

Flag: Flag for follow up

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

Begin forwarded message:

> **From:** "Dunham, Sarah" <Dunham.Sarah@epa.gov>
> **To:** "Grundler, Christopher" <grundler.christopher@epa.gov>, "Lewis, Josh" <Lewis.Josh@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>
> **Subject: FW: CMS ASSIGNMENT**
>
> FYI. Apparently this is now somewhere in the CMS system. The beachhead team was aware of this petition and had given a heads-up that we were going to receive this. It is a petition to reconsider the original mobile sources GHG endangerment finding.

CALDWELL, PROPST & DELOACH, LLP
ATTORNEYS AT LAW
TWO RAVINIA DRIVE
SUITE 1600
ATLANTA, GEORGIA 30346

HARRY W MacDOUGALD

hmacdougald@cpdlawyers.com
www.cpdlawyers.com

TELEPHONE 404-843-1956
FACSIMILE 404-843-2737

RECEIVED
2017 FEB -2 PM 3:06
OFFICE OF THE EXECUTIVE SECRETARIAT

February 1, 2017

VIA FEDERAL EXPRESS
Administrator
c/o Acting Administrator Catherine McCabe
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW – Rm 3000
Washington, DC 20460

Dear Acting Administrator McCabe:

Enclosed please find a Petition for Reconsideration of "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(A) of The Clean Air Act, submitted on behalf of the Concerned Household Electricity Consumers Council ("CHECC"), and Joseph D'Aleo, Clement Dwyer, Jr., Russell C. Slanover, Scott Univer, James P. Wallace III, Robin D. Weaver, and Douglas S. Springer.

This was originally sent to you for delivery on January 23, 2017, however Federal Express just returned the package back to us stating it was undeliverable. We are therefore resending it to your attention.

Please direct any replies to the counsel of record indicated on the cover of the Petition.

Sincerely,

CALDWELL, PROPST, & DELOACH, LLP

Harry W. MacDougald

ORIGINAL

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

In re:	)	
	)	EPA Docket No.
Endangerment and Cause or Contribute	)	
Findings for Greenhouse Gases Under	)	EPA-HQ-OAR-2009-01
Section 202(a) of the Clean Air Act	)	
	)	

PETITION FOR RECONSIDERATION OF "ENDANGERMENT AND CAUSE OR CONTRIBUTE FINDINGS FOR GREENHOUSE GASES UNDER SECTION 202(a) OF THE CLEAN AIR ACT"

Filed by

Concerned Household Electricity Consumers Council, consisting of Joseph D'Aleo, Clement Dwyer, Jr., Russell C. Slanover, Scott Univer, James P. Wallace III, Robin D. Weaver, and Douglas S. Springer

Francis Menton
Law Office of Francis Menton
85 Broad Street, 18th floor
New York, New York 10004
(212) 627-1796
fmenton@manhattancontrarian.com

Harry W. MacDougald
Caldwell Propst & DeLoach LLP
Two Ravinia Drive, Suite 1600
Atlanta, Georgia 30346
(404) 843-1956
hmacdougald@cpdlawyers.com

Attorneys for Concerned Household Electricity Consumers Council and its members

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ED_002401_00001441-00003

I. INTRODUCTION

Pursuant to Section 307(d) of the Clean Air Act, 42 U.S.C. § 7607(d), the Concerned Household Electricity Consumers Council ("CHECC"), consisting of Joseph D'Aleo, Clement Dwyer, Jr., Russell C. Slanover, Scott Univer, James P. Wallace III, Robin D. Weaver and Douglas S. Springer, hereby petition the U.S. Environmental Protection Agency ("EPA" or "the Agency") to convene a proceeding for reconsideration of the "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act" published by the Agency on December 15, 2009 (74 F.R. 66496, Dec. 15, 2009) (original EPA Docket No. Docket EPA-HQ-OAR-2009-171) ("the Endangerment Finding").

As is more fully shown below, the Endangerment Finding was based on attribution of observed climate change to anthropogenic activities through what EPA termed its three "lines of evidence." 74 C.F.R. at 66518. Scientific research since the adoption of the Endangerment Finding has invalidated each of EPA's three lines of evidence. This Petition principally relies on the peer-reviewed Research Report of Wallace, *et al.*, that was first published on September 21, 2016. *See* https://thsresearch.files.wordpress.com/2016/09/ef-cpp-sc-2016-data-ths-paper-ex-sum-090516v2.pdf ("Research Report"). That Research Report is based on evidence that includes data as to atmospheric temperatures subsequent to the 2009 Endangerment Finding. The invalidation of the Endangerment Finding is conclusive, and thoroughly undermines all basis for any and all EPA regulation that is based on the Endangerment Finding, and the Social Cost of Carbon estimates that are based on this Finding.

The regulations that are based on the Endangerment Finding have resulted in much ongoing activity in the economy that looks to shut down existing sources of electricity and replace them with other much more expensive sources. Much of this activity is ongoing and, if not halted promptly, will impose massive new burdens on consumers of electricity. Therefore, Petitioners ask that EPA promptly convene hearings on this subject and issue a new "Non-Endangerment Finding" no later than June 20, 2017.

II. LEGAL STANDARD

Section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. § 7607(d)(7)(B), states in relevant part:

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> If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such an objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed.

Thus, EPA is required to convene a proceeding for reconsideration upon a showing of two conditions precedent: (1) the information arose after the period for public comment on the Endangerment Finding and (2) the objection is of "central relevance to the outcome of the rule."

The procedural and substantive requirements for a petition for reconsideration are easily met here. The matters in this Petition could not have been raised during the comment period on the Endangerment Finding because the Research Report on which this Petition principally relies was first published on September 21, 2016, close to seven years *after* the Endangerment Finding. The Research Report in turn relies on substantial scientific evidence and data that did not exist at the time of the Endangerment Finding, namely data as to atmospheric temperatures that include extensive data for time periods subsequent to the Endangerment Finding. It was therefore not only impracticable but impossible to have raised these grounds within the original comment period or the period for judicial review of the Endangerment Finding.

The Petition is also timely under the rule of *Oljato Chapter of the Navajo Tribe v. Train*, 515 F.2d 654 (D.C. Cir. 1975).[1] *Oljato Tribe* sets forth a straightforward three-step process for EPA to follow in handling petitions for reconsideration under the Clean Air Act:

> (1) The person seeking revision of a standard of performance, or any other standard reviewable under Section 307, should petition EPA to revise the standard in question. The petition should be submitted together with supporting materials, or references to supporting materials. (2) EPA should respond to the petition and, if it denies the petition, set

[1] The Clean Air Act's legislative history makes clear that "the committee bill confirms the court's decision in *Oljato Chapter of the Navajo Tribe v. Train*, 515 F.2d 654 (D.C. Cir. 1975)." *See* H.R. Rep. 95-294, at 323 (May 12, 1977).

ED_002401_00001441-00005

> forth its reasons. (3) If the petition is denied, the petitioner may seek review of the denial in this court pursuant to Section 307.

Id. at 666.

This Petition satisfies the requirements enumerated in *Oljato Tribe*. It satisfies the first step because it seeks the withdrawal of the Endangerment Finding on specified legal grounds, namely that the attribution of warming to human emissions on which the Endangerment Finding is based has been conclusively invalidated. EPA thus has a duty to respond under the second step, with any denial of the Petition subject to review in the D.C. Circuit under the third step.

Oljato Tribe, in establishing the right to seek reconsideration, does no more than recognize the reality, first emphasized in the legislative history to the 1970 Clean Air Act Amendments, that regulations may need to be revised in light of new information:

> Section 307 originated in the Senate version of the Clean Air Act. The Senate committee described its purpose in allowing for subsequent review based on new information as follows:
>
> > The committee recognizes that it would not be in the public interest to measure for all time the adequacy of a promulgation of any standard or regulation by the information available at the time of such promulgation. In the area of protection of public health and environmental quality, it is clear that new information will be developed and that such information may dictate a revision or modification of any promulgated standard or regulation established under the act. The judicial review section, therefore, provides that any person may challenge any promulgated implementation plan after the date of promulgation whenever it is alleged that significant new information has become available.
>
> S.Rep.No.91-1196, 91st Cong., 2d Sess., 41-42 (1970.

Oljato Tribe, 515 F.2d at 660. Thus, when critical new information becomes available, as here, after a "regulation" has been "promulgated," argument should be directed to EPA in the first instance on reconsideration, to build an appropriate administrative record for later D.C. Circuit review. *See id.* 665-66.

In *Oljato Tribe*, the holding of which was expressly confirmed in the legislative history of the 1977 Clean Air Act amendments, the relevant

ED_002401_00001441-00006

reconsideration petition was remanded to EPA for consideration on its merits even though it was filed long outside the review period. Where, as here, the grounds for reconsideration arise after the close of the review period, the petition must still be considered.

The D.C. Circuit explained in *Oljato Tribe* that "the public's right to petition the Administrator for revision of a standard of performance and the Administrator's duty to respond substantively to such requests *exist completely independently of Section 307 and this court's appellate jurisdiction*." 515 F.2d at 667 (emphasis added). Thus, in *PPG Indus., Inc. v. Costle*, 659 F.2d 1239, 1250 (D.C. Cir. 1981), the D.C. Circuit held that amendment or repeal of a Clean Air Act regulation could be sought under APA Section 553(e) or Section 307(d)(7)(B), even well outside the 60-day review window:

> Alternatively, a petition may be filed directly with EPA to interpret or amend the standard, to withdraw the Guidelines, or to specify midnight to midnight reporting procedures. *See* 42 U.S.C. § 7607(d)(7)(B); 5 U.S.C. § 553(e). Either route would provide a reviewing court with a contemporaneous record of the agency's consideration of this issue, rather than with the "post hoc rationalizations of counsel." *See Oljato Chapter of the Navajo Tribe et al. v. Train*, 515 F.2d 654, 665-68 (D.C. Cir. 1975).

PPG Indus., Inc. v. Costle, 659 F.2d at 1250. This procedure has been repeatedly recognized and approved. "The court subsequently endorsed the same procedure [as in *Ojlato Tribe*], also under section 307, in *Group Against Smog & Pollution, Inc. v. EPA*, 665 F.2d 1284, 1290 (D.C. Cir. 1981); and *Natural Resources Defense Council, Inc. v. Thomas*, 845 F.2d 1088 (D.C.Cir.1988)." *Ciba-Geigy Corp. v. EPA*, 46 F.3d 1208, 1210 (D.C. Cir. 1995) (agreeing with the reasoning of those cases). The Agency itself granted a three-month stay of an emissions standard promulgated nearly four years earlier. S*ee* 63 Fed. Reg. 24,749 (May 5, 1998).

In sum, it is well-settled that EPA has a duty to consider and grant this Petition for Reconsideration, under both Section 307 and as a petition for rulemaking under 5 U.S.C. 553(e), because the grounds presented arose after the close of the period for public comment and judicial review.[2]

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[2] To be clear, this Petition seeks relief alternatively under Clean Air Act Section 307(d)(7)(B) and 5 U.S.C. § 553(e).

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Where, as here, the issues on reconsideration are substantial, a summary denial of the Petition would constitute an abuse of EPA's discretion. *Id.* at 666, n. 19. Likewise, a decision that EPA lacks authority to entertain the petition at all would misread the Agency's statutory mandate. *See Prill v. NLRB*, 755 F.2d 941, 947-48 (D.C. Cir. 1985), and its progeny. EPA may and must exercise the statutory discretion it has been delegated to consider this Petition on its merits.

The matters raised in this Petition are clearly of "central relevance" to the outcome of the Endangerment Finding. Indeed, the Research Report thoroughly and conclusively invalidates the entire basis for the Endangerment Finding, as that basis is stated and defined in the Endangerment Finding itself. *See Coalition for Responsible Regulation v. EPA*, 684 F. 3d 102, 125, 126 (D.C. Cir. 2012) (defining test of "central relevance"), *reversed on other grounds sub. nom. Utility Air Regulatory Group v. EPA*, 134 S.Ct. 2427 (2014).

III. STANDING OF THE PETITIONERS

The Petitioners herein are the Concerned Household Electricity Consumers Council ("CHECC"), and its members, namely Joseph D'Aleo, Clement Dwyer, Jr., Russell C. Slanover, Scott Univer, James P. Wallace III, Robin D. Weaver, and Douglas S. Springer.

Each of CHECC's members is a citizen of the United States and a member of a household that pays a monthly electricity bill to a utility that in turn is regulated by EPA. EPA's regulations based on the Endangerment Finding – notably but not exclusively including the so-called Clean Power Plan, 40 C.F.R. at 64662, *et seq.* – seek to replace current electricity generation sources primarily based on fossil fuels like coal and natural gas with so-called "renewables," principally wind turbines and solar panels. Replacement of fossil fuel sources with such renewables, that provide power only intermittently, threatens to increase the cost of electricity paid by the Petitioners (and by all Americans) by a factor of five or likely far more. Thus, should EPA's Endangerment Finding not be reconsidered and revoked, each of the Petitioners faces electricity bills that will inevitably increase over the coming years by many thousands of dollars per year. On a nationwide basis, the unnecessary incremental cost to consumers of replacing fossil fuel-based electricity generation with intermittent renewables is likely to be in the range of hundreds of billions of dollars per year, if not more.

A critical problem with intermittent renewables like wind and solar power lies in the excess costs that must be incurred to turn power from these sources into a fully-functioning electricity system that provides reliable power 24 hours a day, 7

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days a week, and 365 days a year. Unfortunately, the wind is often calm or blows lightly; and the sun goes completely dark fully half the time ("night"), and also shines at far less than full strength on winter days, cloudy days, cloudy winter days, and at dawn and dusk. At many of these times, consumer power demands are high.

When the intermittent sources provide less than 10% of the electricity in a system, the problems of intermittency typically make only a small cost difference. On a calm night, the lack of power from wind and solar sources can be covered over by a cushion of 10 – 15% or so of excess fossil fuel-based electric power generation capacity. But as the percent of electricity generation from intermittent renewables increases to 15% and beyond, the necessary additional costs multiply. That proposition is demonstrated by the experience of states and countries that have attempted to increase the percent of their electricity generated by intermittent renewables.

For example, California is a "leader" in the United States in generating power from wind and solar sources. According to the California Energy Commission, in 2015 California got 6% of its electricity supply from solar and 8.2% from wind, for a total of 14.2% from those two intermittent sources. *See* http://www.energy.ca.gov/almanac/electricity_data/total_system_power.html According to the U.S. Energy Information Agency, California's average electricity rate that year was 15.62 cents per kWh, versus a U.S. average of 10.31 cents per kWh. *See* https://www.eia.gov/electricity/monthly/epm_table_grapher.cfm?t=epmt_5_6_a In Europe, Germany began its so-called *Energiewende* ("energy transformation") in 2010, and by 2015 had gotten the portion of its electricity generated from wind and solar all the way up to just over 30%. *See* http://www.eia.gov/todayinenergy/detail.php?id=26372 The result: the average German household's electricity rate in 2015 had risen to 28.7 euro cents per kWh, about *triple* the average U.S. rate. *See* https://www.cleanenergywire.org/factsheets/what-german-households-pay-power

Analyses of the soaring price of electricity in Germany place the blame squarely on excess costs that have been necessarily incurred to try to get to a stable, functioning, 24/7/365 system with so much input from intermittent renewables. First, massive wind and solar capacity must be installed to try to deal with days of light wind and heavy clouds. And for calm nights when the wind and solar sources produce nothing, nearly the entire fleet of fossil fuel plants must be maintained and ready to go, even though those sources may be idle much of the time. And then, some means must be found to deal with the surges of available

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electricity when the wind and sun suddenly blow and shine together at full strength at the same time. As noted by Benny Peiser at the Global Warming Policy Foundation on April 4, 2015 (http://www.thegwpf.com/benny-peiser-eus-green-energy-debacle-shows-the-futility-of-unilateral-climate-policies/):

> Every 10 new units worth of wind power installation has to be backed up with some eight units worth of fossil fuel generation. This is because fossil fuel plants have to power up suddenly to meet the deficiencies of intermittent renewables. In short, renewables do not provide an escape route from fossil fuel use without which they are unsustainable. . . . To avoid blackouts, the government has to subsidize uneconomic gas and coal power plants. . . . Germany's renewable energy levy, which subsidizes green energy production, rose from 14 billion euros to 20 billion euros in just one year as a result of the fierce expansion of wind and solar power projects. Since the introduction of the levy in 2000, the electricity bill of the typical German consumer has doubled.

And those extra costs are just to get to a system that gets about 30% of power from the intermittent renewables. To get higher than that, some means must be found to store the power from the wind and sun for release at times of calm and dark. To make this work, major cities like New York would require the equivalent of tens of millions of Teslas' worth of batteries, at a cost of tens or hundreds of billions of dollars.

An idea of how much extra costs must be incurred to get to a system that approaches 50% or more of electricity generation from intermittent renewables, we can look to a demonstration project that was put together in South Korea for a small community of just 97 households and 178 people. A report on the Gapa Island Project appeared on the Hankyoreh news site in July 2016 at http://english.hani.co.kr/arti/english_edition/e_national/752623.html. With average electricity usage of 142 kw, and maximum usage of 230 kw, the islanders installed wind and solar capacity of 674 kw – about *three times* maximum usage, to deal with light wind and low sun. They also bought battery capacity for about eight hours of average usage. The cost of the wind and solar capacity plus batteries was approximately $12.5 million, or about $125,000 per household. And with all that investment the islanders were still only able to get about 42% of their electricity from the sun and wind when averaged over a full month. They still needed the full fossil fuel backup capacity.

By applying a reasonable cost of capital to a system like that of Gapa Island, and considering additional elements of a system, like additional storage, that would

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be necessary to push generation from renewables to higher levels, one can calculate that a system like the Gapa Island demonstration project for the full United States would lead to electricity costs of *at least five times* their current level, and more likely, far higher. Even then, the U.S. would be hard-pressed to achieve 50% of electricity from intermittent renewables. The Petitioners obviously have a strong personal interest in heading off such disastrous cost increases. Granting the relief sought by this Petition would prevent those cost increases from occurring.

IV. THE "LINES OF EVIDENCE" ON WHICH EPA BASED THE ENDANGERMENT FINDING HAVE ALL BEEN INVALIDATED.

EPA's Endangerment Finding appears at 74 C.F.R., page 66,495, *et seq*. At page 66,518 EPA sets forth the three "lines of evidence" upon which it says it has attributed "observed climate change" to "anthropogenic activities," thus providing the basis for the Finding that human GHG emissions endanger human health and welfare:

> The attribution of observed climate change to anthropogenic activities is based on multiple lines of evidence. The first line of evidence arises from our basic physical understanding of the effects of changing concentrations of greenhouse gases, natural factors, and other human impacts on the climate system. The second line of evidence arises from indirect, historical estimates of past climate changes that the changes in global surface temperature over the last several decades are unusual. The third line of evidence arises from the use of computer-based climate models to simulate the likely patterns of response of the climate system to different forcing mechanisms (both natural and anthropogenic).

More information about the nature of each of the three "lines of evidence" can be gleaned from EPA's further elaboration in the Endangerment Finding itself and the associated Technical Support Document.

By the first "line of evidence," ("our basic physical understanding of the effects of changing concentrations of greenhouse gases, natural factors, and other human impacts on the climate system"), EPA is referring to its "greenhouse gas fingerprint" or "tropical hot spot" ("Hot Spot") theory, which is that in the tropics, the upper troposphere is warming faster than the lower troposphere and the lower is warming faster than the surface, all due to rising atmospheric greenhouse gas concentrations blocking heat transfer into outer space. By this mechanism,

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increasing greenhouse gas concentration is assumed to increase surface temperatures.

The second "line of evidence" ("indirect, historical estimates of past climate changes that suggest that the changes in global surface temperature over the last several decades are unusual") refers to EPA's claim that global average surface temperatures have been rising in a dangerous fashion over the last fifty years.

The third "line of evidence" ("use of computer-based climate models to simulate the likely patterns of response of the climate system to different forcing mechanisms (both natural and anthropogenic)") consists of EPA's reliance on climate models (not actually "evidence") that assume that greenhouse gases are a key determinant of climate change. EPA uses climate models for two purposes: to "attribute" warming to human GHG emissions, and to set regulatory policy for such emissions based on their modeled impact on global temperatures.

The Research Report of Wallace, et al. (September 21, 2016) undertook to assess each of EPA's three "lines of evidence" and to either validate or invalidate each of them based on the best available historical temperature data. In accordance with the scientific method, the Research Report used the best available temperature data from multiple sources, all of them completely independent from each other, for the validation/invalidation exercise. The data used in the Research Report are available at the following url: https://thsresearch.files.wordpress.com/2017/01/ef-cpp-sc-2016-data-ths-data-master-original.xlsx. Equally available from the text of the Report itself are all the methods, equations and formulas that were used to produce its results. In other words, the Report is fully replicable by any scientist who wishes to check or question its methods or results.

The principal conclusions of the Research Report are as follows:

- "These analysis results would appear to leave very, very little doubt but that EPA's claim of a Tropical Hot Spot (THS), caused by rising atmospheric CO2 levels, simply does not exist in the real world."

- Once EPA's THS assumption is invalidated, it is obvious why the climate models they claim can be relied upon, are also invalid.

- "[T]his analysis failed to find that the steadily rising Atmospheric CO2 Concentrations have had a statistically significant impact on any of the 13 critically important temperature time series data analyzed."

- "[T]hese results clearly demonstrate - 13 times in fact - that once just the ENSO [El Nino/La Nina] impacts on temperature data are accounted for, there is no "record setting" warming to be concerned about. In fact, there is no ENSO-Adjusted Warming at all."

Research Report, p. 4.

This means that the climate sensitivity parameter's estimate is not statistically significant. Therefore, the Social Cost of Carbon esimates now in widespread use to justify regulation of CO2 emissions are fundamentally flawed. The actual Social Cost of Carbon is negative rather than positive, meaning that CO2 is in fact a benefical gas.

Invalidation of the the Hot Spot requires reconsideration of the Endangerment Finding because the Hot Spot is a critical and necessary component of the "physical understanding" of climate that EPA claims as the foundational line of evidence supporting the Endangerment Finding. For example, the "physical understanding" of the atmospheric greenhouse mechanism set forth in U.S. Climate Change Science Program, Synthesis and Assessment Product 1.1, Temperature Trends in the Lower Atmosphere - Understanding and Reconciling Differences, ("SAP 1.1"), Chapter 1, § 1.1, The Thermal Structure of the Atmosphere, p. 17-19, https://www.gfdl.noaa.gov/bibliography/related_files/vr0603.pdf ; explicitly relies upon the Hot Spot:

> The presence of such greenhouse gases (e.g., carbon dioxide, methane, nitrous oxide, halocarbons) increases the radiative heating of the surface and troposphere. As specific humidity is strongly related to temperature, it is expected to rise with surface warming (IPCC, 1990), The increased moisture content of the atmosphere amplifies the initial radiative heating due to the greenhouse gas increases (Manabe and Wetherald, 1967; Ramanathan, 1981). The re-establishment of a new thermal equilibrium in the climate system involves the communication of the added heat input to the troposphere and surface, leading to surface warming (Goody and Yung, 1989; IPCC, 1990; Lindzen and Emanuel, 2002). From the preceding discussions, the lapse rate can be expected to decrease with the resultant increase in humidity, and also to depend on the resultant changes in atmospheric circulation. **In general, the lapse rate can be expected to decrease with warming such that temperature changes aloft exceed those at the surface.** As a consequence, the characteristic

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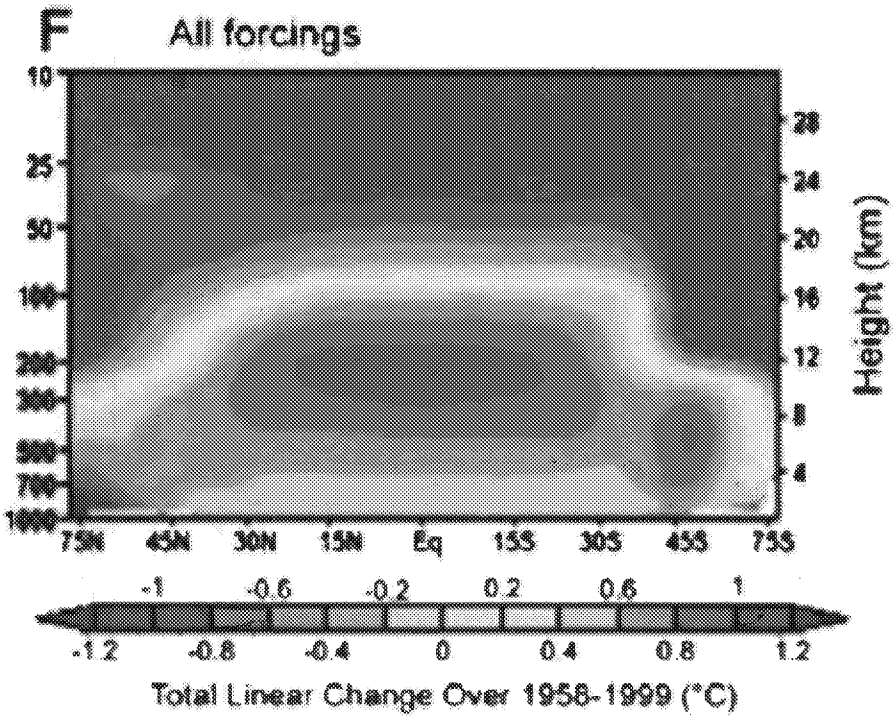
infrared emission level of the planet is shifted to a higher altitude in the atmosphere.

(Emphasis added). The CCSP SAP 1.1 report depicted the Hot Spot graphically in figure 1.3, p. 25, as follows:



Similarly, the IPCC's Fourth Assessment Report (AR4) also states unequivocally that the Hot Spot is an integral feature of the "physical understanding" of the climate's hypothesized greenhouse warming mechanism. This is demonstrated by AR4 WG1, The Physical Science Basis, Chapter 9, Figure 9.1. Panel (c) shows the modeled effect of GHGs, and clearly depicts the hot spot:

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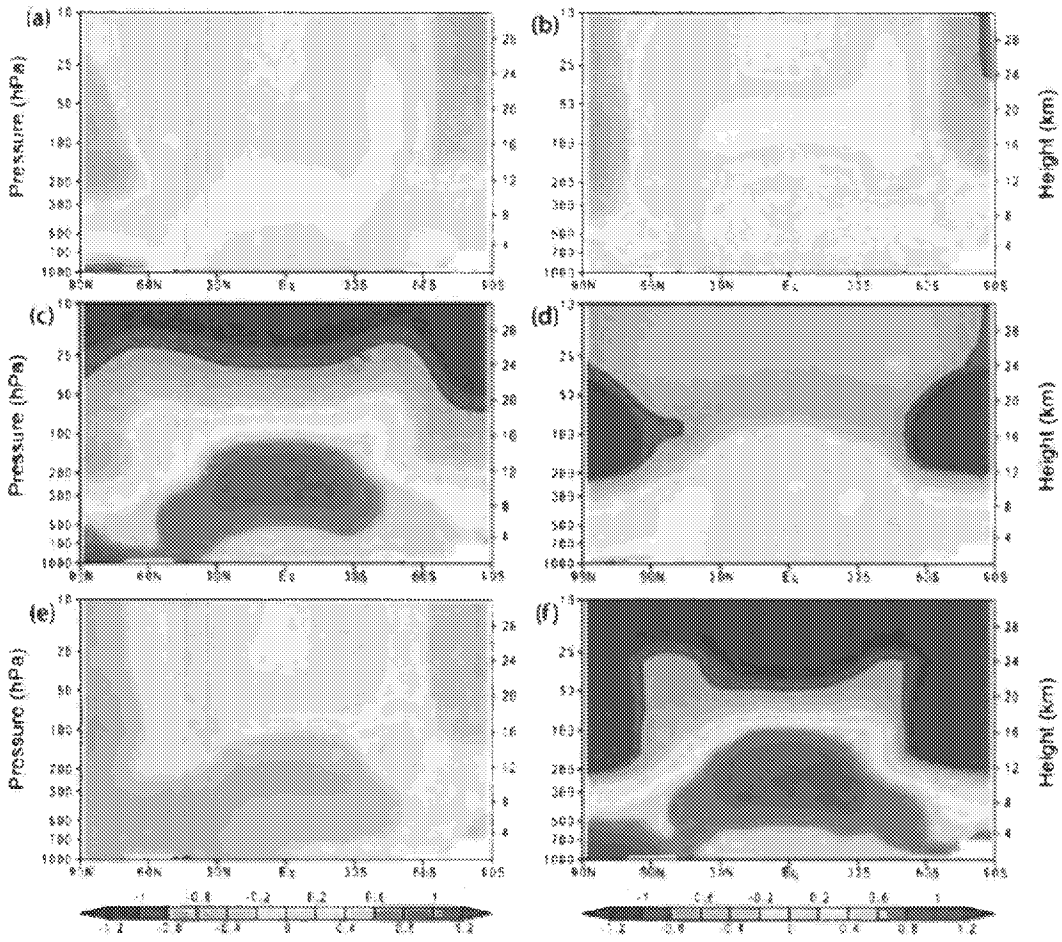

Figure 9.1. Zonal mean atmospheric temperature change from 1890 to 1999 (°C per century) as simulated by the PCM model from (a) solar forcing, (b) volcanoes, (c) well-mixed greenhouse gases, (d) tropospheric and stratospheric ozone changes, (e) direct sulphate aerosol forcing and (f) the sum of all forcings. Plot is from 1,000 hPa to 10 hPa (shown on left scale) and from 0 km to 30 km (shown on right). See Box 9.C for additional information. Based on Santer et al. (2003a).

The text accompanying this figure explains that "The major features shown in Figure 9.1 are robust to using different climate models." IPCC AR4 WG1 § 9.2.2. (http://www.ipcc.ch/publications_and_data/ar4/wg1/en/ch9s9-2-2.html). "Greenhouse gas forcing is expected to produce warming in the troposphere, … ." *Id.*

In adopting the Endangerment Finding, EPA explicitly, repeatedly and irrevocably placed primary reliance on the US CCSP reports and the IPCC AR4. *See* TSD Box 1.1, p 4. These assessments are cited thousands of times in the full set of documentation for the Endangerment Finding.

The CCSP report cited above said if the Hot Spot were missing it would be a "*potentially serious inconsistency*." SAP 1.1, p. 11. (Emphasis added). Yet the

CCSP ultimately sided with those claiming at the time that the mismatch between observations and prediction was not fatal. *Id.*

EPA also acknowledged in the Technical Support Document for the Endangerment Finding that if the Hot Spot were missing it would be "an important inconsistency." TSD p. 50. EPA's team, including Tom Karl, agreed with the CCSP (led by the same Tom Karl) and concluded there was no dispositive conflict between prediction and observation. *Id.*

The Research Report, using substantial scientific evidence and additional data available only after 2009, not only shows a "an important inconsistency," it invalidates the Hot Spot entirely. This is fatal to the EPA's claimed physical understanding of climate, and is likewise fatal to the climate models constituting EPA's third line of evidence. These models, relying on an invalidated physical theory, all predict the Hot Spot. Proper analysis of more than 50 years of balloon and 37 years of satellite temperature data generated by five independent entities conclusively shows that the Hot Spot does not exist. This demonstrates that the models are invalid and unreliable, and cannot properly be used for attribution analysis or forecasting warming due to anthropogenic CO2 emissions.

In sum, all three of the lines of evidence relied upon by EPA to attribute warming to human GHG emissions are invalid. The Endangerment Finding itself is therefore invalid and should be reconsidered. Moreover, this reconsideration is particulary urgent at this point in time in that the widely used Social Cost of Carbon has now been demonstrated to be fundamentally flawed. To put it mildly, the current Endangerment Finding and Social Cost of Carbon are leading the nation in the wrong direction from an energy polcy standpoint. Decarbonization makes absolutely no scientific or economic sense.

V. CONCLUSION

No scientists have yet devised an empirically validated theory proving that higher atmospheric CO2 levels will lead to higher global average surface temperatures. Moreover, if the causal link between higher atmospheric CO2 concentrations and higher temperatures is broken by invalidating each of EPA's three lines of evidence, then EPA's assertions that higher CO2 concentrations also cause sea-level increases and more frequent and severe storms, floods, and droughts and other deleterious effects on human health and welfare are also disproved. Such causality assertions require a validated theory that higher atmospheric CO2 concentrations cause increases in temperatures. Lacking such a validated theory, EPA's conclusions cannot stand. In science, credible empirical

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data always trump proposed theories, even if those theories are claimed to (or actually do) represent the current consensus, or, in this case, a finding made by EPA.

The invalidated Endangerment Finding, combined with a fundamentally flawed and dangerous Social Cost of Carbon estimate, are now driving numerous potentially crippling regulations, including the Clean Power Plan and the newly proposed automotive fuel economy standards. EPA should therefore promptly convene a proceeding to reconsider the Endangerment Finding.

Respectfully submitted this 20th day of January, 2017.

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BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

In re:	)	
	)	EPA Docket No.
Endangerment and Cause or Contribute	)	
Findings for Greenhouse Gases Under	)	EPA-HQ-OAR-2009-01
Section 202(a) of the Clean Air Act	)	
	)	

PETITION FOR RECONSIDERATION OF "ENDANGERMENT AND CAUSE OR CONTRIBUTE FINDINGS FOR GREENHOUSE GASES UNDER SECTION 202(a) OF THE CLEAN AIR ACT"

Filed by

Concerned Household Electricity Consumers Council, consisting of Joseph D'Aleo, Clement Dwyer, Jr., Russell C. Slanover, Scott Univer, James P. Wallace III, Robin D. Weaver, and Douglas S. Springer

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I. INTRODUCTION

Pursuant to Section 307(d) of the Clean Air Act, 42 U.S.C. § 7607(d), the Concerned Household Electricity Consumers Council ("CHECC"), consisting of Joseph D'Aleo, Clement Dwyer, Jr., Russell C. Slanover, Scott Univer, James P. Wallace III, Robin D. Weaver and Douglas S. Springer, hereby petition the U.S. Environmental Protection Agency ("EPA" or "the Agency") to convene a proceeding for reconsideration of the "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act" published by the Agency on December 15, 2009 (74 F.R. 66496, Dec. 15, 2009) (original EPA Docket No. Docket EPA-HQ-OAR-2009-171) ("the Endangerment Finding").

As is more fully shown below, the Endangerment Finding was based on attribution of observed climate change to anthropogenic activities through what EPA termed its three "lines of evidence." 74 C.F.R. at 66518. Scientific research since the adoption of the Endangerment Finding has invalidated each of EPA's three lines of evidence. This Petition principally relies on the peer-reviewed Research Report of Wallace, *et al.*, that was first published on September 21, 2016. *See* https://thsresearch.files.wordpress.com/2016/09/ef-cpp-sc-2016-data-ths-paper-ex-sum-090516v2.pdf ("Research Report"). That Research Report is based on evidence that includes data as to atmospheric temperatures subsequent to the 2009 Endangerment Finding. The invalidation of the Endangerment Finding is conclusive, and thoroughly undermines all basis for any and all EPA regulation that is based on the Endangerment Finding, and the Social Cost of Carbon estimates that are based on this Finding.

The regulations that are based on the Endangerment Finding have resulted in much ongoing activity in the economy that looks to shut down existing sources of electricity and replace them with other much more expensive sources. Much of this activity is ongoing and, if not halted promptly, will impose massive new burdens on consumers of electricity. Therefore, Petitioners ask that EPA promptly convene hearings on this subject and issue a new "Non-Endangerment Finding" no later than June 20, 2017.

II. LEGAL STANDARD

Section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. § 7607(d)(7)(B), states in relevant part:

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> If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such an objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed.

Thus, EPA is required to convene a proceeding for reconsideration upon a showing of two conditions precedent: (1) the information arose after the period for public comment on the Endangerment Finding and (2) the objection is of "central relevance to the outcome of the rule."

The procedural and substantive requirements for a petition for reconsideration are easily met here. The matters in this Petition could not have been raised during the comment period on the Endangerment Finding because the Research Report on which this Petition principally relies was first published on September 21, 2016, close to seven years *after* the Endangerment Finding. The Research Report in turn relies on substantial scientific evidence and data that did not exist at the time of the Endangerment Finding, namely data as to atmospheric temperatures that include extensive data for time periods subsequent to the Endangerment Finding. It was therefore not only impracticable but impossible to have raised these grounds within the original comment period or the period for judicial review of the Endangerment Finding.

The Petition is also timely under the rule of *Oljato Chapter of the Navajo Tribe v. Train*, 515 F.2d 654 (D.C. Cir. 1975).[1] *Oljato Tribe* sets forth a straightforward three-step process for EPA to follow in handling petitions for reconsideration under the Clean Air Act:

> (1) The person seeking revision of a standard of performance, or any other standard reviewable under Section 307, should petition EPA to revise the standard in question. The petition should be submitted together with supporting materials, or references to supporting materials. (2) EPA should respond to the petition and, if it denies the petition, set

[1] The Clean Air Act's legislative history makes clear that "the committee bill confirms the court's decision in *Oljato Chapter of the Navajo Tribe v. Train*, 515 F.2d 654 (D.C. Cir. 1975)." *See* H.R. Rep. 95-294, at 323 (May 12, 1977).

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> forth its reasons. (3) If the petition is denied, the petitioner may seek review of the denial in this court pursuant to Section 307.

Id. at 666.

This Petition satisfies the requirements enumerated in *Oljato Tribe*. It satisfies the first step because it seeks the withdrawal of the Endangerment Finding on specified legal grounds, namely that the attribution of warming to human emissions on which the Endangerment Finding is based has been conclusively invalidated. EPA thus has a duty to respond under the second step, with any denial of the Petition subject to review in the D.C. Circuit under the third step.

Oljato Tribe, in establishing the right to seek reconsideration, does no more than recognize the reality, first emphasized in the legislative history to the 1970 Clean Air Act Amendments, that regulations may need to be revised in light of new information:

> Section 307 originated in the Senate version of the Clean Air Act. The Senate committee described its purpose in allowing for subsequent review based on new information as follows:
>
> > The committee recognizes that it would not be in the public interest to measure for all time the adequacy of a promulgation of any standard or regulation by the information available at the time of such promulgation. In the area of protection of public health and environmental quality, it is clear that new information will be developed and that such information may dictate a revision or modification of any promulgated standard or regulation established under the act. The judicial review section, therefore, provides that any person may challenge any promulgated implementation plan after the date of promulgation whenever it is alleged that significant new information has become available.
>
> S.Rep.No.91-1196, 91st Cong., 2d Sess., 41-42 (1970.

Oljato Tribe, 515 F.2d at 660. Thus, when critical new information becomes available, as here, after a "regulation" has been "promulgated," argument should be directed to EPA in the first instance on reconsideration, to build an appropriate administrative record for later D.C. Circuit review. *See id.* 665-66.

In *Oljato Tribe*, the holding of which was expressly confirmed in the legislative history of the 1977 Clean Air Act amendments, the relevant

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reconsideration petition was remanded to EPA for consideration on its merits even though it was filed long outside the review period. Where, as here, the grounds for reconsideration arise after the close of the review period, the petition must still be considered.

The D.C. Circuit explained in *Oljato Tribe* that "the public's right to petition the Administrator for revision of a standard of performance and the Administrator's duty to respond substantively to such requests *exist completely independently of Section 307 and this court's appellate jurisdiction*." 515 F.2d at 667 (emphasis added). Thus, in *PPG Indus., Inc. v. Costle*, 659 F.2d 1239, 1250 (D.C. Cir. 1981), the D.C. Circuit held that amendment or repeal of a Clean Air Act regulation could be sought under APA Section 553(e) or Section 307(d)(7)(B), even well outside the 60-day review window:

> Alternatively, a petition may be filed directly with EPA to interpret or amend the standard, to withdraw the Guidelines, or to specify midnight to midnight reporting procedures. *See* 42 U.S.C. § 7607(d)(7)(B); 5 U.S.C. § 553(e). Either route would provide a reviewing court with a contemporaneous record of the agency's consideration of this issue, rather than with the "post hoc rationalizations of counsel." *See Oljato Chapter of the Navajo Tribe et al. v. Train*, 515 F.2d 654, 665-68 (D.C. Cir. 1975).

PPG Indus., Inc. v. Costle, 659 F.2d at 1250. This procedure has been repeatedly recognized and approved. "The court subsequently endorsed the same procedure [as in *Ojlato Tribe*], also under section 307, in *Group Against Smog & Pollution, Inc. v. EPA*, 665 F.2d 1284, 1290 (D.C. Cir. 1981); and *Natural Resources Defense Council, Inc. v. Thomas*, 845 F.2d 1088 (D.C.Cir.1988)." *Ciba-Geigy Corp. v. EPA*, 46 F.3d 1208, 1210 (D.C. Cir. 1995) (agreeing with the reasoning of those cases). The Agency itself granted a three-month stay of an emissions standard promulgated nearly four years earlier. S*ee* 63 Fed. Reg. 24,749 (May 5, 1998).

In sum, it is well-settled that EPA has a duty to consider and grant this Petition for Reconsideration, under both Section 307 and as a petition for rulemaking under 5 U.S.C. 553(e), because the grounds presented arose after the close of the period for public comment and judicial review.[2]

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[2] To be clear, this Petition seeks relief alternatively under Clean Air Act Section 307(d)(7)(B) and 5 U.S.C. § 553(e).

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Where, as here, the issues on reconsideration are substantial, a summary denial of the Petition would constitute an abuse of EPA's discretion. *Id.* at 666, n. 19. Likewise, a decision that EPA lacks authority to entertain the petition at all would misread the Agency's statutory mandate. *See Prill v. NLRB*, 755 F.2d 941, 947-48 (D.C. Cir. 1985), and its progeny. EPA may and must exercise the statutory discretion it has been delegated to consider this Petition on its merits.

The matters raised in this Petition are clearly of "central relevance" to the outcome of the Endangerment Finding. Indeed, the Research Report thoroughly and conclusively invalidates the entire basis for the Endangerment Finding, as that basis is stated and defined in the Endangerment Finding itself. *See Coalition for Responsible Regulation v. EPA*, 684 F. 3d 102, 125, 126 (D.C. Cir. 2012) (defining test of "central relevance"), *reversed on other grounds sub. nom. Utility Air Regulatory Group v. EPA*, 134 S.Ct. 2427 (2014).

III. STANDING OF THE PETITIONERS

The Petitioners herein are the Concerned Household Electricity Consumers Council ("CHECC"), and its members, namely Joseph D'Aleo, Clement Dwyer, Jr., Russell C. Slanover, Scott Univer, James P. Wallace III, Robin D. Weaver, and Douglas S. Springer.

Each of CHECC's members is a citizen of the United States and a member of a household that pays a monthly electricity bill to a utility that in turn is regulated by EPA. EPA's regulations based on the Endangerment Finding – notably but not exclusively including the so-called Clean Power Plan, 40 C.F.R. at 64662, *et seq.* – seek to replace current electricity generation sources primarily based on fossil fuels like coal and natural gas with so-called "renewables," principally wind turbines and solar panels. Replacement of fossil fuel sources with such renewables, that provide power only intermittently, threatens to increase the cost of electricity paid by the Petitioners (and by all Americans) by a factor of five or likely far more. Thus, should EPA's Endangerment Finding not be reconsidered and revoked, each of the Petitioners faces electricity bills that will inevitably increase over the coming years by many thousands of dollars per year. On a nationwide basis, the unnecessary incremental cost to consumers of replacing fossil fuel-based electricity generation with intermittent renewables is likely to be in the range of hundreds of billions of dollars per year, if not more.

A critical problem with intermittent renewables like wind and solar power lies in the excess costs that must be incurred to turn power from these sources into a fully-functioning electricity system that provides reliable power 24 hours a day, 7

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days a week, and 365 days a year. Unfortunately, the wind is often calm or blows lightly; and the sun goes completely dark fully half the time ("night"), and also shines at far less than full strength on winter days, cloudy days, cloudy winter days, and at dawn and dusk. At many of these times, consumer power demands are high.

When the intermittent sources provide less than 10% of the electricity in a system, the problems of intermittency typically make only a small cost difference. On a calm night, the lack of power from wind and solar sources can be covered over by a cushion of 10 – 15% or so of excess fossil fuel-based electric power generation capacity. But as the percent of electricity generation from intermittent renewables increases to 15% and beyond, the necessary additional costs multiply. That proposition is demonstrated by the experience of states and countries that have attempted to increase the percent of their electricity generated by intermittent renewables.

For example, California is a "leader" in the United States in generating power from wind and solar sources. According to the California Energy Commission, in 2015 California got 6% of its electricity supply from solar and 8.2% from wind, for a total of 14.2% from those two intermittent sources. *See* http://www.energy.ca.gov/almanac/electricity_data/total_system_power.html According to the U.S. Energy Information Agency, California's average electricity rate that year was 15.62 cents per kWh, versus a U.S. average of 10.31 cents per kWh. *See* https://www.eia.gov/electricity/monthly/epm_table_grapher.cfm?t=epmt_5_6_a In Europe, Germany began its so-called *Energiewende* ("energy transformation") in 2010, and by 2015 had gotten the portion of its electricity generated from wind and solar all the way up to just over 30%. *See* http://www.eia.gov/todayinenergy/detail.php?id=26372 The result: the average German household's electricity rate in 2015 had risen to 28.7 euro cents per kWh, about *triple* the average U.S. rate. *See* https://www.cleanenergywire.org/factsheets/what-german-households-pay-power

Analyses of the soaring price of electricity in Germany place the blame squarely on excess costs that have been necessarily incurred to try to get to a stable, functioning, 24/7/365 system with so much input from intermittent renewables. First, massive wind and solar capacity must be installed to try to deal with days of light wind and heavy clouds. And for calm nights when the wind and solar sources produce nothing, nearly the entire fleet of fossil fuel plants must be maintained and ready to go, even though those sources may be idle much of the time. And then, some means must be found to deal with the surges of available

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electricity when the wind and sun suddenly blow and shine together at full strength at the same time. As noted by Benny Peiser at the Global Warming Policy Foundation on April 4, 2015 (http://www.thegwpf.com/benny-peiser-eus-green-energy-debacle-shows-the-futility-of-unilateral-climate-policies/):

> Every 10 new units worth of wind power installation has to be backed up with some eight units worth of fossil fuel generation. This is because fossil fuel plants have to power up suddenly to meet the deficiencies of intermittent renewables. In short, renewables do not provide an escape route from fossil fuel use without which they are unsustainable. . . . To avoid blackouts, the government has to subsidize uneconomic gas and coal power plants. . . . Germany's renewable energy levy, which subsidizes green energy production, rose from 14 billion euros to 20 billion euros in just one year as a result of the fierce expansion of wind and solar power projects. Since the introduction of the levy in 2000, the electricity bill of the typical German consumer has doubled.

And those extra costs are just to get to a system that gets about 30% of power from the intermittent renewables. To get higher than that, some means must be found to store the power from the wind and sun for release at times of calm and dark. To make this work, major cities like New York would require the equivalent of tens of millions of Teslas' worth of batteries, at a cost of tens or hundreds of billions of dollars.

An idea of how much extra costs must be incurred to get to a system that approaches 50% or more of electricity generation from intermittent renewables, we can look to a demonstration project that was put together in South Korea for a small community of just 97 households and 178 people. A report on the Gapa Island Project appeared on the Hankyoreh news site in July 2016 at http://english.hani.co.kr/arti/english_edition/e_national/752623.html. With average electricity usage of 142 kw, and maximum usage of 230 kw, the islanders installed wind and solar capacity of 674 kw – about *three times* maximum usage, to deal with light wind and low sun. They also bought battery capacity for about eight hours of average usage. The cost of the wind and solar capacity plus batteries was approximately $12.5 million, or about $125,000 per household. And with all that investment the islanders were still only able to get about 42% of their electricity from the sun and wind when averaged over a full month. They still needed the full fossil fuel backup capacity.

By applying a reasonable cost of capital to a system like that of Gapa Island, and considering additional elements of a system, like additional storage, that would

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be necessary to push generation from renewables to higher levels, one can calculate that a system like the Gapa Island demonstration project for the full United States would lead to electricity costs of *at least five times* their current level, and more likely, far higher. Even then, the U.S. would be hard-pressed to achieve 50% of electricity from intermittent renewables. The Petitioners obviously have a strong personal interest in heading off such disastrous cost increases. Granting the relief sought by this Petition would prevent those cost increases from occurring.

IV. THE "LINES OF EVIDENCE" ON WHICH EPA BASED THE ENDANGERMENT FINDING HAVE ALL BEEN INVALIDATED.

EPA's Endangerment Finding appears at 74 C.F.R., page 66,495, *et seq*. At page 66,518 EPA sets forth the three "lines of evidence" upon which it says it has attributed "observed climate change" to "anthropogenic activities," thus providing the basis for the Finding that human GHG emissions endanger human health and welfare:

> The attribution of observed climate change to anthropogenic activities is based on multiple lines of evidence. The first line of evidence arises from our basic physical understanding of the effects of changing concentrations of greenhouse gases, natural factors, and other human impacts on the climate system. The second line of evidence arises from indirect, historical estimates of past climate changes that the changes in global surface temperature over the last several decades are unusual. The third line of evidence arises from the use of computer-based climate models to simulate the likely patterns of response of the climate system to different forcing mechanisms (both natural and anthropogenic).

More information about the nature of each of the three "lines of evidence" can be gleaned from EPA's further elaboration in the Endangerment Finding itself and the associated Technical Support Document.

By the first "line of evidence," ("our basic physical understanding of the effects of changing concentrations of greenhouse gases, natural factors, and other human impacts on the climate system"), EPA is referring to its "greenhouse gas fingerprint" or "tropical hot spot" ("Hot Spot") theory, which is that in the tropics, the upper troposphere is warming faster than the lower troposphere and the lower is warming faster than the surface, all due to rising atmospheric greenhouse gas concentrations blocking heat transfer into outer space. By this mechanism,

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increasing greenhouse gas concentration is assumed to increase surface temperatures.

The second "line of evidence" ("indirect, historical estimates of past climate changes that suggest that the changes in global surface temperature over the last several decades are unusual") refers to EPA's claim that global average surface temperatures have been rising in a dangerous fashion over the last fifty years.

The third "line of evidence" ("use of computer-based climate models to simulate the likely patterns of response of the climate system to different forcing mechanisms (both natural and anthropogenic)") consists of EPA's reliance on climate models (not actually "evidence") that assume that greenhouse gases are a key determinant of climate change. EPA uses climate models for two purposes: to "attribute" warming to human GHG emissions, and to set regulatory policy for such emissions based on their modeled impact on global temperatures.

The Research Report of Wallace, et al. (September 21, 2016) undertook to assess each of EPA's three "lines of evidence" and to either validate or invalidate each of them based on the best available historical temperature data. In accordance with the scientific method, the Research Report used the best available temperature data from multiple sources, all of them completely independent from each other, for the validation/invalidation exercise. The data used in the Research Report are available at the following url: https://thsresearch.files.wordpress.com/2017/01/ef-cpp-sc-2016-data-ths-data-master-original.xlsx. Equally available from the text of the Report itself are all the methods, equations and formulas that were used to produce its results. In other words, the Report is fully replicable by any scientist who wishes to check or question its methods or results.

The principal conclusions of the Research Report are as follows:

- "These analysis results would appear to leave very, very little doubt but that EPA's claim of a Tropical Hot Spot (THS), caused by rising atmospheric CO2 levels, simply does not exist in the real world."

- Once EPA's THS assumption is invalidated, it is obvious why the climate models they claim can be relied upon, are also invalid.

- "[T]his analysis failed to find that the steadily rising Atmospheric CO2 Concentrations have had a statistically significant impact on any of the 13 critically important temperature time series data analyzed."

- "[T]hese results clearly demonstrate - 13 times in fact - that once just the ENSO [El Nino/La Nina] impacts on temperature data are accounted for, there is no "record setting" warming to be concerned about. In fact, there is no ENSO-Adjusted Warming at all."

Research Report, p. 4.

This means that the climate sensitivity parameter's estimate is not statistically significant. Therefore, the Social Cost of Carbon esimates now in widespread use to justify regulation of CO2 emissions are fundamentally flawed. The actual Social Cost of Carbon is negative rather than positive, meaning that CO2 is in fact a benefical gas.

Invalidation of the the Hot Spot requires reconsideration of the Endangerment Finding because the Hot Spot is a critical and necessary component of the "physical understanding" of climate that EPA claims as the foundational line of evidence supporting the Endangerment Finding. For example, the "physical understanding" of the atmospheric greenhouse mechanism set forth in U.S. Climate Change Science Program, Synthesis and Assessment Product 1.1, Temperature Trends in the Lower Atmosphere - Understanding and Reconciling Differences, ("SAP 1.1"), Chapter 1, § 1.1, The Thermal Structure of the Atmosphere, p. 17-19, https://www.gfdl.noaa.gov/bibliography/related_files/vr0603.pdf : explicitly relies upon the Hot Spot:

> The presence of such greenhouse gases (e.g., carbon dioxide, methane, nitrous oxide, halocarbons) increases the radiative heating of the surface and troposphere. As specific humidity is strongly related to temperature, it is expected to rise with surface warming (IPCC, 1990), The increased moisture content of the atmosphere amplifies the initial radiative heating due to the greenhouse gas increases (Manabe and Wetherald, 1967; Ramanathan, 1981). The re-establishment of a new thermal equilibrium in the climate system involves the communication of the added heat input to the troposphere and surface, leading to surface warming (Goody and Yung, 1989; IPCC, 1990; Lindzen and Emanuel, 2002). From the preceding discussions, the lapse rate can be expected to decrease with the resultant increase in humidity, and also to depend on the resultant changes in atmospheric circulation. **In general, the lapse rate can be expected to decrease with warming such that temperature changes aloft exceed those at the surface.** As a consequence, the characteristic

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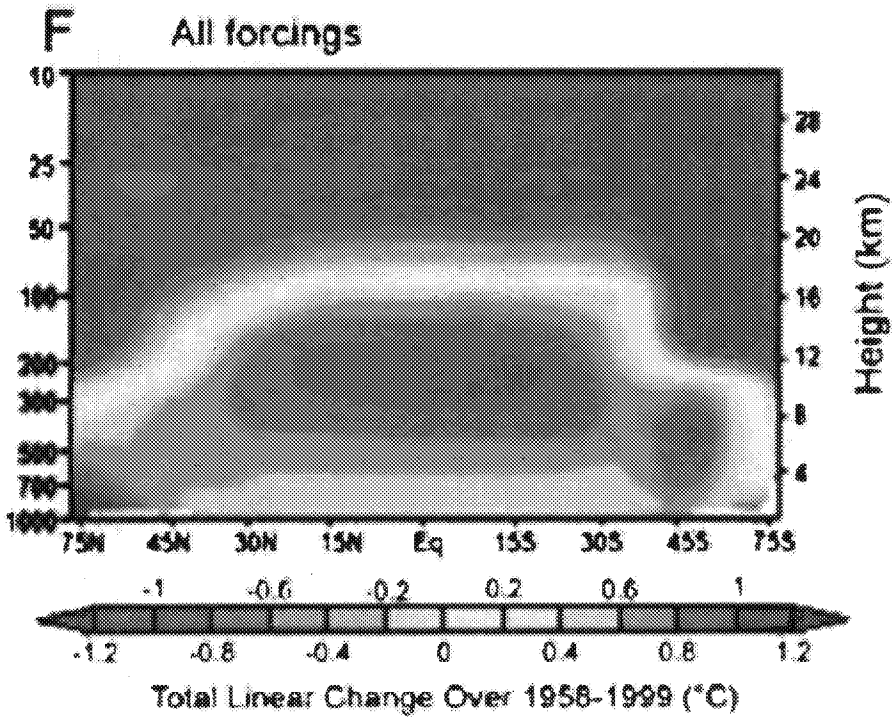
infrared emission level of the planet is shifted to a higher altitude in the atmosphere.

(Emphasis added). The CCSP SAP 1.1 report depicted the Hot Spot graphically in figure 1.3, p. 25, as follows:



Similarly, the IPCC's Fourth Assessment Report (AR4) also states unequivocally that the Hot Spot is an integral feature of the "physical understanding" of the climate's hypothesized greenhouse warming mechanism. This is demonstrated by AR4 WG1, The Physical Science Basis, Chapter 9, Figure 9.1. Panel (c) shows the modeled effect of GHGs, and clearly depicts the hot spot:

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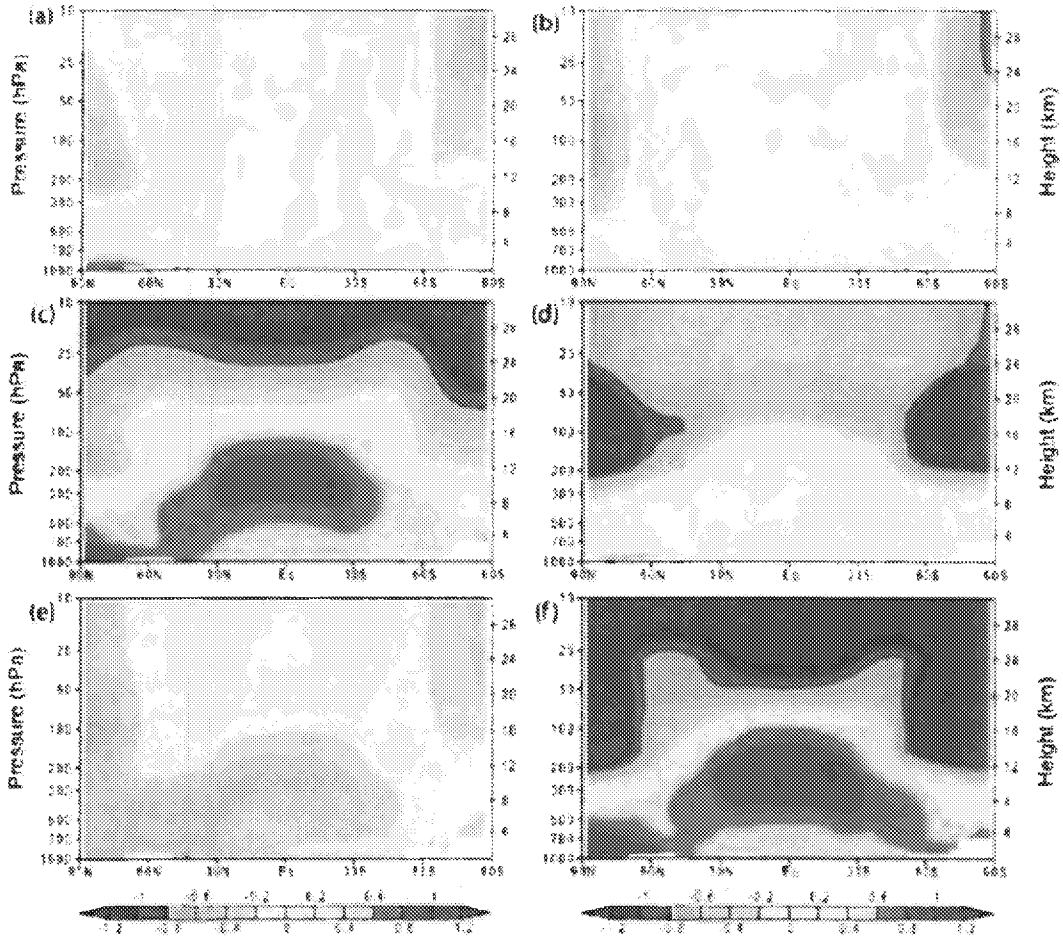

Figure 9.1. Zonal mean atmospheric temperature change from 1890 to 1999 (°C per century) as simulated by the PCM model from (a) solar forcing, (b) volcanoes, (c) well-mixed greenhouse gases, (d) tropospheric and stratospheric ozone changes, (e) direct sulphate aerosol forcing and (f) the sum of all forcings. Plot is from 1,000 hPa to 10 hPa (shown on left scale) and from 0 km to 30 km (shown on right). See Appendix 9.C for additional information. Based on Santer et al. (2003a).

The text accompanying this figure explains that "The major features shown in Figure 9.1 are robust to using different climate models." IPCC AR4 WG1 § 9.2.2. (http://www.ipcc.ch/publications_and_data/ar4/wg1/en/ch9s9-2-2.html). "Greenhouse gas forcing is expected to produce warming in the troposphere, … ." *Id.*

In adopting the Endangerment Finding, EPA explicitly, repeatedly and irrevocably placed primary reliance on the US CCSP reports and the IPCC AR4. *See* TSD Box 1.1, p 4. These assessments are cited thousands of times in the full set of documentation for the Endangerment Finding.

The CCSP report cited above said if the Hot Spot were missing it would be a "*potentially serious inconsistency*." SAP 1.1, p. 11. (Emphasis added). Yet the

CCSP ultimately sided with those claiming at the time that the mismatch between observations and prediction was not fatal. *Id.*

EPA also acknowledged in the Technical Support Document for the Endangerment Finding that if the Hot Spot were missing it would be "an important inconsistency." TSD p. 50. EPA's team, including Tom Karl, agreed with the CCSP (led by the same Tom Karl) and concluded there was no dispositive conflict between prediction and observation. *Id.*

The Research Report, using substantial scientific evidence and additional data available only after 2009, not only shows a "an important inconsistency," it invalidates the Hot Spot entirely. This is fatal to the EPA's claimed physical understanding of climate, and is likewise fatal to the climate models constituting EPA's third line of evidence. These models, relying on an invalidated physical theory, all predict the Hot Spot. Proper analysis of more than 50 years of balloon and 37 years of satellite temperature data generated by five independent entities conclusively shows that the Hot Spot does not exist. This demonstrates that the models are invalid and unreliable, and cannot properly be used for attribution analysis or forecasting warming due to anthropogenic CO2 emissions.

In sum, all three of the lines of evidence relied upon by EPA to attribute warming to human GHG emissions are invalid. The Endangerment Finding itself is therefore invalid and should be reconsidered. Moreover, this reconsideration is particulary urgent at this point in time in that the widely used Social Cost of Carbon has now been demonstrated to be fundamentally flawed. To put it mildly, the current Endangerment Finding and Social Cost of Carbon are leading the nation in the wrong direction from an energy polcy standpoint. Decarbonization makes absolutely no scientific or economic sense.

V. CONCLUSION

No scientists have yet devised an empirically validated theory proving that higher atmospheric CO2 levels will lead to higher global average surface temperatures. Moreover, if the causal link between higher atmospheric CO2 concentrations and higher temperatures is broken by invalidating each of EPA's three lines of evidence, then EPA's assertions that higher CO2 concentrations also cause sea-level increases and more frequent and severe storms, floods, and droughts and other deleterious effects on human health and welfare are also disproved. Such causality assertions require a validated theory that higher atmospheric CO2 concentrations cause increases in temperatures. Lacking such a validated theory, EPA's conclusions cannot stand. In science, credible empirical

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data always trump proposed theories, even if those theories are claimed to (or actually do) represent the current consensus, or, in this case, a finding made by EPA.

The invalidated Endangerment Finding, combined with a fundamentally flawed and dangerous Social Cost of Carbon estimate, are now driving numerous potentially crippling regulations, including the Clean Power Plan and the newly proposed automotive fuel economy standards. EPA should therefore promptly convene a proceeding to reconsider the Endangerment Finding.

Respectfully submitted this 20th day of January, 2017.

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BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

In re:	)	
	)	EPA Docket No.
Endangerment and Cause or Contribute	)	
Findings for Greenhouse Gases Under	)	EPA-HQ-OAR-2009-01
Section 202(a) of the Clean Air Act	)	
	)	

PETITION FOR RECONSIDERATION OF "ENDANGERMENT AND CAUSE OR CONTRIBUTE FINDINGS FOR GREENHOUSE GASES UNDER SECTION 202(a) OF THE CLEAN AIR ACT"

Filed by

Concerned Household Electricity Consumers Council, consisting of Joseph D'Aleo, Clement Dwyer, Jr., Russell C. Slanover, Scott Univer, James P. Wallace III, Robin D. Weaver, and Douglas S. Springer

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I. INTRODUCTION

Pursuant to Section 307(d) of the Clean Air Act, 42 U.S.C. § 7607(d), the Concerned Household Electricity Consumers Council ("CHECC"), consisting of Joseph D'Aleo, Clement Dwyer, Jr., Russell C. Slanover, Scott Univer, James P. Wallace III, Robin D. Weaver and Douglas S. Springer, hereby petition the U.S. Environmental Protection Agency ("EPA" or "the Agency") to convene a proceeding for reconsideration of the "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act" published by the Agency on December 15, 2009 (74 F.R. 66496, Dec. 15, 2009) (original EPA Docket No. Docket EPA-HQ-OAR-2009-171) ("the Endangerment Finding").

As is more fully shown below, the Endangerment Finding was based on attribution of observed climate change to anthropogenic activities through what EPA termed its three "lines of evidence." 74 C.F.R. at 66518. Scientific research since the adoption of the Endangerment Finding has invalidated each of EPA's three lines of evidence. This Petition principally relies on the peer-reviewed Research Report of Wallace, *et al.*, that was first published on September 21, 2016. *See* https://thsresearch.files.wordpress.com/2016/09/ef-cpp-sc-2016-data-ths-paper-ex-sum-090516v2.pdf ("Research Report"). That Research Report is based on evidence that includes data as to atmospheric temperatures subsequent to the 2009 Endangerment Finding. The invalidation of the Endangerment Finding is conclusive, and thoroughly undermines all basis for any and all EPA regulation that is based on the Endangerment Finding, and the Social Cost of Carbon estimates that are based on this Finding.

The regulations that are based on the Endangerment Finding have resulted in much ongoing activity in the economy that looks to shut down existing sources of electricity and replace them with other much more expensive sources. Much of this activity is ongoing and, if not halted promptly, will impose massive new burdens on consumers of electricity. Therefore, Petitioners ask that EPA promptly convene hearings on this subject and issue a new "Non-Endangerment Finding" no later than June 20, 2017.

II. LEGAL STANDARD

Section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. § 7607(d)(7)(B), states in relevant part:

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> If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such an objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed.

Thus, EPA is required to convene a proceeding for reconsideration upon a showing of two conditions precedent: (1) the information arose after the period for public comment on the Endangerment Finding and (2) the objection is of "central relevance to the outcome of the rule."

The procedural and substantive requirements for a petition for reconsideration are easily met here. The matters in this Petition could not have been raised during the comment period on the Endangerment Finding because the Research Report on which this Petition principally relies was first published on September 21, 2016, close to seven years *after* the Endangerment Finding. The Research Report in turn relies on substantial scientific evidence and data that did not exist at the time of the Endangerment Finding, namely data as to atmospheric temperatures that include extensive data for time periods subsequent to the Endangerment Finding. It was therefore not only impracticable but impossible to have raised these grounds within the original comment period or the period for judicial review of the Endangerment Finding.

The Petition is also timely under the rule of *Oljato Chapter of the Navajo Tribe v. Train*, 515 F.2d 654 (D.C. Cir. 1975).[1] *Oljato Tribe* sets forth a straightforward three-step process for EPA to follow in handling petitions for reconsideration under the Clean Air Act:

> (1) The person seeking revision of a standard of performance, or any other standard reviewable under Section 307, should petition EPA to revise the standard in question. The petition should be submitted together with supporting materials, or references to supporting materials. (2) EPA should respond to the petition and, if it denies the petition, set

[1] The Clean Air Act's legislative history makes clear that "the committee bill confirms the court's decision in *Oljato Chapter of the Navajo Tribe v. Train*, 515 F.2d 654 (D.C. Cir. 1975)." *See* H.R. Rep. 95-294, at 323 (May 12, 1977).

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> forth its reasons. (3) If the petition is denied, the petitioner may seek review of the denial in this court pursuant to Section 307.

Id. at 666.

This Petition satisfies the requirements enumerated in *Oljato Tribe*. It satisfies the first step because it seeks the withdrawal of the Endangerment Finding on specified legal grounds, namely that the attribution of warming to human emissions on which the Endangerment Finding is based has been conclusively invalidated. EPA thus has a duty to respond under the second step, with any denial of the Petition subject to review in the D.C. Circuit under the third step.

Oljato Tribe, in establishing the right to seek reconsideration, does no more than recognize the reality, first emphasized in the legislative history to the 1970 Clean Air Act Amendments, that regulations may need to be revised in light of new information:

> Section 307 originated in the Senate version of the Clean Air Act. The Senate committee described its purpose in allowing for subsequent review based on new information as follows:
>
> > The committee recognizes that it would not be in the public interest to measure for all time the adequacy of a promulgation of any standard or regulation by the information available at the time of such promulgation. In the area of protection of public health and environmental quality, it is clear that new information will be developed and that such information may dictate a revision or modification of any promulgated standard or regulation established under the act. The judicial review section, therefore, provides that any person may challenge any promulgated implementation plan after the date of promulgation whenever it is alleged that significant new information has become available.
>
> S.Rep.No.91-1196, 91st Cong., 2d Sess., 41-42 (1970.

Oljato Tribe, 515 F.2d at 660. Thus, when critical new information becomes available, as here, after a "regulation" has been "promulgated," argument should be directed to EPA in the first instance on reconsideration, to build an appropriate administrative record for later D.C. Circuit review. *See id.* 665-66.

In *Oljato Tribe*, the holding of which was expressly confirmed in the legislative history of the 1977 Clean Air Act amendments, the relevant

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reconsideration petition was remanded to EPA for consideration on its merits even though it was filed long outside the review period. Where, as here, the grounds for reconsideration arise after the close of the review period, the petition must still be considered.

The D.C. Circuit explained in *Oljato Tribe* that "the public's right to petition the Administrator for revision of a standard of performance and the Administrator's duty to respond substantively to such requests *exist completely independently of Section 307 and this court's appellate jurisdiction*." 515 F.2d at 667 (emphasis added). Thus, in *PPG Indus., Inc. v. Costle*, 659 F.2d 1239, 1250 (D.C. Cir. 1981), the D.C. Circuit held that amendment or repeal of a Clean Air Act regulation could be sought under APA Section 553(e) or Section 307(d)(7)(B), even well outside the 60-day review window:

> Alternatively, a petition may be filed directly with EPA to interpret or amend the standard, to withdraw the Guidelines, or to specify midnight to midnight reporting procedures. *See* 42 U.S.C. § 7607(d)(7)(B); 5 U.S.C. § 553(e). Either route would provide a reviewing court with a contemporaneous record of the agency's consideration of this issue, rather than with the "post hoc rationalizations of counsel." *See Oljato Chapter of the Navajo Tribe et al. v. Train*, 515 F.2d 654, 665-68 (D.C. Cir. 1975).

PPG Indus., Inc. v. Costle, 659 F.2d at 1250. This procedure has been repeatedly recognized and approved. "The court subsequently endorsed the same procedure [as in *Ojlato Tribe*], also under section 307, in *Group Against Smog & Pollution, Inc. v. EPA*, 665 F.2d 1284, 1290 (D.C. Cir. 1981); and *Natural Resources Defense Council, Inc. v. Thomas*, 845 F.2d 1088 (D.C.Cir.1988)." *Ciba-Geigy Corp. v. EPA*, 46 F.3d 1208, 1210 (D.C. Cir. 1995) (agreeing with the reasoning of those cases). The Agency itself granted a three-month stay of an emissions standard promulgated nearly four years earlier. S*ee* 63 Fed. Reg. 24,749 (May 5, 1998).

In sum, it is well-settled that EPA has a duty to consider and grant this Petition for Reconsideration, under both Section 307 and as a petition for rulemaking under 5 U.S.C. 553(e), because the grounds presented arose after the close of the period for public comment and judicial review.[2]

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[2] To be clear, this Petition seeks relief alternatively under Clean Air Act Section 307(d)(7)(B) and 5 U.S.C. § 553(e).

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Where, as here, the issues on reconsideration are substantial, a summary denial of the Petition would constitute an abuse of EPA's discretion. *Id.* at 666, n. 19. Likewise, a decision that EPA lacks authority to entertain the petition at all would misread the Agency's statutory mandate. *See Prill v. NLRB*, 755 F.2d 941, 947-48 (D.C. Cir. 1985), and its progeny. EPA may and must exercise the statutory discretion it has been delegated to consider this Petition on its merits.

The matters raised in this Petition are clearly of "central relevance" to the outcome of the Endangerment Finding. Indeed, the Research Report thoroughly and conclusively invalidates the entire basis for the Endangerment Finding, as that basis is stated and defined in the Endangerment Finding itself. *See Coalition for Responsible Regulation v. EPA*, 684 F. 3d 102, 125, 126 (D.C. Cir. 2012) (defining test of "central relevance"), *reversed on other grounds sub. nom. Utility Air Regulatory Group v. EPA*, 134 S.Ct. 2427 (2014).

III. STANDING OF THE PETITIONERS

The Petitioners herein are the Concerned Household Electricity Consumers Council ("CHECC"), and its members, namely Joseph D'Aleo, Clement Dwyer, Jr., Russell C. Slanover, Scott Univer, James P. Wallace III, Robin D. Weaver, and Douglas S. Springer.

Each of CHECC's members is a citizen of the United States and a member of a household that pays a monthly electricity bill to a utility that in turn is regulated by EPA. EPA's regulations based on the Endangerment Finding – notably but not exclusively including the so-called Clean Power Plan, 40 C.F.R. at 64662, *et seq.* – seek to replace current electricity generation sources primarily based on fossil fuels like coal and natural gas with so-called "renewables," principally wind turbines and solar panels. Replacement of fossil fuel sources with such renewables, that provide power only intermittently, threatens to increase the cost of electricity paid by the Petitioners (and by all Americans) by a factor of five or likely far more. Thus, should EPA's Endangerment Finding not be reconsidered and revoked, each of the Petitioners faces electricity bills that will inevitably increase over the coming years by many thousands of dollars per year. On a nationwide basis, the unnecessary incremental cost to consumers of replacing fossil fuel-based electricity generation with intermittent renewables is likely to be in the range of hundreds of billions of dollars per year, if not more.

A critical problem with intermittent renewables like wind and solar power lies in the excess costs that must be incurred to turn power from these sources into a fully-functioning electricity system that provides reliable power 24 hours a day, 7

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days a week, and 365 days a year. Unfortunately, the wind is often calm or blows lightly; and the sun goes completely dark fully half the time ("night"), and also shines at far less than full strength on winter days, cloudy days, cloudy winter days, and at dawn and dusk. At many of these times, consumer power demands are high.

When the intermittent sources provide less than 10% of the electricity in a system, the problems of intermittency typically make only a small cost difference. On a calm night, the lack of power from wind and solar sources can be covered over by a cushion of 10 – 15% or so of excess fossil fuel-based electric power generation capacity. But as the percent of electricity generation from intermittent renewables increases to 15% and beyond, the necessary additional costs multiply. That proposition is demonstrated by the experience of states and countries that have attempted to increase the percent of their electricity generated by intermittent renewables.

For example, California is a "leader" in the United States in generating power from wind and solar sources. According to the California Energy Commission, in 2015 California got 6% of its electricity supply from solar and 8.2% from wind, for a total of 14.2% from those two intermittent sources. *See* http://www.energy.ca.gov/almanac/electricity_data/total_system_power.html According to the U.S. Energy Information Agency, California's average electricity rate that year was 15.62 cents per kWh, versus a U.S. average of 10.31 cents per kWh. *See* https://www.eia.gov/electricity/monthly/epm_table_grapher.cfm?t=epmt_5_6_a In Europe, Germany began its so-called *Energiewende* ("energy transformation") in 2010, and by 2015 had gotten the portion of its electricity generated from wind and solar all the way up to just over 30%. *See* http://www.eia.gov/todayinenergy/detail.php?id=26372 The result: the average German household's electricity rate in 2015 had risen to 28.7 euro cents per kWh, about *triple* the average U.S. rate. *See* https://www.cleanenergywire.org/factsheets/what-german-households-pay-power

Analyses of the soaring price of electricity in Germany place the blame squarely on excess costs that have been necessarily incurred to try to get to a stable, functioning, 24/7/365 system with so much input from intermittent renewables. First, massive wind and solar capacity must be installed to try to deal with days of light wind and heavy clouds. And for calm nights when the wind and solar sources produce nothing, nearly the entire fleet of fossil fuel plants must be maintained and ready to go, even though those sources may be idle much of the time. And then, some means must be found to deal with the surges of available

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electricity when the wind and sun suddenly blow and shine together at full strength at the same time. As noted by Benny Peiser at the Global Warming Policy Foundation on April 4, 2015 (http://www.thegwpf.com/benny-peiser-eus-green-energy-debacle-shows-the-futility-of-unilateral-climate-policies/):

> Every 10 new units worth of wind power installation has to be backed up with some eight units worth of fossil fuel generation. This is because fossil fuel plants have to power up suddenly to meet the deficiencies of intermittent renewables. In short, renewables do not provide an escape route from fossil fuel use without which they are unsustainable. . . . To avoid blackouts, the government has to subsidize uneconomic gas and coal power plants. . . . Germany's renewable energy levy, which subsidizes green energy production, rose from 14 billion euros to 20 billion euros in just one year as a result of the fierce expansion of wind and solar power projects. Since the introduction of the levy in 2000, the electricity bill of the typical German consumer has doubled.

And those extra costs are just to get to a system that gets about 30% of power from the intermittent renewables. To get higher than that, some means must be found to store the power from the wind and sun for release at times of calm and dark. To make this work, major cities like New York would require the equivalent of tens of millions of Teslas' worth of batteries, at a cost of tens or hundreds of billions of dollars.

An idea of how much extra costs must be incurred to get to a system that approaches 50% or more of electricity generation from intermittent renewables, we can look to a demonstration project that was put together in South Korea for a small community of just 97 households and 178 people. A report on the Gapa Island Project appeared on the Hankyoreh news site in July 2016 at http://english.hani.co.kr/arti/english_edition/e_national/752623.html. With average electricity usage of 142 kw, and maximum usage of 230 kw, the islanders installed wind and solar capacity of 674 kw – about *three times* maximum usage, to deal with light wind and low sun. They also bought battery capacity for about eight hours of average usage. The cost of the wind and solar capacity plus batteries was approximately $12.5 million, or about $125,000 per household. And with all that investment the islanders were still only able to get about 42% of their electricity from the sun and wind when averaged over a full month. They still needed the full fossil fuel backup capacity.

By applying a reasonable cost of capital to a system like that of Gapa Island, and considering additional elements of a system, like additional storage, that would

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be necessary to push generation from renewables to higher levels, one can calculate that a system like the Gapa Island demonstration project for the full United States would lead to electricity costs of *at least five times* their current level, and more likely, far higher. Even then, the U.S. would be hard-pressed to achieve 50% of electricity from intermittent renewables. The Petitioners obviously have a strong personal interest in heading off such disastrous cost increases. Granting the relief sought by this Petition would prevent those cost increases from occurring.

IV. THE "LINES OF EVIDENCE" ON WHICH EPA BASED THE ENDANGERMENT FINDING HAVE ALL BEEN INVALIDATED.

EPA's Endangerment Finding appears at 74 C.F.R., page 66,495, *et seq*. At page 66,518 EPA sets forth the three "lines of evidence" upon which it says it has attributed "observed climate change" to "anthropogenic activities," thus providing the basis for the Finding that human GHG emissions endanger human health and welfare:

> The attribution of observed climate change to anthropogenic activities is based on multiple lines of evidence. The first line of evidence arises from our basic physical understanding of the effects of changing concentrations of greenhouse gases, natural factors, and other human impacts on the climate system. The second line of evidence arises from indirect, historical estimates of past climate changes that the changes in global surface temperature over the last several decades are unusual. The third line of evidence arises from the use of computer-based climate models to simulate the likely patterns of response of the climate system to different forcing mechanisms (both natural and anthropogenic).

More information about the nature of each of the three "lines of evidence" can be gleaned from EPA's further elaboration in the Endangerment Finding itself and the associated Technical Support Document.

By the first "line of evidence," ("our basic physical understanding of the effects of changing concentrations of greenhouse gases, natural factors, and other human impacts on the climate system"), EPA is referring to its "greenhouse gas fingerprint" or "tropical hot spot" ("Hot Spot") theory, which is that in the tropics, the upper troposphere is warming faster than the lower troposphere and the lower is warming faster than the surface, all due to rising atmospheric greenhouse gas concentrations blocking heat transfer into outer space. By this mechanism,

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increasing greenhouse gas concentration is assumed to increase surface temperatures.

The second "line of evidence" ("indirect, historical estimates of past climate changes that suggest that the changes in global surface temperature over the last several decades are unusual") refers to EPA's claim that global average surface temperatures have been rising in a dangerous fashion over the last fifty years.

The third "line of evidence" ("use of computer-based climate models to simulate the likely patterns of response of the climate system to different forcing mechanisms (both natural and anthropogenic)") consists of EPA's reliance on climate models (not actually "evidence") that assume that greenhouse gases are a key determinant of climate change. EPA uses climate models for two purposes: to "attribute" warming to human GHG emissions, and to set regulatory policy for such emissions based on their modeled impact on global temperatures.

The Research Report of Wallace, et al. (September 21, 2016) undertook to assess each of EPA's three "lines of evidence" and to either validate or invalidate each of them based on the best available historical temperature data. In accordance with the scientific method, the Research Report used the best available temperature data from multiple sources, all of them completely independent from each other, for the validation/invalidation exercise. The data used in the Research Report are available at the following url: https://thsresearch.files.wordpress.com/2017/01/ef-cpp-sc-2016-data-ths-data-master-original.xlsx. Equally available from the text of the Report itself are all the methods, equations and formulas that were used to produce its results. In other words, the Report is fully replicable by any scientist who wishes to check or question its methods or results.

The principal conclusions of the Research Report are as follows:

- "These analysis results would appear to leave very, very little doubt but that EPA's claim of a Tropical Hot Spot (THS), caused by rising atmospheric CO2 levels, simply does not exist in the real world."

- Once EPA's THS assumption is invalidated, it is obvious why the climate models they claim can be relied upon, are also invalid.

- "[T]his analysis failed to find that the steadily rising Atmospheric CO2 Concentrations have had a statistically significant impact on any of the 13 critically important temperature time series data analyzed."

- "[T]hese results clearly demonstrate - 13 times in fact - that once just the ENSO [El Nino/La Nina] impacts on temperature data are accounted for, there is no "record setting" warming to be concerned about. In fact, there is no ENSO-Adjusted Warming at all."

Research Report, p. 4.

This means that the climate sensitivity parameter's estimate is not statistically significant. Therefore, the Social Cost of Carbon esimates now in widespread use to justify regulation of CO2 emissions are fundamentally flawed. The actual Social Cost of Carbon is negative rather than positive, meaning that CO2 is in fact a benefical gas.

Invalidation of the the Hot Spot requires reconsideration of the Endangerment Finding because the Hot Spot is a critical and necessary component of the "physical understanding" of climate that EPA claims as the foundational line of evidence supporting the Endangerment Finding. For example, the "physical understanding" of the atmospheric greenhouse mechanism set forth in U.S. Climate Change Science Program, Synthesis and Assessment Product 1.1, Temperature Trends in the Lower Atmosphere - Understanding and Reconciling Differences, ("SAP 1.1"), Chapter 1, § 1.1, The Thermal Structure of the Atmosphere, p. 17-19, https://www.gfdl.noaa.gov/bibliography/related_files/vr0603.pdf ; explicitly relies upon the Hot Spot:

> The presence of such greenhouse gases (e.g., carbon dioxide, methane, nitrous oxide, halocarbons) increases the radiative heating of the surface and troposphere. As specific humidity is strongly related to temperature, it is expected to rise with surface warming (IPCC, 1990), The increased moisture content of the atmosphere amplifies the initial radiative heating due to the greenhouse gas increases (Manabe and Wetherald, 1967; Ramanathan, 1981). The re-establishment of a new thermal equilibrium in the climate system involves the communication of the added heat input to the troposphere and surface, leading to surface warming (Goody and Yung, 1989; IPCC, 1990; Lindzen and Emanuel, 2002). From the preceding discussions, the lapse rate can be expected to decrease with the resultant increase in humidity, and also to depend on the resultant changes in atmospheric circulation. **In general, the lapse rate can be expected to decrease with warming such that temperature changes aloft exceed those at the surface.** As a consequence, the characteristic

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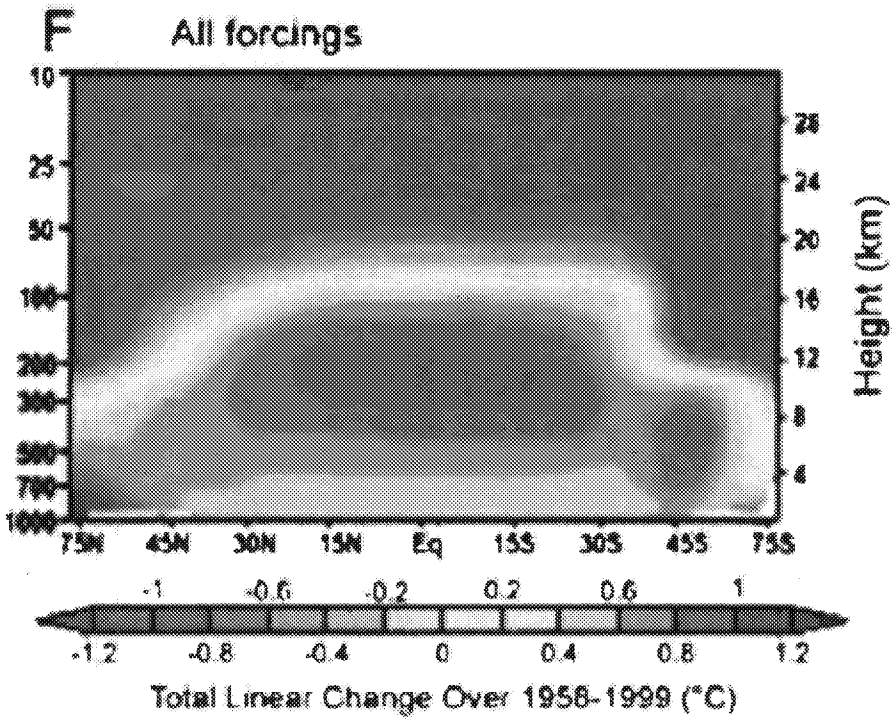
infrared emission level of the planet is shifted to a higher altitude in the atmosphere.

(Emphasis added). The CCSP SAP 1.1 report depicted the Hot Spot graphically in figure 1.3, p. 25, as follows:



Similarly, the IPCC's Fourth Assessment Report (AR4) also states unequivocally that the Hot Spot is an integral feature of the "physical understanding" of the climate's hypothesized greenhouse warming mechanism. This is demonstrated by AR4 WG1, The Physical Science Basis, Chapter 9, Figure 9.1. Panel (c) shows the modeled effect of GHGs, and clearly depicts the hot spot:

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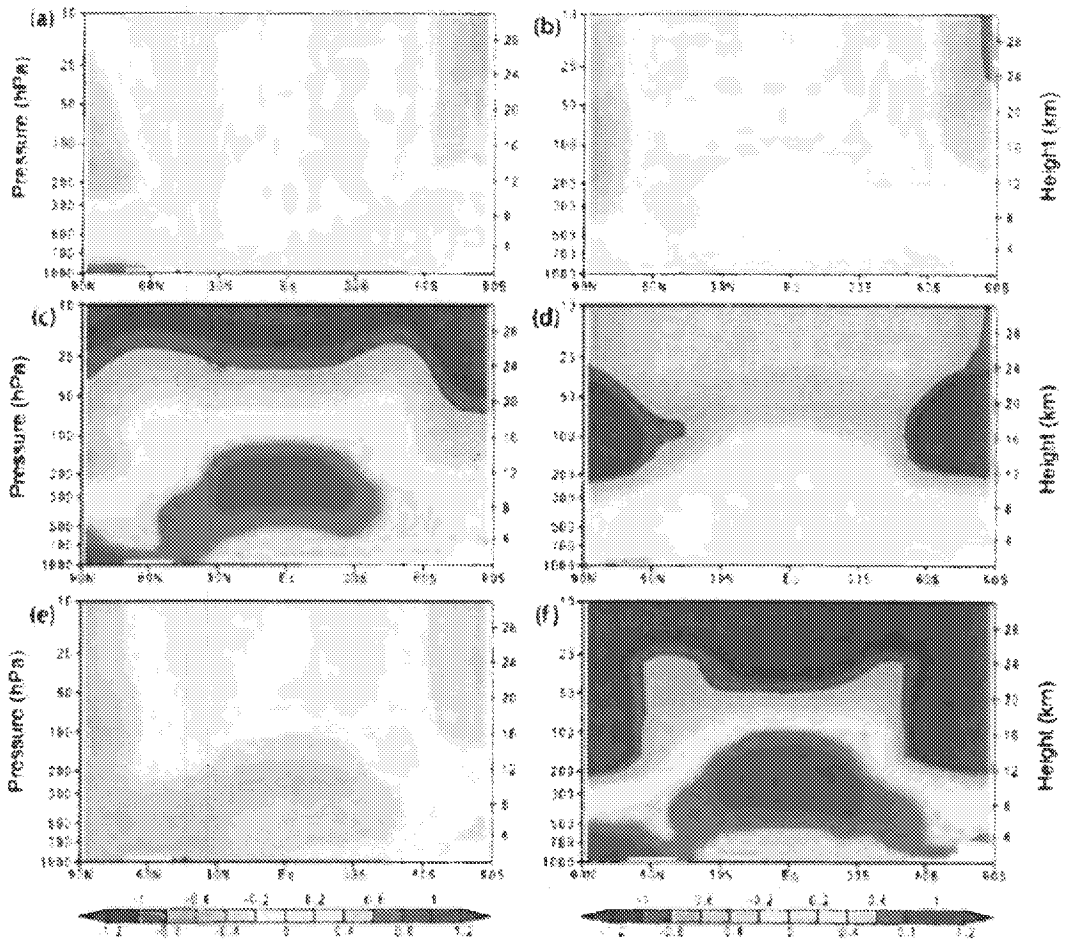

Figure 9.1. Zonal mean atmospheric temperature change from 1890 to 1999 (°C per century) as simulated by the PCM model from (a) solar forcing, (b) volcanoes, (c) well-mixed greenhouse gases, (d) tropospheric and stratospheric ozone changes, (e) direct sulphate aerosol forcing and (f) the sum of all forcings. Plot is from 1,000 hPa to 10 hPa (shown on left scale) and from 0 km to 30 km (shown on right). See Appendix 9.C for additional information. Based on Santer et al. (2003a).

The text accompanying this figure explains that "The major features shown in Figure 9.1 are robust to using different climate models." IPCC AR4 WG1 § 9.2.2. (http://www.ipcc.ch/publications_and_data/ar4/wg1/en/ch9s9-2-2.html). "Greenhouse gas forcing is expected to produce warming in the troposphere, … ." *Id.*

In adopting the Endangerment Finding, EPA explicitly, repeatedly and irrevocably placed primary reliance on the US CCSP reports and the IPCC AR4. *See* TSD Box 1.1, p 4. These assessments are cited thousands of times in the full set of documentation for the Endangerment Finding.

The CCSP report cited above said if the Hot Spot were missing it would be a "*potentially serious inconsistency*." SAP 1.1, p. 11. (Emphasis added). Yet the

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CCSP ultimately sided with those claiming at the time that the mismatch between observations and prediction was not fatal. *Id.*

EPA also acknowledged in the Technical Support Document for the Endangerment Finding that if the Hot Spot were missing it would be "an important inconsistency." TSD p. 50. EPA's team, including Tom Karl, agreed with the CCSP (led by the same Tom Karl) and concluded there was no dispositive conflict between prediction and observation. *Id.*

The Research Report, using substantial scientific evidence and additional data available only after 2009, not only shows a "an important inconsistency," it invalidates the Hot Spot entirely. This is fatal to the EPA's claimed physical understanding of climate, and is likewise fatal to the climate models constituting EPA's third line of evidence. These models, relying on an invalidated physical theory, all predict the Hot Spot. Proper analysis of more than 50 years of balloon and 37 years of satellite temperature data generated by five independent entities conclusively shows that the Hot Spot does not exist. This demonstrates that the models are invalid and unreliable, and cannot properly be used for attribution analysis or forecasting warming due to anthropogenic CO2 emissions.

In sum, all three of the lines of evidence relied upon by EPA to attribute warming to human GHG emissions are invalid. The Endangerment Finding itself is therefore invalid and should be reconsidered. Moreover, this reconsideration is particulary urgent at this point in time in that the widely used Social Cost of Carbon has now been demonstrated to be fundamentally flawed. To put it mildly, the current Endangerment Finding and Social Cost of Carbon are leading the nation in the wrong direction from an energy polcy standpoint. Decarbonization makes absolutely no scientific or economic sense.

V. CONCLUSION

No scientists have yet devised an empirically validated theory proving that higher atmospheric CO2 levels will lead to higher global average surface temperatures. Moreover, if the causal link between higher atmospheric CO2 concentrations and higher temperatures is broken by invalidating each of EPA's three lines of evidence, then EPA's assertions that higher CO2 concentrations also cause sea-level increases and more frequent and severe storms, floods, and droughts and other deleterious effects on human health and welfare are also disproved. Such causality assertions require a validated theory that higher atmospheric CO2 concentrations cause increases in temperatures. Lacking such a validated theory, EPA's conclusions cannot stand. In science, credible empirical

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data always trump proposed theories, even if those theories are claimed to (or actually do) represent the current consensus, or, in this case, a finding made by EPA.

The invalidated Endangerment Finding, combined with a fundamentally flawed and dangerous Social Cost of Carbon estimate, are now driving numerous potentially crippling regulations, including the Clean Power Plan and the newly proposed automotive fuel economy standards. EPA should therefore promptly convene a proceeding to reconsider the Endangerment Finding.

Respectfully submitted this 20th day of January, 2017.

Attorneys for Petitioners,

Francis Menton

Francis Menton by HWM with express permission

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Correspondence Management System
Control Number: AX-17-000-3904
Printing Date: February 07, 2017 01:26:42

Citizen Information

Citizen/Originator: **MacDougald, Harry W.**
Organization: Caldwell, Propst & DeLoach
Address: Two Ravinia Drive, Atlanta, GA 30346

Constituent: N/A
Committee: N/A **Sub-Committee:** N/A

Control Information

Control Number:	AX-17-000-3904	**Alternate Number:**	N/A
Status:	Pending	**Closed Date:**	N/A
Due Date:	Feb 16, 2017	**# of Extensions:**	0
Letter Date:	Feb 1, 2017	**Received Date:**	Feb 2, 2017
Addressee:	AAD-Acting Administrator	**Addressee Org:**	EPA
Contact Type:	LTR (Letter)	**Priority Code:**	Normal
Signature:	AAA-OAR-Acting Assistant Administrator-OAR	**Signature Date:**	N/A

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.
Subject: Petition for reconsideration of "Endangerment and Cause or Contribute Findings of Greenhouse Gases Under Section 202 (A) of the Clean Air Act
Instructions: AAA-OAR-Prepare draft response for signature by the Acting Assistant Administrator for OAR
Instruction Note: N/A
General Notes: N/A
CC: N/A

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
Brenda Salvador	OEX	OAR	Feb 7, 2017	Feb 16, 2017	N/A
	Instruction: N/A				
Barbara Matthews	OAR	OAR-OAQPS	Feb 7, 2017	Feb 13, 2017	N/A
	Instruction: AA-OAR-Prepare draft response for signature by the Assistant Administrator for OAR				
Lora Strine	OAR-OAQPS	OAR-OAQPS-SPPD	Feb 7, 2017	Feb 10, 2017	N/A
	Instruction: N/A				

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
No Record Found.			

History

Action By	Office	Action	Date
Ken Labbe	OEX	Assign OAR as lead office	Feb 2, 2017
Barbara Matthews	OAR	Accepted the group assignment	Feb 3, 2017
Barbara Matthews	OAR	Assign OAR-OAQPS as lead office	Feb 3, 2017
Brenda Salvador	OEX	cmsdockt proxy for Brenda Salvador: Control Taken Over	Feb 6, 2017
Brenda Salvador	OEX	Assign OAR as lead office	Feb 7, 2017
Barbara Matthews	OAR	Accepted the group assignment	Feb 7, 2017
Barbara Matthews	OAR	Assign OAR-OAQPS as lead office	Feb 7, 2017
Lora Strine	OAR-OAQPS	Accepted the group assignment	Feb 7, 2017
Lora Strine	OAR-OAQPS	Assign OAR-OAQPS-SPPD as lead office	Feb 7, 2017
Mariel Morales	OAR-OAQPS-SPPD	Accepted the group assignment	Feb 7, 2017

Comments

Commentator	Comment	Date
No Record Found.		

Message

From: U.S. EPA Media Relations [noreply-subscriptions@epa.gov]
Sent: 3/30/2017 9:43:31 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: EPA Administrator Sends Clean Power Plan Guidance Letter to Governors
Attachments: KY Bevin.pdf

CONTACT:
press@epa.gov

FOR IMMEDIATE RELEASE
March 30, 2017

EPA Administrator Sends Clean Power Plan Guidance Letter to Governors

States have no obligation to spend resources to comply with a Rule that has been stayed by the Supreme Court of the United States

WASHINGTON – Fulfilling his promise of cooperative federalism and acting on President Trump's Energy Independence Executive Order, Environmental Protection Agency (EPA) Administrator Scott Pruitt sent letters to state governors advising them that they are under no obligation to adhere to the Clean Power Plan (CPP) rule.

"The days of coercive federalism are over," the letter reads. *"Accordingly, I look forward to working with you, your state experts and local communities as we develop a path forward to improve our environment and bolster the economy in a manner that is respectful of and consistent with the rule of law."*

Full letter attached.

R047

If you would rather not receive future communications from Environmental Protection Agency, let us know by clicking here.
Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460 United States

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

March 30, 2017

The Honorable Matt Bevin
Governor of Kentucky
700 Capitol Avenue
Suite 100
Frankfort, Kentucky 40601

Dear Governor Bevin:

On February 9, 2016, the Supreme Court of the United States stayed implementation of the Clean Power Plan (CPP) effectively "suspend[ing] administrative alteration of the status quo." *Nken v. Holder*, 556 U.S. 418, 428 n.1 (2009). Further, pursuant to the Administrative Procedure Act, the Supreme Court has authority to "issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings." 5 U.S.C. § 705.

Under that precedent, States and other interested parties have neither been required nor expected to work towards meeting the compliance dates set in the CPP. It is the policy of the Environmental Protection Agency (EPA) that States have no obligation to spend resources to comply with a Rule that has been stayed by the Supreme Court of the United States. To the extent any deadlines become relevant in the future, case law and past practice of the EPA supports the application of day-to-day tolling.

The days of coercive federalism are over. Accordingly, I look forward to working with you, your state experts and local communities as we develop a path forward to improve our environment and bolster the economy in a manner that is respectful of and consistent with the rule of law.

Respectfully yours,

E. Scott Pruitt

ED_002401_00001445-00001

Message

From: Bowman, Liz [Bowman.Liz@epa.gov]
Sent: 4/28/2017 5:28:18 PM
To: Fotouhi, David [fotouhi.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]
Subject: FW: CPP decision

Sorry, this was my call. Apologies for all the back and forth. I will talk to JP

From: Freire, JP
Sent: Friday, April 28, 2017 12:54 PM
To: Fotouhi, David <fotouhi.david@epa.gov>
Cc: Bowman, Liz <Bowman.Liz@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Konkus, John <konkus.john@epa.gov>; Graham, Amy <graham.amy@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Subject: Re: CPP decision

Deliberative Process / Ex. 5

J.P. Freire
Environmental Protection Agency
Associate Administrator for Public Affairs
Mobile: (202) 309-6781

On Apr 28, 2017, at 12:45 PM, Fotouhi, David <fotouhi.david@epa.gov> wrote:

> Agreed
>
> **David Fotouhi**
>
> Deputy General Counsel
> Office of General Counsel
> U.S. Environmental Protection Agency
> Tel: +1 202.564.1976
> fotouhi.david@epa.gov
>
> ---
>
> **From:** Freire, JP
> **Sent:** Friday, April 28, 2017 12:42 PM
> **To:** Bowman, Liz <Bowman.Liz@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Konkus, John <konkus.john@epa.gov>; Graham, Amy <graham.amy@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
> **Subject:** Fwd: CPP decision
>
> We have to coordinate with doj.
>
> J.P. Freire
> Environmental Protection Agency
> Associate Administrator for Public Affairs
> Mobile: (202) 309-6781

Begin forwarded message:

From: "Valentine, Julia" <Valentine.Julia@epa.gov>
Date: April 28, 2017 at 12:39:48 PM EDT
To: "Freire, JP" <Freire.JP@epa.gov>
Subject: FW: CPP decision

Julia P. Valentine
Assoc. Dir./Acting Dir.
U.S. EPA, Ofc of Media Relations
202.564.2663 direct
202.740.1336 m/txt

From: Hornbuckle, Wyn (OPA) [mailto:Wyn.Hornbuckle@usdoj.gov]
Sent: Friday, April 28, 2017 12:33 PM
To: Millett, John <Millett.John@epa.gov>; Senn, John <Senn.John@epa.gov>
Cc: Hornbuckle, Wyn (OPA) <Wyn.Hornbuckle@usdoj.gov>; Valentine, Julia <Valentine.Julia@epa.gov>
Subject: RE: CPP decision

Thanks John,
DOJ needs to clear any statements before they go out, as with all litigation. I'll flag this for the team

---

From: Millett, John [mailto:Millett.John@epa.gov]
Sent: Friday, April 28, 2017 12:17 PM
To: Senn, John <Senn.John@epa.gov>
Cc: Hornbuckle, Wyn (OPA) <Wyn.Hornbuckle@usdoj.gov>; Valentine, Julia <Valentine.Julia@epa.gov>
Subject: Re: CPP decision

Here's the statement I've seen -- recommend connecting with Jahan

Deliberative Process / Ex. 5

John Millett
202.510.1822

On Apr 28, 2017, at 11:50 AM, Senn, John <Senn.John@epa.gov> wrote:

> Probably John Millett from our air office and Julia Valentine from our press shop—cc'ing both of them on this email. Not sure the degree to

which our counsel's office has been involved with language, but John & Julia should know.

Thanks,
John

From: Hornbuckle, Wyn (OPA) [mailto:Wyn.Hornbuckle@usdoj.gov]
Sent: Friday, April 28, 2017 11:21 AM
To: Senn, John <Senn.John@epa.gov>
Subject: CPP decision

John – Can you remind me real quick who I should coordinate with on CPP ruling, and phone and email address if you have it?

Message

From: U.S. EPA Media Relations [noreply-subscriptions@epa.gov]
Sent: 4/20/2017 5:08:56 PM
To: Schwab, Justin [schwab.justin@epa.gov]
Subject: EPA Administrator Brings Back-to-Basics Agenda to Missouri Power Plant

CONTACT:
press@epa.gov

FOR IMMEDIATE RELEASE
April 20, 2017

EPA Administrator Brings *Back-to-Basics Agenda* to Missouri Power Plant

CLIFTON HILL, Mo. – U.S. Environmental Protection Agency Administrator Scott Pruitt visited the Thomas Hill Energy Center in Clifton Hill, Mo. today to discuss EPA's *Back-to-Basics* agenda, which aims to refocus the agency on its core mission of protecting the environment through sensible regulations developed in cooperation with state, local and tribal partners. Administrator Pruitt spoke with more than 300 power plant workers, electric cooperative members and agriculture leaders about balancing environmental protection with affordable energy and jobs.

"Rather than regulating an entire industry out of business, I'm committed to working in coordination with states to create a healthy environment where jobs and businesses can grow. That's the purpose of my *Back-to-Basics* agenda," **said Administrator Pruitt**. "Last week I went underground in a Pennsylvania coal mine, and today I got a firsthand look at a Missouri coal-fired power plant. Coal is, and will continue to be, a critical part of America's energy mix. I saw today just how important this fuel source is to affordable electricity and economic development in the region, especially in the agriculture community."

Administrator Pruitt also spoke with workers and co-op members about the President's recent Energy Independence Executive Order and his Executive Order directing EPA to review the 2015 Waters of the United States rule, known as WOTUS.

"When EPA asked for comments from the public on its Clean Power Plan in 2013, Missouri electric cooperative members responded with more than 300,000 comments, all with a common theme: 'Don't raise our rates, and we want an all-of-the-above energy strategy that keeps electricity affordable and creates jobs.' Those comments fell on deaf ears. We are encouraged to see that the Trump Administration understands the concerns of people in rural America and is committed to bringing the change they want. We look forward to working with Administrator Pruitt and other administration officials as they work to ensure Washington regulations don't harm the people who can least afford it — our members — and help rural communities create jobs," **said Barry Hart, Executive VP and CEO of Association of Missouri Electric Cooperatives.**

"Responsible coal generation plays a key role in making sure rural America has access to affordable power it can count on. While natural gas prices and other variables may periodically affect the operation of generating units like those here at Thomas Hill Energy Center, coal is still the foundation fuel that delivers reliability at competitive prices for our cooperative system. Based on his visit today and our conversation, it's clear to me Administrator Pruitt's vision and priorities for the EPA align with the values of Associated Electric and our members," **said David Tudor, CEO & General Manager, Associated Electric Cooperative Inc.**

"Missouri is proud to host U.S. EPA Administrator Scott Pruitt on his *Back-to-Basics* tour. We are encouraged that it is a new day at the agency, one in which all sides are heard and common sense will be considered in decisions that affect people's lives and economic livelihood. The last time an EPA Administrator traveled to our state she was in the midst of a

lobbying campaign for the onerous Waters of the United States rule that would make 99 percent of Missouri land subject to federal regulation. President Trump's decision to conduct a thorough review of the WOTUS rule is a good step, and we look forward to the day when government overreach is no longer standard operating procedure. Missouri farmers and ranchers work hard every day to produce an abundance of high quality and affordable food and don't need to be targeted for unnecessary and costly government regulations," **said Blake Hurst, President of the Missouri Farm Bureau.**

R062

If you would rather not receive future communications from Environmental Protection Agency, let us know by clicking here.
Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460 United States

Message

From: So, Katherine [so.katherine@epa.gov]
Sent: 2/17/2017 5:13:55 PM
To: McGonagle, Kevin [mcgonagle.kevin@epa.gov]; Mccabe, Catherine [McCabe.Catherine@epa.gov]; Reeder, John [Reeder.John@epa.gov]; Flynn, Mike [Flynn.Mike@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Hull, George [Hull.George@epa.gov]; Slotkin, Ron [slotkin.ron@epa.gov]; Sowell, Sarah [Sowell.Sarah@epa.gov]; Hart, Daniel [Hart.Daniel@epa.gov]; Orquina, Jessica [Orquina.Jessica@epa.gov]; Actadmmccabe, Catherine17 [Actadmmccabe.catherine17@epa.gov]; Benton, Donald [benton.donald@epa.gov]; Bangerter, Layne [bangerter.layne@epa.gov]; Davis, Patrick [davis.patrick@epa.gov]; Ericksen, Doug [ericksen.doug@epa.gov]; Konkus, John [konkus.john@epa.gov]; Greaves, Holly [greaves.holly@epa.gov]; Kreutzer, David [kreutzer.david@epa.gov]; Munoz, Charles [munoz.charles@epa.gov]; Schnare, David [schnare.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Sugiyama, George [sugiyama.george@epa.gov]; Valentine, Julia [Valentine.Julia@epa.gov]; AO OPA Media Relations [AO_OPA_Media_Relations@epa.gov]
CC: So, Katherine [so.katherine@epa.gov]
Subject: RE: Pruitt Pre-vote Clips 2/17/17

Below: AP, Politico, Politico Pro, Reuters, Bloomberg BNA, E&E News (2), Politico Pro, LA Times, Washington Times, Huffington Post, The Hill (2/16)

AP
http://hosted.ap.org/dynamic/stories/U/US_SENATE_TRUMP_CABINET?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT

Senate on track to confirm Scott Pruitt as EPA administrator
By Michael Biesecker 2/17/17, 11:53AM

WASHINGTON (AP) -- Senate Republicans are poised to use their majority to confirm President Donald Trump's nominee to lead the Environmental Protection Agency, despite calls from Democrats to delay until requested emails are released.

A vote on Scott Pruitt's nomination is set for Friday afternoon. As part of a public records lawsuit, a state judge in Oklahoma on Thursday ordered Pruitt to release thousands of emails that he exchanged with oil and gas executives by next week. Pruitt, who is Oklahoma's attorney general, has refused to release the emails for more than two years.

Democrats boycotted a committee vote on Pruitt's nomination last month, citing his refusal to hand over the emails, and on Thursday called on Senate Majority Leader Mitch McConnell, R-Ky., to delay Pruitt's confirmation vote until the nominee turns over the thousands of requested emails from his time as attorney general.

Senate Democratic Leader Chuck Schumer of New York tried to draw a direct line between Pruitt's withheld emails and last year's demands from Trump and congressional Republicans during the presidential campaign.

"Emails! Remember emails?" Schumer asked on the Senate floor. "'We should get them out!' they said about Hillary Clinton. ... If they weren't worried about them, then why rush?"

Republican leaders, however, have shown no signs they intend to wait for the documents to be released before voting to confirm him.

"Scott Pruitt is the most thoroughly vetted nominee we've ever had to lead this agency," said Sen. John Barrasso, R-Wyo., chairman of the Senate Environment and Public Works Committee. "These boycotts and these delay tactics do nothing to protect our environment or the health of Americans."

So far, Sen. Susan Collins of Maine is the lone Republican saying she will vote against Pruitt. Her no vote could be canceled out by Democratic Sen. Joe Manchin of coal-dependent West Virginia, who is expected to cross party lines to support Trump's pick.

To dramatize their cause, Senate Democrats kept the Senate in session through the night with a series of speeches opposing his confirmation. Democrats were still marching to the floor at daybreak.

Trump has tapped some of the wealthiest Americans to serve in his Cabinet, and ethics reviews have slowed the confirmation process. So have Senate Democrats, who have mostly opposed all the nominees and forced hours of debate.

So far, the Senate has confirmed 13 out of 22 Trump Cabinet or Cabinet-level picks requiring confirmation.

Pruitt's nomination was strongly opposed by environmental groups and hundreds of former EPA employees, who predict he will roll back the agency's environmental enforcement efforts. During his Senate confirmation hearing last month, Pruitt said he disagreed with Trump's past statements that global warming is a hoax. However, Pruitt has previously cast doubt on the extensive body of scientific evidence showing that the planet is warming and man-made carbon emissions are to blame.

The 48-year-old Republican is closely aligned in his home state with oil and gas companies, whose executives have backed his political campaigns. Though Pruitt ran unopposed for a second term in 2014, public campaign finance reports show he raised more than $700,000, much of it from people in the energy and utility industries.

The Center for Media and Democracy filed multiple public records requests for Pruitt's emails to coal, oil and gas corporations going back to 2015. It sued him last week.

In a hearing Thursday, Oklahoma District Court Judge Aletia Haynes Timmons concluded "there really is no reasonable explanation" for why Pruitt's office hasn't complied with the request for his emails. Timmons ordered Pruitt to turn over the records by Tuesday and to comply with other open records requests by the group in 2015 and 2016 within 10 days.

Pruitt's office says about 400 documents were turned over on Feb. 10, but Timmons says more than 3,000 have been withheld.

As attorney general, Pruitt filed 14 lawsuits challenging EPA regulations. He joined a multistate lawsuit opposing the Obama administration's plan to limit planet-warming carbon emissions from coal-fired power plants. Pruitt also sued over the EPA's recent expansion of water bodies regulated under the Clean Water Act. It has been opposed by industries that would be forced to clean up polluted wastewater.

Politico
http://www.politico.com/story/2017/02/scott-pruitt-democrats-emails-oil-gas-235140
Democrats: GOP will 'rue the day' it pushed Pruitt vote for EPA
By Alex Guillen 2/17/17, 11:16AM

The Senate is set to confirm Oklahoma Attorney General Scott Pruitt as the head of the Environmental Protection Agency Friday, installing one of the agency's fiercest critics as the nation's leading environmental regulator just hours after an Oklahoma judge ordered the release of his email conversations with oil, gas and coal groups.

On the eve of his confirmation, the state judge ordered Pruitt's office release the potentially thousands of emails relating to the energy companies he will soon be regulating — but not until Tuesday, days after his confirmation vote.

Pruitt is among the group of President Donald Trump's most controversial nominees, including Education Secretary Betsy DeVos, Health and Human Services Secretary Tom Price and Attorney General Jeff Sessions. And like those others tapped by Trump, Pruitt's nomination is likely to narrowly pass in the Senate — with the help of a pair of Democrats.

The controversy around Pruitt's contacts with oil, natural gas and coal companies has given Democrats a rallying point to call for a delay of his final vote on the Senate floor, but which Majority Leader Mitch McConnell has insisted will take place Friday.

"This is an egregious cover-up that must not stand," said Sen. Jeff Merkley (D-Ore.), who is planning to ask for another 10 days of debate on Pruitt — a move that's almost certain to be rejected.

It's not clear whether Pruitt's unreleased emails contain any damaging surprises, particularly since his ties to the oil and gas industry are well known. But Democrats — already incensed that Pruitt had told them to go through the public records request process if they wanted his emails or other documents from his time as attorney general — were apoplectic Thursday night when GOP leaders said Pruitt's vote would take place Friday as scheduled.

Sen. Sheldon Whitehouse (D-R.I.) called the Pruitt vote "an epic ram job," and said Pruitt himself is "the tool and the minion of the fossil fuel industry."

Given Pruitt's industry ties, "I don't see any way his tenure at the Environmental Protection Agency ends well," Whitehouse said. "Time will tell and facts will [come] out, but I believe our Republican friends will rue the day that they had this nomination rammed through the Senate on the very day that the emails were being litigated in Oklahoma, in order to get ahead of any counterpressure."

Sen. Tom Carper (D-Del.), who led a boycott of Pruitt earlier this month before the Environment and Public Works Committee, warned that Republicans could be tying themselves to a time bomb.

"Sometime — a week from now, maybe days from now — my fear is that a number of members, especially on the other side, will have been put in a very bad position and asked to vote for a nominee that they otherwise may not have supported had they known," Carper told reporters shortly before the judge ordered the emails released.

Republican leadership, with 52 votes secured to approve Pruitt, including Democratic Sens. Joe Manchin of West Virginia and Heidi Heitkamp of North Dakota, have no plans to change course on confirming him.

"Despite Democrat efforts to delay his confirmation vote, we need to be responsible and move forward to confirm Attorney General Pruitt," Sen. Jim Inhofe (R-Okla.) said on the Senate floor shortly before the judge's order came down. "The longer we postpone this vote, the longer it is going to take for things to get done at the EPA, which will not help anyone."

Speaking on the floor Friday morning, McConnell said Democrats have engaged in "truly historic, unprecedented and harmful obstruction" over Pruitt and other candidates.

"Democrats' obstruction has just kept many of our nation's most critical agencies without a leader for too long — needlessly delaying the president from fully standing up this new administration," he said.

Whitehouse argued that prior to the election, Republicans "had a fixation with emails," particularly Hillary Clinton's, National Oceanic and Atmospheric Administration scientists' message on climate change and the Obama administration's EPA administrators.

"They were desperate for emails. But now, suddenly emails between a nominee's office and the major players in the industry that he will be regulating as EPA administrator, all they do is look at the ceiling tiles," he said.

The judge who ordered the emails released, Aletia Haynes Timmons, said the two-year delay in releasing emails sought by the left-leaning watchdog Center for Media and Democracy was an "abject failure to provide prompt and reasonable access to documents" by Pruitt's office. Pruitt's lawyers had argued that his office processes requests in the order they are filed, indicating at least a two-year backlog.

She ordered Pruitt's office turn over up to 2,500 emails that are in dispute in CMD's oldest request, and said any documents thought to be privileged be brought to her for review by close of business Tuesday.

Timmons also ordered Pruitt's office to release emails responsive to five more records requests filed by CMD before Pruitt was nominated to run EPA within 10 days.

"The Office of Attorney General remains committed to following the letter and spirit of the Open Records Act," Pruitt spokesman Lincoln Ferguson said in a statement. "In light of that, we are reviewing all of our options in order to ensure fairness to all requestors rather than elevating the importance of some requests over others."

Pruitt's coordination with oil and gas companies is already well known since a 2014 New York Times story that detailed his "secretive alliance" with fossil fuel interests to combat Obama administration rules. Pruitt defended that alliance as in the best interest of Oklahomans who live in one of the biggest oil- and gas-producing states.

He also belonged to groups, including the Republican Attorneys General Association, that received major contributions from energy interests, although Pruitt denied ever soliciting the donations himself.

Politico Pro
https://www.politicopro.com/energy/whiteboard/2017/02/democrats-move-to-delay-pruitt-vote-after-email-release-083913
Democrats move to delay Pruitt vote after email release
BY Alex Guillen 2/17/17, 10:39 AM

Senate Democrats plan to push for another 10 days of debate time on EPA nominee Scott Pruitt in an effort to delay today's nomination vote until after potentially thousands of his emails with oil and gas interests are released by the Oklahoma attorney general's office.

However, Republicans appear prepared to stop Democrats' delay effort in its tracks.

Sen. Jeff Merkley will make a motion ahead of Pruitt's planned vote early this afternoon seeking 248 more hours of debate on Pruitt. A state judge on Thursday said delays by Pruitt's office in answering records requests was an "abject failure" and ordered as many as 3,000 emails turned over by Tuesday, with more due within 10 days.

But it will take only a simple majority to override Merkley's motion, and Republicans are counting 52 votes in support of Pruitt, including two Democratic cross-overs.

Speaking on the floor this morning, Majority Leader Mitch McConnell said Democrats have engaged in "truly historic, unprecedented and harmful obstruction" over Pruitt and other candidates.

"Democrats' obstruction has just kept many of our nation's most critical agencies without a leader for too long — needlessly delaying the President from fully standing up this new administration," he said.

Reuters
http://www.reuters.com/article/us-usa-congress-epa-idUSKBN15W131'
Senate set to approve Trump's EPA pick as White House targets regulation
By Timothy Gardner 2/17/17

The U.S. Senate is expected to approve President Donald Trump's pick to run the Environmental Protection Agency on Friday over the objections of Democrats and green groups worried he will gut the agency, as the administration readies executive orders to ease regulation on drillers and miners.

Trump's nominee, Oklahoma Attorney General Scott Pruitt, is likely to pass the vote scheduled for midday with the support of nearly all the Republicans in the Republican-controlled Senate. The vote could take place earlier in the day.

Pruitt's nomination has been controversial in progressive circles: he sued the agency he intends to lead more than a dozen times while top prosecutor of his oil and gas producing state, and has expressed doubts about the science behind climate change. But many Republican lawmakers view him as a welcome change at the top of the EPA, an agency they say declared war on the coal industry during Barack Obama's presidency with its rules against carbon emissions.

Democratic Senator Ben Cardin said on Thursday he was concerned Pruitt's opposition to Obama's landmark Clean Power Plan to reduce emissions from coal and natural gas burning plants would hurt the domestic environment and international efforts to curb climate change.

"He has not been at all committed to the United States' programs on dealing with climate change let alone our international responsibilities to lead other countries to do what they need to do," Cardin said on the Senate floor.

Pruitt only needs 51 votes in the 100-member chamber to be approved. Nearly all 52 Republicans, except Senator Susan Collins, who announced her opposition on Wednesday, are expected to vote for him.

In addition, one Democrat, Heidi Heitkamp, said on Thursday she would vote for Pruitt despite her concerns about his support for renewable energy like wind and solar power, and for cutting emissions blamed for global warming. If there were a tie, Vice President Mike Pence would vote to break it.

If Pruitt is approved, Trump is expected to quickly issue two to five executive orders to reshape the EPA, sources said.

Trump has promised to slash environmental rules as a way to bolster the drilling and coal mining industries, but has vowed to do so without compromising air and water quality. The White House web site says lifting policies such as Obama's Climate Action Plan would help U.S. workers and raise wages.

Bloomberg BNA
http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=105762276&vname=dennotallissues&wsn=498799000&searchid=29386767&doctypeid=2&type=date&mode=doc&split=0&scm=1245&pg=0
GOP Moves Ahead on Pruitt Despite Oklahoma E-mail Release Ruling
By Brian Dabbs 2/17/17

A vast set of e-mails traded between Oklahoma Attorney General Scott Pruitt's office and a range of fossil fuel companies must be released in the coming days, an Oklahoma judge ruled late Feb. 16, Bob Nelon, an attorney representing the watchdog group that requested the release, told Bloomberg BNA.

Senate Democrats, the vast majority of which oppose Pruitt, are already using the ruling as firepower to continue to pressure a delay on the Feb. 17-scheduled confirmation vote for the Pruitt nomination as EPA administrator.

But Republicans rejected a postponement in the immediate wake of the ruling. “[Pruitt] has fully cooperated with our committee, and the Office of Government and Ethics has determined that he has complied with all laws,” Mike Danylak, spokesman for Senate Environment and Public Works (EPW) Committee Chairman John Barrasso (R-Wy.), told Bloomberg BNA. “Democrats have stalled nominees across the Senate—the EPA needs an administrator. It is time to confirm him.”

Oklahoma Ruling

The watchdog, named the Center for Media and Democracy (CMD), and the Oklahoma chapter of the American Civil Liberties Union, sued the attorney general's office roughly a week ago to require disclosure of years of e-mails before Pruitt's office and companies such as Murray Energy Corp. and Devon Energy Corp. CMD lodged the request in January 2015.

At the hearing Feb. 17, Judge Aletia Haynes Timmons called the delay an "abject failure," according to Nelon, who is attorney with the Hall Estill law firm.

"The judge repeatedly asked the [attorney general's] office to explain why it would take as long as it has to respond to the request, and the attorney general's lawyers couldn't respond. They basically said we take requests in order and we're busy," said Nelon. "That was not persuasive for the judge, and she kept saying 'I'm still waiting for an explanation for why this was taking so long.'" Timmons ordered the release by Feb. 21, Nelon said.

Sen. Ed Markey (D-Mass.) pounced on the judge's ruling. "Senate Majority Leader Mitch McConnell is forcing the Senate to vote tomorrow on Pruitt even though his e-mails won't be released until Tuesday. This is an egregious cover up that must not stand," Markey said in a statement.

Repeated Delay Calls

Earlier Feb. 17, EPW Ranking Member Tom Carper (D-Del.) and other committee Democrats said the release of the e-mails are necessary for the Senate to fully vet Pruitt.

"In my gut, I feel that these e-mails, the nature of these e-mails and the entities with whom they were sent and received, will help us understand the truth," Carper said. "That opportunity is going to be denied to us." Carper, Markey and other Democrats plan to denounce Pruitt on the Senate floor through the night of Feb. 16.

Meanwhile, thirty Senate Democrats, roughly two-thirds of the caucus, urged Pruitt Feb. 16 to recuse himself from issues that he litigated as attorney general.

Pruitt is still involved in several active lawsuits against the agency, including challenges to the Clean Water Rule, Clean Power Plan, ozone air quality standards, mercury standards and methane limits for the oil and natural gas industry.

Partisan Trade-Off

Despite the rancor, a pair of Senate Democrats from energy-producing states vowed to support Pruitt's confirmation as EPA administrator, those lawmakers announced Feb. 16 as they voted to advance the Pruitt nomination to a final vote.

The endorsements from Sens. Joe Manchin (D-W.Va.) and Heidi Heitkamp (D-N.D.), both up for re-election in 2018, bolster Pruitt's chances of confirmation by the Senate. Heitkamp pledged to hold Pruitt accountable.

A spokesman for McConnell, Don Stewart, said the preliminary vote justifies quick confirmation. "A bipartisan majority of the Senate voted today to move forward with the vote," he said. That vote, which passed 54-46, limited debate and teed up the confirmation vote.

Meanwhile, Sen. Susan Collins (R-Maine) made waves after announcing her opposition to Pruitt, pointing to her support for the Clean Power Plan and bedrock environmental statutes.

"I have significant concerns that Mr. Pruitt has actively opposed and sued EPA on numerous issues that are of great importance to the state of Maine," Collins said. "His actions leave me with considerable doubts about whether his vision for the EPA is consistent with the agency's critical mission to protect human health and the environment."

More Republican Opposition Unlikely

Two Republican senators indicated to Bloomberg BNA Feb. 17 they aren't yet fully committed to endorsing Pruitt.

Asked whether he is a "yes" vote on the nomination, Sen. Cory Gardner (R-Colo.) said he was "looking forward to the debate over the next couple hours." Sen. Tim Scott (R-S.C.), said he would "probably" support Pruitt, suggesting he doesn't "see any reason why not."

Collins said she did not know if other Republicans would oppose him. FreedomWorks, an influential conservative advocacy group, skewered Collins for her opposition.

Sen. Roy Blunt (R-Mo.), a member of the Republican leadership team in the Senate, told Bloomberg BNA Republicans will fall in line to confirm Pruitt. And Sen. John Barrasso (R-Wyo.) took to the Senate floor to encourage support.

"When the Environmental Protection Agency overstepped its mission, Attorney General Pruitt led the charge to rein in government overreach," said Barrasso. "Time after time, Scott Pruitt worked with other states to challenge the agency when it exceeded its authority. Under his leadership, this agency will respect the rule of law."

E&E News
http://www.eenews.net/energywire/2017/02/17/stories/1060050244
Pruitt's missing emails color Democrats' talk-a-thon
By Mike Lee and Joel Kirkland 2/17/17

OKLAHOMA CITY — The Oklahoma attorney general's office will have until Tuesday to turn over as many as 3,000 documents related to Attorney General Scott Pruitt's communications with oil, gas and coal groups, a state district judge ruled yesterday.

The legal action happened as Democrats vowed to talk all night, and they did, on the Republican attorney general's nomination to be President Trump's U.S. EPA administrator.

Yesterday, Democrats who boycotted an initial vote on Pruitt in the Senate Environment and Public Works Committee failed in their quixotic bid to delay a full Senate confirmation vote scheduled for this afternoon. Senate Majority Leader Mitch McConnell (R-Ky.) refused to put the brakes on the process, as Republicans teed up the partisan battle to get Pruitt through the door before the Senate's Presidents Day recess.

Democrats read letters from constituents and talked about missing emails, global warming, oil, ethanol standards and fearful EPA staffers.

Pruitt angered Democrats during the confirmation process when he said senators should file a state freedom-of-information (FOI) records request with the Oklahoma attorney general's office, which he controls, if they wanted to read his email communications with energy companies, conservative groups and lawyers hostile to EPA.

In press conferences and floor speeches during the day and into the night, Senate Democrats rapped Pruitt for his role as a coordinator of like-minded attorneys general and fossil fuel companies that repeatedly sued to overturn tougher EPA air and water rules under President Obama. Pruitt has his signature on more than a dozen lawsuits against the agency.

"Are you kidding me?" said Sen. Elizabeth Warren of Massachusetts. "If those emails show corruption, every senator should have that information before, not after, they put someone in charge of EPA."

In tone and focus, Pruitt's legal challenges against EPA reflected the priorities of right-leaning groups with close ties to the oil industry's Koch brothers and represented the interests of Oklahoma-based gas giant Devon Energy Corp. and politically powerful coal companies such as Peabody Energy Corp. The suits sought to stop the agency from enforcing

limits on power plant emissions of carbon dioxide, a contributor to climate change, and mercury, a neurotoxin, and took aim at the Clean Water Act.

Pruitt's supporters point to his commitment to preserving state supremacy over environmental regulation and say he will rein in EPA's overreaching tendencies.

Senate Democrats, led by Sen. Tom Carper of Delaware, pinned much of their hope of stirring up opposition to Pruitt through the timely release of his office's emails with energy companies sought by the liberal-leaning Center for Media and Democracy, based in Madison, Wis.

Other than a 400-page batch of emails released last Friday, in response to the center's original unanswered request two years ago, the Senate isn't likely to see the fuller 3,000-page response to nine FOI requests for documents out of Pruitt's office before the confirmation vote.

Under the ruling, the attorney general's office will have to turn the material over to the Center for Media and Democracy or provide it to the court for inspection, Judge Aletia Haynes Timmons said at the end of a 25-minute hearing.

"The court rules there was an abject failure to provide prompt, reasonable access," Timmons said from the bench.

She ordered the state to turn over other documents, from separate requests in 2015 and 2016, within 10 days. The attorney general's office can appeal the ruling, attorneys in the case said.

Brady Henderson, an attorney for the Oklahoma Chapter of the American Civil Liberties Union, said the Senate should view the documents before voting on Pruitt's nomination. Henderson assisted other Oklahoma attorneys to represent the Center for Media and Democracy in the case.

The state's legal staff left the court building without speaking to reporters. But the attorney general's office said in a statement that it is "committed to following the letter and spirit" of the state's open records law. The statement also alluded to the office's first-come, first-served process for handling records requests, a process issue that has become a focal point of the case.

"In light of that, we are reviewing all of our options in order to ensure fairness to all requestors rather than elevating the importance of some requests over others," said the AG's office.

An unusual process

The Wisconsin group has said the unusual process of handling government records requests has been a handy tool for delaying releases. The Center for Media and Democracy made its first documents request in January 2015, along with eight new requests since then, for emails and documents dating to 2013.

Pruitt's staff have continued to say they answer open records requests in the order in which they're received and that they've been overwhelmed with requests since he was nominated to lead EPA (*Energywire*, Dec. 20, 2016).

Pruitt has been Oklahoma's attorney general since 2011 and has forged close ties with energy companies. *The New York Times* reported in 2014 that he had pulled language directly from letters and legal briefs written by industry lawyers as part of his campaign to challenge federal regulations (*Greenwire*, Dec. 8, 2014).

Like most states, Oklahoma allows government agencies to withhold some documents from the public in narrowly tailored circumstances, but lawyers for the attorney general's office couldn't immediately explain why the documents hadn't been produced for more than two years.

At one point during the 25-minute hearing, Timmons interrupted Assistant Attorney General Jeb Joseph and read aloud from the state open-records statute, which says, "The people are invested with the inherent right to know and be fully informed about their government."

Among the missing documents were letters and emails that the state had previously provided to *The New York Times*, which the center said was evidence that the state withheld material in its response.

E&E News
http://www.eenews.net/climatewire/2017/02/17/stories/1060050246
Dems rail all night against Pruitt; vote still set for 1 p.m.
By Niina Heikkinen and Kavya Balaraman 2/17/17

Democrats staged an all-night fight in the Senate in a final play to delay a vote on the nominee they say is unfit to lead U.S. EPA.

Scott Pruitt, the Republican attorney general of Oklahoma, has been a controversial pick to lead the agency since his selection in December. In the days leading up to the full Senate vote on his nomination, Pruitt's opponents have stepped up efforts to stall or even derail it. In the final hours before his expected confirmation today, Democrats continued to press their case that Pruitt's record disqualified him from the top environmental enforcement job.

One of their main concerns: that Pruitt is not committed to EPA's goal of protecting the environment and public health.

Pruitt's statements through his confirmation that though humans affect climate change in "some manner," the science is still "unsettled" also didn't sit well with Democratic senators. Several suggested that Pruitt's rejection of climate science and attacks on environmental regulations were a direct result of the "dark money" he had received from fossil fuel donors such as Murray Energy Corp.

Sen. Sheldon Whitehouse (D-R.I.) displayed a diagram he called "The Denial Beast," which marked out the reach of the fossil fuel industry in perpetuating climate denial. He called it a "visual description of the complex matrix of fossil fuel interests that [Pruitt] has been so closely involved with."

"This is a very, very significant matrix of fossil fuel interests, and that is what Scott Pruitt has been serving, not the public and not his duties," he said.

Whitehouse and other Democrats called for a delay in the vote on Pruitt until they had a chance to carefully review records of Pruitt's communication with the fossil fuel industry. The correspondence was the subject of a lawsuit brought against the attorney general by the Center for Media and Democracy. Lawmakers noted that emailed correspondence would be available in a matter of days following a recent court ruling.

"Maybe this is just an empty concern. But over and over and over again, emails have been really important at breaking investigations open, and certainly our friends on the other side, until the election in November, had a fascination with emails," said Whitehouse. "Now, suddenly, everybody is looking at the ceiling, examining the ceiling tiles, when it's time to wonder about these emails."

Yesterday afternoon, an Oklahoma judge ruled that Pruitt would have to produce the first batch of roughly 2,500 outstanding emails that the Oklahoma attorney general had not sent in response to nine outstanding public records requests submitted by the Center for Media and Democracy (*Greenwire* Feb. 16; *Climatewire*, Feb. 15).

These first emails will include correspondence between Pruitt and fossil fuel donors, such as Devon Energy Corp., Peabody Energy Corp. and the American Petroleum Institute, to be delivered by Tuesday. The next batch, slated to come out in 10 days, will include email correspondence with the American Legislative Exchange Council, or ALEC, which supports partisan policy, according to Whitehouse.

Following the court ruling, Senate Republicans continued to deny calls to delay the vote for Pruitt, scheduled for 1 p.m. today.

"Now, that smells to the high heavens. The American people have the right to know what's in those emails," said Sen. Ed Markey (D-Mass.). He dubbed the GOP the "Gas and Oil Party."

Democrats noted that failure to analyze the emails prior to a vote could come back to bite Republicans, who would have to answer to their voters if the emails do reveal evidence of illegal activity.

Markey compared the concerns about Pruitt to those surrounding President Reagan's controversial picks to lead the Department of the Interior and EPA — James Watt and Anne Gorsuch Burford, respectively. Both Watt and Burford, the mother of current Supreme Court nominee Judge Neil Gorsuch, resigned from their posts.

Sen. Cory Booker (D-N.J.) said it is unfortunate that Republicans have chosen not allow a delay in the vote.

"We are finally getting some transparency after stonewalling for week after week and month after month. Now we are going to see what kind of potential collusion went on," he said.

Dems: Questioning climate change a disqualifier

Beginning yesterday afternoon and continuing through the night, Democrats came to the Senate floor armed with charts and anecdotes from Pruitt's record as Oklahoma attorney general to argue against his appointment.

Pruitt has filed more than a dozen legal cases against EPA regulations, including those restricting mercury pollution, smog and carbon dioxide emissions. Many cited his stance on climate change as an important factor in influencing their vote, especially since it has affected their own states.

From threatened blue crab fisheries in Maryland to warming temperatures hurting maple syrup production in New England, senators outlined how climate change is already affecting natural resources, wildlife and infrastructure across the country.

"As a result of climate change, we have seen 40 percent reduction in the moose population," said Sen. Jeanne Shaheen (D) of New Hampshire. "Because of milder winters, ticks don't die off; they multiply on moose, they ravage it and eventually kill."

Sen. Bill Nelson (D-Fla.) called his state "ground zero" for sea-level rise, citing measurements in South Florida over the past four decades that have shown a 5- to 8-inch increase in sea levels.

"Oh, and by the way, where is three-quarters of the population in Florida? It's along the coast," he said.

Sen. Al Franken (D-Minn.) pointed out that while Pruitt did not follow Trump's example in calling climate change a "hoax," his denial was more "subtle" and "intentionally deceptive."

"If we look at Mr. Pruitt's record, it shows that he has been steadfastly against action on climate change — including a suit to block the first requirements of power plants to reduce their carbon emissions," he said.

He also criticized Pruitt's implication that imposing regulations on the environment would reduce employment and economic prosperity, saying that Minnesota has managed to balance both: The state adopted a renewable energy standard in 2007, and the clean energy economy currently employs around 54,000 of its residents.

Sen. Richard Blumenthal (D-Conn.) summed up his opposition to Pruitt with one sentence.

"We have enough foxes guarding henhouses as it is in this administration," he said.

He went on to criticize Pruitt's lack of transparency, in terms of contributions from the energy industry, and his refusal to accept the scientific evidence of climate change.

"I'm not here to argue climate change. I'm here to argue that Scott Pruitt is unqualified to fight climate change because he denies it as a problem, and he denies the mission and purpose of the EPA," he said.

GOP: Stop the 'blind obstruction'

Sen. Amy Klobuchar (D-Minn.) said that she disagreed with Pruitt's claim that the "debate" on climate change is "far from settled," citing national climate assessments as well as the impacts that shifting weather patterns are having on the Midwest.

"We may not have tsunamis, but in the Midwest, what we see is major unpredictable weather, which is just as dangerous. We've seen the devastating impact of natural disasters like Hurricane Matthew, and we've seen flooding from Cedar Rapids [Iowa] to Duluth. We now know the risk of climate change to Minnesota, to the country and to our planet," she said, adding that she also opposed Pruitt's nomination on the basis of his record on the renewable fuel standard.

Sen. Elizabeth Warren (D-Mass.) spent nearly an hour on the floor issuing scorching criticisms of Pruitt, including of his "flippant, evasive and outright misleading" responses during his confirmation hearing.

"Scott Pruitt has the nerve to say that the cause of climate change is 'subject to debate.' More debate? We had that debate — in the 1980s, in the 1990s, in the 2000s. Maybe Mr. Pruitt missed it, buried under a pile of Big Oil money," she said.

Meanwhile, Republican senators scolded their Democratic counterparts for what they described as "blind obstruction" of Pruitt's confirmation process.

"These boycotts and these delay tactics do nothing to protect our environment or the health of Americans. Democrats are engaged in nothing more than political theater. They are wasting time while the Environmental Protection Agency needs a new administrator," said Sen. John Barrasso (R-Wyo.), chairman of the Environment and Public Works Committee.

Barrasso described Pruitt as the "right man for the job" to lead EPA.

"I would plead with our colleagues across the aisle: Stop the dysfunction," said Sen. John Cornyn (R-Texas). "Instead, let us fight for the people we represent and find common ground where we can and put forward legislation that represents them well."

Politico Pro
https://www.politicopro.com/tipsheets/morning-energy/2017/02/seismic-shift-to-hit-epa-with-pruitt-confirmation-021443
Seismic shift to hit EPA with Pruitt confirmation
By Anthony Adragna 2/17/17. 5:46AM

MR. PRUITT GOES TO EPA: Scott Pruitt is set to be confirmed today as the 14th EPA administrator, marking a massive change in the agency's direction and ushering in a new era of regulatory rollbacks. A confirmation vote is expected around 1:00 p.m. — over howls of protest from Democrats clamoring to see copies of emails Pruitt and his staff exchanged with fossil fuel lobbyists, Republican donors and others while he was Oklahoma's attorney general. A state judge Thursday afternoon ordered Pruitt to cough up as many as 3,000 emails by Tuesday in response to a liberal watchdog's longstanding public records request. As Democrats planned to hold the Senate floor all night speaking

against the nomination, top Environment and Public Works Committee Democrat Tom Carper said the court's ruling "should finally give my Republican colleagues pause" and that it would "wholly irresponsible to vote on this nominee this week knowing that we don't have the full picture" of potential conflicts of interest Pruitt would bring to the job.

Anyone who has been paying attention to President Donald Trump's campaign or transition knows what to expect from Pruitt: A major reduction in EPA's emphasis on federal oversight in favor of giving more control to the states; a severely reduced, if not reversed, focus on climate change and other clean air and water initiatives; and long-term moves to decrease funding and staff.

Welcome, boss: Meanwhile, EPA employees are already responding with unhappiness about the new jefe. A few dozen current employees publicly protested his nomination, and 773 former EPA employees have signed onto a letter opposing him. Unions organized drives for workers to call and urge their senators to vote against him, a first, according to the New York Times. And at least a few EPA employees have started using an encrypted app in case they need a private way to communicate, drawing ire from House Republicans who say they are skirting recordkeeping laws.

What's next: It has long been expected that once Pruitt is installed, Trump will sign one or more executive orders directing the agency to roll back climate change work, limit its enforcement powers or otherwise apply a lighter touch to regulation. Pruitt has a major to-do list, including shifting gear in the dozens of ongoing lawsuits challenging EPA rules and actions, starting the years-long process to repeal regulations like the Clean Power Plan and searching for the dozens of political staff required to operate EPA. Trump leaves for South Carolina this morning and Vice President Mike Pence heads to Europe in the morning as well. ME hears EPA is preparing for a Tuesday swearing in for Pruitt, but plans remain up in the air.

Sen. Jim Inhofe **(R-Okla.),** a close Pruitt ally, said he and Pruitt have had many discussions in the past about the challenges EPA presents to the agriculture and energy industries. "But not since he's gotten this close, I don't think he's thinking about it now," Inhofe told ME Thursday evening, explaining that he had not been given a heads up on what Pruitt's first order of business would be. "He wants to get properly staffed, and then watch him roll."

LA Times
http://www.latimes.com/politics/la-na-pol-trump-epa-pruitt-20180217-story.html
After bruising confirmation battle, EPA nominee Scott Pruitt expected to clear Senate vote
By Evan Halper 2/17/17

Donald Trump's embattled nominee to run the Environmental Protection Agency is expected to get final approval from the Senate on Friday after withstanding a prolonged assault from environmentalists who warn he is a menace to clean air and water.

The likely approval of Oklahoma Atty. Gen. Scott Pruitt for the post exposed an internal rift in the Democratic Party as two senators from coal country signaled they would give their support to the longtime ally of the Koch brothers and unabashed climate-change skeptic.

The Pruitt nomination has been one of the most bitterly fought since Trump took office last month, pitting a crusader for fossil fuel interests who has sued the agency he will take over 14 times against an environmental movement that is scrambling to preserve what it can of actions President Obama took to curb climate change and protect natural resources.

Pruitt will be inheriting an agency of 15,000 employees where much of the workforce will likely be openly hostile to his agenda. Nearly 800 former EPA employees signed a letter imploring lawmakers to reject his nomination, and many current employees joined the ranks of activists demonstrating against him at rallies and deluging the switchboards of congressional offices.

He distinguished himself in Oklahoma by battling many of the signature environmental protections implemented by Obama, arguing they were a federal intrusion on the states. He does not accept the mainstream scientific consensus on

climate change, and has been described by the National Resources Defense Council and the Environmental Working Group as the worst nominee selected to run the EPA in history.

Washington Times
http://www.washingtontimes.com/news/2017/feb/17/senate-dems-hold-floor-demand-delay-epa-nominee-sc/
Senate Dems hold floor, demand delay on EPA nominee Scott Pruitt until his emails are released
By Ben Wolfgang 2/17/17

Holding the Senate floor for a talk-a-thon that will last into Friday afternoon, Democrats are demanding that the chamber delay its planned vote on Scott Pruitt's nomination to head the EPA, saying lawmakers can afford to wait a few days and learn more about his ties to the oil and gas industry.

Mr. Pruitt, Oklahoma's attorney general, was ordered by an Oklahoma judge late Thursday to turn over nearly 3,000 emails related to his communications with the oil and gas sector. The nominee has until Tuesday to turn over those documents, which Democrats argue will show that Mr. Pruitt is in the pocket of the fossil fuel industry and is unfit to lead the EPA.

Sen, Richard Durbin, Illinois Democrat, took to the Senate floor about 8:30 a.m. Friday and said Republicans who vote in favor of Mr. Pruitt will be sorry after they see the emails next week.

"Be careful about the vote you cast at 1 o'clock today because by 1 o'clock on Tuesday or Wednesday in the following week you may regret that vote," he said. "The Republican senators and Mitch McConnell said we don't want to read [the emails]. We don't care what's in them. … Scott Pruitt can wait 10 days and we can wait for the truth, can't we?"

Senate Majority Leader Mitch McConnell's office said Thursday night the final vote on Mr. Pruitt will go ahead Friday afternoon as scheduled, despite the Oklahoma judge's ruling.

Democrats held the Senate floor all night Thursday and into the morning Friday to protest that decision, though their efforts likely will fail.

"It would be wholly irresponsible to vote on this nominee this week knowing that we don't have the full picture," Sen. Tom Carper, Delaware Democrat and his party's ranking member on the Senate Environment and Public Works Committee, said Thursday night. "If we are going to do the job that the American people sent us here to do, we must carefully review this new information in order to better evaluate just what kind of EPA Administrator Scott Pruitt would be."

In raising concerns about what could be in the emails, Democrats point to a 2011 letter sent by Mr. Pruitt to the EPA, raising questions about the agency's conclusions regarding harmful emissions from natural gas wells. The majority of the language in the letter was lifted directly from documents written by Devon Energy, an Oklahoma oil and gas company.

During testimony before a Senate panel last month, Mr. Pruitt didn't deny using the company's language, but said it was his job as Oklahoma attorney general to advocate on behalf of his state's interests, including the interests of major industries in the state like the oil and gas sector.

Democrats have blasted Mr. Pruitt's logic in that particular situation and believe the looming email trove will show other examples of collusion between the two sides.

Despite the uproar, Mr. Pruitt almost surely will be approved in Friday's vote. While one Republican, Sen. Susan Collins of Maine, has said she'll vote against him, two Democrats will back Mr. Pruitt.

Sen. Joe Manchin of West Virginia and Sen. Heidi Heitkamp of North Dakota have said they'll vote in favor of the nomination, likely ensuring Mr. Pruitt's approval, unless Republican leaders change course and delay the vote.

Huffington Post
http://www.huffingtonpost.com/entry/elizabeth-warren-scott-pruitt_us_58a6881ae4b07602ad53435c
Sen. Elizabeth Warren Slams Pruitt: 'Big Polluters Have Their Fantasy EPA Nominee'
By Nick Visser 2/17/17

Sen. Elizabeth Warren (D-Mass.) denounced President Donald Trump's nominee to head the Environmental Protection Agency, Scott Pruitt, just hours before the Senate was scheduled to vote on his approval.

Warren spent nearly an hour on the floor Thursday evening to voice her "strong opposition" to Pruitt, the Oklahoma attorney general who has sued the EPA 13 times. The excoriation came hours after a state judge ordered Pruitt's office to release more than 2,500 documents and emails about his communications with energy companies during his tenure.

"I rise today to express my strong opposition to President Trump's nomination of Scott Pruitt," Warren said at the outset of her speech. "The reason is simple: In a choice between corporate polluters and people who want to breathe air and drink water, Scott Pruitt sides with the corporate polluters. He has no business as head of the EPA."

The Senate is scheduled to vote on Pruitt's nomination Friday afternoon, just days before the documents and emails are made public. An incredulous Warren demanded senators be given access to the communications to make an informed decision on the nomination and called for a bipartisan effort to ensure "access to clean air and clean water [as] a basic right for all Americans."

"Their plan is to jam this nomination through tomorrow, four days before the emails are slated to become public. Are you kidding me?" she asked. "If those emails show corruption, every senator should have that information before, not after, they vote to put someone in charge of the EPA who may be there for years."

She continued:

Clean air and clean water used to be a nonpartisan issue. In earlier decades, leaders in both parties had the courage to say no to suffocating smog and towering plumes of toxic chemicals poisoning our children. Republicans and Democrats came together, and together they declared that access to clean air and clean water is a basic right for all Americans We passed the Clean Air Act, we passed the Clean Water Act ... we did those things together.

Many leading Democrats have also expressed outrage over the vote.

Pruitt's nomination has prompted widespread fear among environmentalists and staff currently at the EPA. Since 2002, Pruitt has received more than $300,000 in contributions from the fossil fuel industry, and on his LinkedIn page, he lists himself as "a leading advocate against the EPA's activist agenda."

This week, nearly 800 former agency staffers signed a letter in protest of his nomination. The letter called Pruitt "a close ally of the oil and gas industry [who] has made a career of suing EPA and attacking the idea of federal action to reduce pollution — while simultaneously failing to enforce environmental laws in his own state and shutting down the Environmental Protection Unit in the Oklahoma Attorney General's Office."

Warren echoed these fears and what she called Pruitt's continual support for "his friends in the oil industry ... to heck with everybody else."

"Those big polluters have their fantasy EPA nominee, someone who will work on their side and not on the side of the American people."

The Hill
http://thehill.com/policy/energy-environment/320041-epa-employees-call-on-senators-to-reject-trump-epa-pick
EPA Employees call on senators to reject Trump EPA pick: report
By Max Greenwood 2/16/17, 9:19PM

In an unusual show of opposition for federal employees, Environmental Protection Agency workers have been calling their senators to urge them to reject President Trump's pick to lead their agency, The New York Times reported Thursday.

Scott Pruitt, the attorney general of Oklahoma, has sued the EPA more than a dozen times in his current post, alarming many of the agency's employees, who fear that, if confirmed, he will work to dismantle its work.

On the campaign trail, Trump railed against the environmental agency, calling it a "disgrace" and vowing to undo federal environmental rules and regulations.

"Mr. Pruitt's background speaks for itself, and it comes on top of what the president wants to do to EPA," John O'Grady, a longtime EPA employee and president of the union representing its workers, told The Times.

Still, the effort to rally the opposition of enough senators to reject Pruitt during his confirmation vote on Friday is a longshot. Only one GOP senator, Susan Collins (Maine), has said she will vote against Trump's EPA pick. And Democratic Sens. Joe Manchin (W.V.) and Heidi Heitkamp (N.D.) have both said they will support Pruitt.

Even with the expected absence of Sen. John McCain (R-Ariz.), who is set to attend a security conference in Germany on Friday, Pruitt will likely win the support of 52 senators, securing confirmation.

It is unusual for civil servants, such as EPA employees, to so actively oppose a Cabinet appointee. What is more, The Times reports, the move signifies that Pruitt will likely face strong pushback from his own employees once he takes office.

"What it means is that it's going to be a blood bath when Pruitt gets in there," former New Jersey Gov. and past EPA administrator Christine Todd Whitman (R) told The Times.

Kevin McGonagle
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Katherine So
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so.katherine@epa.gov

Message

From: Minoli, Kevin [Minoli.Kevin@epa.gov]
Sent: 2/23/2017 6:24:57 AM
To: Benton, Donald [benton.donald@epa.gov]
CC: Schwab, Justin [schwab.justin@epa.gov]
Subject: Re: Memo for Administrator Pruitt re: EPA Actions

Hi Don- Attorney Client / Ex. 5

Attorney Client / Ex. 5

Thanks, Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

https://www.pdc.wa.gov/browse/cases/8321

https://www.pdc.wa.gov/sites/default/files/compliance_case_files/Investigative%20Review%20Memorandum%20Larry%20Wasserman%2CDeniss%20McLerran%2CStrategies360%20%28PDC%20Case%208321%29.pdf

https://www.pdc.wa.gov/sites/default/files/compliance_case_files/Save%20Family%20Farming%20Response%20Ltr%20To%20PDC%20Investigative%20Review.pdf

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

On Feb 22, 2017, at 1:57 PM, Benton, Donald <benton.donald@epa.gov> wrote:

If Administrator could pop in for 10 minutes, then staff can handle the rest of the meeting.

Attorney Client / Ex. 5

Let me know,
Don

From: Dan Wood [mailto:dan@wastatedairy.com]
Sent: Tuesday, February 21, 2017 3:53 PM
To: Benton, Donald <benton.donald@epa.gov>
Cc: Hale, Michelle <hale.michelle@epa.gov>; Dan Wood <dan@wastatedairy.com>
Subject: RE: Memo for Administrator Pruitt re: EPA Actions

Given flight limitations, we are down to Thursday or Friday (Feb. 23-24) for this week. We will schedule the flights around the appointment.

I appreciate the opportunity to come present some important and timely information.

Thank you,

Dan Wood
Executive Director
Washington State Dairy Federation
PO Box 1768 Elma, WA 98541
Dan@wastatedairy.com
360-870-6018.
It's OK to call any time – early, late, weekends are OK. Really.

From: Dan Wood
Sent: Sunday, February 19, 2017 3:02 PM
To: Benton, Donald <benton.donald@epa.gov>
Cc: Hale, Michelle <hale.michelle@epa.gov>; Dan Wood <dan@wastatedairy.com>
Subject: RE: Memo for Administrator Pruitt re: EPA Actions

I can be available any time Wednesday (Feb. 22) through Friday (Feb. 24) for next week.

We will schedule everything else around meeting with you and the Administrator.

Thanks,

Dan Wood
Executive Director
Washington State Dairy Federation
PO Box 1768 Elma, WA 98541
Dan@wastatedairy.com
~~360-870-6018.~~
It's OK to call any time – early, late, weekends are OK. Really.

From: Benton, Donald [mailto:benton.donald@epa.gov]
Sent: Saturday, February 18, 2017 11:44 AM
To: Dan Wood <dan@wastatedairy.com>

Cc: Hale, Michelle <hale.michelle@epa.gov>
Subject: RE: Memo for Administrator Pruitt re: EPA Actions

Dan, If you could provide date and times you may be available I can request a meeting with the Administrator or his designee.

Don
Senator Don Benton
Senior White House Advisor
Office of the Administrator
202.564.4711
<image002.png>

From: Dan Wood [mailto:dan@wastatedairy.com]
Sent: Friday, February 17, 2017 4:28 PM
To: Benton, Donald <benton.donald@epa.gov>
Cc: Dan Wood <dan@wastatedairy.com>
Subject: FW: Memo for Administrator Pruitt re: EPA Actions

Congratulations on the Senate confirmation of the appointment of Scott Pruitt as EPA Administrator.

I am re-sending the email summarizing the issues we discussed that should be in front of the Administrator.

We have cause to be in Washington, D.C. next week and would be glad to bring an affected dairy farmer, the researcher who compiled the timeline from the FOIA records on the illegal "What's Upstream" campaign, and someone who sits on the Groundwater Management Area in the Yakima Valley.

These are all timely issues that merit attention and resolution, and present an opportunity for the EPA and new Administration to demonstrate a balanced commitment to both environmental concerns and a positive business climate.

We can have people on a plane with a couple days' notice; the group is ready to come to speak with you and the Administrator.

Thanks,

Dan Wood
Executive Director
Washington State Dairy Federation
PO Box 1768 Elma, WA 98541
Dan@wastatedairy.com
360-870-6018.
It's OK to call any time – early, late, weekends are OK. Really.

From: Dan Wood
Sent: Tuesday, February 14, 2017 9:39 AM
To: Benton.Donald@EPA.gov
Cc: Dan Wood <dan@wastatedairy.com>
Subject: Memo for Administrator Pruitt re: EPA Actions

Scott Pruitt, Administrator

Environmental Protection Agency
Via email to Benton.Donald@EPA.gov

C: Don Benton,
Senior White House Advisor
Via email to Benton.Donald@EPA.gov

February 13, 2017

Dear Administrator Pruitt:

There are several areas of accountability and questionable agency actions that merit your immediate attention as EPA Administrator. Some actions have already gained the attention of Congressional investigators, and been subjects of complaints to the Office of Inspector General and the Washington State Public Disclosure Commission.

We request an appointment to present documentation of each of the following matters and to request specific actions by the EPA.

1. Ensure the investigation of the "What's Upstream" campaign is completed.

In 2015 the Government Accountability Office determined that EPA officials in Washington, D.C. had broken federal law by using social media to promote the Waters of the US Rule.

Subsequently, the Region 10 Administrator allowed more than $600,000 of public money to be spent on an overtly political campaign filled with false statements aimed at passing laws harmful to farmers. These illegal campaign expenditures were allowed, despite staff objections and actions subordinate staff had taken to halt the illegal campaign. The Regional Administrator further communicated false information to Congress about this campaign and EPA's role in it.

Public documents and extensive reporting by *The Capital Press* (a Northwest agricultural newspaper) raise questions about the degree to which then-Administrator Gina McCarthy had been aware and possibly directed the activities. Documents show the illegal campaign had been halted, then re-authorized after a visit from Administrator McCarthy.

To ensure that officials are held accountable, the Office of Inspector General needs to complete the investigation of the "What's Upstream" campaign and EPA funding of it, as was requested by Congressional leaders. Enforcement action must wait until the Office of Inspector General completes the investigation, and we are asking that you help ensure this investigation is done thoroughly, promptly and fairly and that the results are made public.

The EPA has not completely responded to FOIA records requests in this matter. Full disclosure of requested public records is paramount to accountability, as is cooperation with Congressional investigators and the Office of Inspector General.

Representative Dan Newhouse and Senator Pat Roberts are key Congressional contacts in this matter.

Resources:

1. We would be glad to bring to Washington, D.C. the executive director of Save Family Farming, who has filed the FOIA request and compiled the timeline and key actions in this matter.

2. We can provide reports and timelines from the investigative report by *The Capital Press*.

3. We can provide a summary of the filings and status of investigation by the Washington State Public Disclosure Commission

2. Review the science and behavior of EPA Region 10 staff with regard to the September 2012 Report EPA-910-R-12-003.

This report was roundly criticized by credentialed PhDs and professionals from research universities, NRCS, and state and local conservation agencies. Initially, EPA Region 10 posted those comments on their Web site. Subsequently, EPA Region 10 has removed the critical content from the Web site, making it no longer available for public view.

This extensively-criticized report led to an Administrative Order on Consent after EPA said the subject dairies could take EPA to the Ninth Circuit Court of Appeals if they wanted to challenge the report. The report was subsequently used as "evidence" in a federal lawsuit that resulted in an unprecedented ruling that held that fertilizing a field with natural livestock manure equates to an illegal dumping of hazardous waste under the Resource Conservation and Recovery Act (RCRA).

After the farm agreed to the Administrative Order on Consent, complied with the provisions of the order, and invested millions of dollars into technology and conservation, EPA refused to issue a statement as to the good works and compliance of the farm.

Participants and eye-witnesses to the conversations with the Region 10 Administrator can attest to the threats and discussions of involving the Ninth Circuit Court.

Unless there has been an illegal permanent destruction of public records, the scientific criticism of **EPA-910-R-12-003** should be archived at EPA Region 10. That information should be restored to public viewing on the Web site.

Resources:

1. <!--[if !supportLists]--><!--[endif]-->We would be glad to have one of the subject farmers come to Washington, D.C. to visit with you regarding the impact of these Region 10 actions. The multi-generational farm is struggling to survive because of the costs of the order and subsequent lawsuit.
2. <!--[if !supportLists]--><!--[endif]-->Archives should provide the critical reviews of report **EPA-910-R-12-003**; if the critical evaluations are not found in EPA Region 10 archives, we can go back to original sources to re-located those evaluations.

3. Carefully review the best available science on the important issue of nitrates in drinking water, its health effects, and historic causes in the Yakima Valley.

The Lower Yakima Valley has had high groundwater nitrates for more than 100 years, predating much of the dairy farming in the area.

Despite that documented history, EPA Region 10 has focused on dairies, assuming their responsibility for this historic problem. The actions of the EPA have fanned public criticism, nuisance complaints and lawsuits against dairies.

Nitrates in groundwater is the driving issue in the litigation and enforcement action against farmers. Yet, the EPA refuses to recognize that nitrates above the EPA standard have been present in drinking water in virtually all farming areas since water testing began.

Prior to 2008, the EPA, following the data, focused on on-site septic systems as a primary source of water contamination. Since then, the focus has shifted inappropriately to agriculture. Use of best science to evaluate actual causes should be used to prioritize efforts rather than following the lead of environmental activists seeking new targets for fundraising.

Area dairy farmers, along with other agriculture, local government, state and federal agencies, and others are participating in a **Groundwater Management Area** to research and address sources of groundwater nitrates.

EPA should work more cooperatively and with an objective approach to the Groundwater Management Area.

Resources:

1. <!--[if !supportLists]--><!--[endif]-->We would be glad to bring to Washington, D.C. an agricultural representative to the Groundwater Management Area. He can discuss the history and current projects, as well as where EPA can engage more cooperatively.
2. <!--[if !supportLists]--><!--[endif]-->We would be glad to provide recent reviews and focus of the Groundwater Management Area

We look forward to a face-to-face discussion with you and to be a resource to help with understanding and positive changes in these matters involving the EPA.

Dan Wood
Executive Director
Washington State Dairy Federation
PO Box 1768 Elma, WA 98541
Dan@wastatedairy.com
360-870-6018.
It's OK to call any time – early, late, weekends are OK. Really.