Message

From: Jackson, Ryan [jackson.ryan@epa.gov]
Sent: 4/28/2017 1:00:58 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
CC: Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]
Subject: Re:

Definitely

Ryan Jackson
Chief of Staff
U.S. EPA
Ex. 6 - Personal Privacy

> On Apr 28, 2017, at 9:00 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:
>
> Ah ok. Ex. 6 - Personal Privacy
Ex. 6 - Personal Privacy
>
> Sent from my iPad
>
>> On Apr 28, 2017, at 8:59 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:
>>
>> No.
>>
>> Ryan Jackson
>> Chief of Staff
>> U.S. EPA
>> Ex. 6 - Personal Privacy
>>
>>> On Apr 28, 2017, at 8:51 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:
>>>
>>> Are we still meeting at Noon on CPP with Administrator? I was going to tell Al to come in to walk through the RIA.
>>>
>>> Sent from my iPad

Message

From: Jackson, Ryan [jackson.ryan@epa.gov]
Sent: 4/28/2017 12:59:02 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
CC: Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]
Subject: Re:

No.

Ryan Jackson
Chief of Staff
U.S. EPA
Ex. 6 - Personal Privacy

> On Apr 28, 2017, at 8:51 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:
>
> Are we still meeting at Noon on CPP with Administrator? I was going to tell Al to come in to walk through the RIA.
>
> Sent from my iPad

From: Kime, Robin
Location: 3513A
Importance: Normal
Subject: Accepted: CPP RIA
Start Date/Time: Mon 4/24/2017 6:30:00 PM
End Date/Time: Mon 4/24/2017 7:00:00 PM

Appointment

From: Microsoft Outlook [MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@usepa.onmicrosoft.com]
Sent: 4/24/2017 4:38:49 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]

Subject: Meeting Forward Notification: CPP RIA
Location: 3513A

Start: 4/24/2017 6:30:00 PM
End: 4/24/2017 7:00:00 PM

Recurrence: (none)

Your meeting was forwarded

Inge, Carolyn has forwarded your meeting request to additional recipients.

Meeting

CPP RIA

Meeting Time

Monday, April 24, 2017 2:30 PM-3:00 PM.

Recipients

Durham, Natalie

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

Appointment

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 4/24/2017 4:21:49 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]

Subject: Accepted: CPP RIA
Location: 3513A

Start: 4/24/2017 6:30:00 PM
End: 4/24/2017 7:00:00 PM
Show Time As: Busy

Appointment

From: Inge, Carolyn [Inge.Carolyn@epa.gov]
Sent: 4/24/2017 4:17:47 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]

Subject: Accepted: CPP RIA
Location: 3513A

Start: 4/24/2017 6:30:00 PM
End: 4/24/2017 7:00:00 PM

Recurrence: (none)

Appointment

From: Microsoft Outlook [MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@usepa.onmicrosoft.com]
Sent: 4/24/2017 4:17:46 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]

Subject: Meeting Forward Notification: CPP RIA
Location: 3513A

Start: 4/24/2017 6:30:00 PM
End: 4/24/2017 7:00:00 PM

Recurrence: (none)

Your meeting was forwarded

Inge, Carolyn has forwarded your meeting request to additional recipients.

Meeting

CPP RIA

Meeting Time

Monday, April 24, 2017 2:30 PM-3:00 PM.

Recipients

McGartland, Al

Kime, Robin

Irving, Verna

Inge, Carolyn

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

Message

From: Kime, Robin [Kime.Robin@epa.gov]
Sent: 4/24/2017 2:59:45 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: RE: Is it possible to get 20 min with SD on CPP RIA?

Will do

-----Original Message-----
From: Dravis, Samantha
Sent: Monday, April 24, 2017 10:59 AM
To: Kime, Robin <Kime.Robin@epa.gov>
Subject: RE: Is it possible to get 20 min with SD on CPP RIA?

Yes. Bolen needs to be in this as well. Ask Kenny if she can attend senior staff.

-----Original Message-----
From: Kime, Robin
Sent: Monday, April 24, 2017 10:49 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: FW: Is it possible to get 20 min with SD on CPP RIA?

Hi- could we do this today at 1:30 in lieu of senior staff?

-----Original Message-----
From: McGartland, Al
Sent: Monday, April 24, 2017 10:45 AM
To: Kime, Robin <Kime.Robin@epa.gov>
Subject: Is it possible to get 20 min with SD on CPP RIA?

Sent from my iPhone

Message

From: Kime, Robin [Kime.Robin@epa.gov]
Sent: 4/24/2017 2:49:01 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: FW: Is it possible to get 20 min with SD on CPP RIA?

Hi- could we do this today at 1:30 in lieu of senior staff?

-----Original Message-----
From: McGartland, Al
Sent: Monday, April 24, 2017 10:45 AM
To: Kime, Robin <Kime.Robin@epa.gov>
Subject: Is it possible to get 20 min with SD on CPP RIA?

Sent from my iPhone

Message

From: U.S. EPA Media Relations [noreply-subscriptions@epa.gov]
Sent: 4/20/2017 5:08:57 PM
To: Dravis, Samantha [dravis.samantha@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: Ford, Hayley [ford.hayley@epa.gov]
Sent: 4/18/2017 4:13:07 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
CC: Munoz, Charles [munoz.charles@epa.gov]
Subject: FW: Cabinet Affairs Update

Hi Samantha – Could you send along any policy updates for our 1:45 Cabinet Affairs call? We are open to whatever process you would prefer in getting us these daily updates.

Thanks!

- Proceeding on WOTUS and CPP review and revision per 2 Presidential EOs. Our teams have had calls w/ OMB and the WH about the plan moving forward.
- On 4/13, the Administrator issued an administrative stay on the compliance deadlines of the ELG (Effluent Limitations Guidelines) for steam electric power plants under the Clean Water Act. This was a crippling, costly and burdensome rule – staying the rule will save money and jobs. The Administrator also began the reconsideration process for this rule and sent a letter to all state governors and state DEQs identifying the flexibility states have to delay implementation.
- Working with Commerce on response to the Manufacturing Permit Streamlining Presidential Memorandum.

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: Ex. 6 - Personal Privacy

From: Ford, Hayley
Sent: Monday, April 17, 2017 9:28 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Munoz, Charles <munoz.charles@epa.gov>
Subject: Cabinet Affairs Update

Hi Samantha,

Hope you had a nice weekend! For the daily Cabinet Affairs calls, 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 policy 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: Ex. 6 - Personal Privacy

Message

From: Lovell, Will (William) [lovell.william@epa.gov]
Sent: 7/10/2017 11:39:34 AM
To: Dravis, Samantha [dravis.samantha@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]
CC: Lopez, George [lopez.george@epa.gov]
Subject: RE: NAM Materials
Attachments: 170710_NAM_BP.docx

Our POC just got back to us. Please find attached the updated BP with attendees.

I will print this off and insert it into your schedules.

From: Lovell, Will (William)
Sent: Friday, July 7, 2017 7:55 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Lopez, George <lopez.george@epa.gov>
Subject: NAM Materials

Please find attached the materials for Monday's meeting with the **National Association of Manufacturers.**

Please note: this material is updated from the NAM roundtable on June 20. The NAM POC has been traveling and unavailable to provide an updated list of attendees or topics for this discussion. I will have my laptop over the weekend in case she gets back to me and/or Alex Dominguez.

Will Lovell
Policy Assistant, Office of Policy
U.S. Environmental Protection Agency
(202) 564-5713
Lovell.William@epa.gov

Briefing Paper

Meeting: National Association of Manufacturers
Date: Monday, July 10, 2017
Time: 2:00 – 3:00 pm
Location: 3530 WJCN

Attendees

- Rachel Jones, NAM, Director of Energy and Resources Policy
- Ross Eisenberg, NAM, Vice President of Energy and Resources Policy
- Maryam Brown, Sempra, Vice President of Federal Government Affairs
- Bryan Zumwalt, ACC, Vice President of Federal Affairs
- Khary Cauthen, API, Senor Director of Federal Relations
- Jay Cranford, CGCN, Partner
- Martin Edwards, INGAA, Vice President of Legislative Affairs
- Brian Kelly, BKstrategies, Founder and Principal
- Puneet Verma, Chevron, Manager
- Geoff Moody, AFPM, Vice President of Government Relations

National Association of Manufacturers

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Their members employ more than 12 million men and women, contribute $2.17 trillion to the U.S. economy annually, have the largest economic impact of any major sector, and account for more than three-quarters of all private-sector research and development in the Nation.

Comments

Docket: EPA-HQ-OA-2017-0190
Title: Evaluation of Existing Regulations
Status: Proposed Rule (April 13, 2017)

NAAQS

NAM supports easing implementation of the 2015 Ozone NAAQs and performing an audit of the NAAQS process. On June 21, 2017, the DC Circuit set oral arguments in the NAAQS implementation lawsuit for September 14. Currently, the EPA is reconsidering existing source Control Techniques Guidelines (CTGs) for ozone nonattainment areas and working on a Presidential memorandum regarding the NAAQS process.

Clean Power Plan

NAM supports replacing the Clean Power Plan and clarifying the use of the word "significant" in relation to endangerment for GHGs, which is a higher threshold than the "cause and contribute" endangerment determination the Agency made for mobile sources under Title II of the Clean Air Act.

ED_0011318_00006593-00001

This rule threatens 400,000 jobs. On March 28, 2017, the EPA signed a notice to review the Clean Power Plan. The Agency has withdrawn the Federal Plan/Trading Rule/Framework Amendments. The plan to rescind the rest of the CPP is currently under OMB review.

NSPS 111(b)

NAM advocates that this rule inappropriately assumes that carbon capture and sequestration (CCS) is "adequately demonstrated" for utility-scale applications, which is the basis for the mandated standard for all new coal-fired power plants. NAM supports the issuance of a new rule that is based on a more conservative definition of the Best System of Emissions Reduction (BSER) for GHGs. The EPA is currently reviewing the New Source Performance Standards for coal-fired power plants.

CAFE Standards

NAM supports the Administrator's decision to review the 2016 midterm evaluation (MTE). According to the Auto Alliance, "no agency has ever set emission limits so far into the future," and the previous administration's determination would have put 1.1 million jobs at risk and cost the industry $200 billion by 2025.

The decision to review the MTE was announced on March 15, 2017. He must make a final determination about whether the standards remain appropriate or should be changed by April 1, 2018. The EPA is working with the DOT to conduct a collaborative and robust review of the standards.

GHG Threshold Rule

On October 3, 2016, the EPA proposed a rule known as the "Threshold Rule." The Threshold Rule was intended to correct aspects of a previous rule identified by the Supreme Court in *Utility Air Regulatory Group v. EPA*. The rule set the *de minimis* threshold for GHG emissions at 75,000 tons per year. NAM supports raising that threshold.

RMP Rule

The RMP Modernization rule modified or added several regulations regarding the prevention of accident releases, emergency response preparedness, and sharing of information with the public. NAM supports a new rulemaking to reconsider the RMP Rule.

This rule could cost about $131.8 million annually, amounting to $1.3 billion over ten years. On June 9, 2017, the EPA finalized its decision to extend the effective date of the rule to February 19, 2019. This extension allows the Agency time to develop a proposal to amend the final rule in late 2017/early 2018, and seek to finalize any changes by late 2018.

Regional Haze

States have been working to implement the Regional Haze (RH) program under the Clean Air Act based on EPA guidance to improve visibility, especially in National Parks. The statute gives states the primary role in implementing air quality programs, including for regional haze. Recently, environmental groups have sued the EPA for failing to act on state RH proposals. As a result, the EPA issued Federal Implementation Plans (FIPs) to supersede the SIPS. NAM supports allowing states to implement the Regional Haze program with federal oversight.

ED_0011318_00006593-00002

Boiler MACT
The U.S. Court of Appeals for the District of Columbia has directed EPA to revise certain standards of the Boiler MACT rule to account for additional "best performing" boilers while upholding the core framework and methodology of the rule. NAM supports finalizing a cost-effective Boiler MACT rule within the next six months in order to provide regulatory certainty.

Tier 4
In June 2004, the EPA published its final rule on emission standards for nonroad diesel engines. In June 2013, the EPA issued a direct final rule to assist in the transitioning to Tier 4 standards but withdrew provisions of the rule due to adverse public comment. The updated final rule was published in February 2014. NAM supports easing the burden of compliance for the Tier 4 rule.

NESHAP 6X
NESHAP 6X regulations require ongoing, quarterly visual emissions monitoring for welding operations and abrasive blasting operations, even if zero visible emissions have been documented in the past. NAM supports limiting the required number of inspections after a site demonstrates a consistent record of zero visible emissions.

Co-location
The EPA requires that activities or facilities located at major sources to be collectively permitted as one single source, subjecting them to more stringent regulations. NAM supports the modification or removal of this requirement.

Waters of the United States
NAM supports rescinding the rule and proposing a new rule that limits federal jurisdiction. This rule could have a negative economic impact between $600 million and $1.2 billion. On February 28, 2017, the EPA signed a notice to review of the rule. On June 26, 2017, the EPA proposed its step 1 repeal of the rule. Consultations and cost-benefit analyses are currently ongoing.

As indicated in the proposed withdrawal, the agency is implementing EO 13778 in two steps to provide regulatory certainty to the regulated community. In Step 1, which is being implemented now, the agencies are taking action to establish legal status quo in the CFR, by recodifying the regulation that in place prior to the issuance of the Clean Water Rule. In Step 2, the agencies plan to propose a new definition that would replace the approach in 2015 Clean Water Rule with one that reflects the principles outlined in the *Rapanos* plurality opinion.

NPDES Permits
Pipelines require a NPDES permit to discharge hydrostatic test water to waters of the U.S. after using the water to test pipelines. NAM supports streamlining this process. In the RRTF 90-day progress report, the Office of Water identified this issue in several comments and proposed preliminary recommendations for reform.

ED_0011318_00006593-00003

Safe Drinking Water Act Study
The EPA, along with several other federal agencies and numerous state agencies, is evaluating the potential for linkages between produced water disposal and seismicity. NAM recommends supporting current state efforts in this study.

CERCLA 108(b) Rule
On December 1, 2016, EPA proposed regulations for the hardrock mining industry that would require additional financial assurances for miners. NAM supports a rulemaking to require financial assurance only where the degree and duration of the risk associated with hazardous substances justifies it.

On March 22, 2017, EPA extended the comment period on the Hard Rock Mining proposed rule that could cost American businesses $171 million annually. Furthermore, in the RRTF 90-day progress report, the Office of Land and Emergency Management identified this issue in several comments and proposed preliminary recommendations for reform.

RCRA
On December 10, 2014, the EPA finalized the "Definition of Solid Waste" rule. The rule went into effect on July 13, 2015. Previously, a 2008 rule excluded recycled materials from the definition of solid waste, exempting the materials from certain RCRA regulations. The new rule provides that exception only in certain circumstances, such as in the case of domestic and processed materials.

NAM supports reviewing the definition of solid waste to ensure that the classification is appropriate. Additionally, NAM supports reviewing existing and proposed policies that may implement duplicative requirements for products and wastes that are already being regulated by other agencies or statutes.

Superfund
NAM supports interpreting regulatory requirements under the Superfund program in a manner that would speed the remediation of these sites while reducing costs and ensuring environmental protections. NAM supports moving final remediation decisions from regional offices to headquarters. Finally, NAM supports eliminating the current practice of re-allocating cleanup costs to the lone surviving company (or companies) when one or more responsible party files for bankruptcy or refuses to participate after cost allocation decisions have been made commensurate with each party's level of contribution to the site's contamination.

Cleanup operations are occurring in East Chicago (IN), West Oakland (CA) and Pompton Lake (NJ). Administrator Pruitt is the first EPA Administrator to visit the East Chicago site. Additionally, the EPA announced new plans to get better results at Superfunds, including a new task force to streamline the cleanup process for Superfund sites, and a new authority for the Administrator to decide remedies that cost over $50 million.

TSCA Prioritization
NAM supports prioritizing chemicals posing the greatest demonstrated risk for TSCA review. Additionally, NAM supports providing more clarity and transparency in the review process.

ED_0011318_00006593-00004

Finally, NAM supports avoiding chemical regulations that are duplicative or overly burdensome. In the RRTF 90-day progress report, the Office of Chemical Safety and Pollution Prevention identified this issue in several comments. Additionally, OCSPP hosted a public meeting on May 1, 2017 on opportunities for regulatory reform as it relates to TSCA.

The EPA is on track to meet the deadlines outlined in TSCA. On June 22, 2017, the Agency finalized the Inventory Update rule, Prioritization rule, Risk Evaluation rule, External Risk Evaluation Guidance, and Notice On Scoping Documents. The Agency has submitted its Fees rule to OMB and plans to eliminate new chemical backlog by the end of July.

Worker Protection Standard

On November 2, 2015, EPA revised the Worker Protection Rule (WPS) to implement further protections for agricultural workers, handlers, and their families. NAM supports rescinding this regulation for being costly and unnecessary. In the RRTF 90-day progress report, the Office of Chemical Safety and Pollution Prevention identified this issue in several comments and proposed preliminary recommendations for reform.

Perchlorate

NAM supports reviewing previous regulations pertaining to perchlorate and subjecting the EPA's data to peer review.

The EPA sent its report on perchlorate to OMB and is considering options to "terminate" peer review process and "consider reversing" determination to regulate from 2011.

Lead Repair, Renovation, and Painting Rule

EPA has issued new requirements on firms performing renovation, repair, and painting projects in homes built before 1978. NAM supports reviewing the requirements and, if justified, change the rule to make it more effective and ensure costs imposed do not exceed benefits. OCSPP hosted a public meeting on May 1, 2017 on opportunities for regulatory reform as it relates to the lead rule.

Vapor Intrusion

EPA Region 9 issued guidance on Vapor Intrusion as applied to federal Superfund sites in the states and territories covered by that regional office. NAM supports withdrawing the Region 9 Vapor Intrusion Guidance (and that of any other regions) and referring the matter to the National Academy of Sciences for further guidance.

Consent Decrees

NAM supports prioritizing the process for consent decree terminations so companies do not have to fulfill unnecessary monitoring and reporting requirements.

General Science Evaluation Process

NAM supports reforming its process for evaluating science to improve transparency and better involve the public.

ED_0011318_00006593-00005

Message

From: Lovell, Will (William) [lovell.william@epa.gov]
Sent: 7/7/2017 11:55:18 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]
CC: Lopez, George [lopez.george@epa.gov]
Subject: NAM Materials
Attachments: Reg Reform Comments.pdf; 170710_NAM_BP.docx

Please find attached the materials for Monday's meeting with the **National Association of Manufacturers.**

Please note: this material is updated from the NAM roundtable on June 20. The NAM POC has been traveling and unavailable to provide an updated list of attendees or topics for this discussion. I will have my laptop over the weekend in case she gets back to me and/or Alex Dominguez.

Will Lovell
Policy Assistant, Office of Policy
U.S. Environmental Protection Agency
(202) 564-5713
Lovell.William@epa.gov

Briefing Paper

Meeting: National Association of Manufacturers
Date: Monday, July 10, 2017
Time: 2:00 – 3:00 pm
Location: 3530 WJCN

National Association of Manufacturers
The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Their members employ more than 12 million men and women, contribute $2.17 trillion to the U.S. economy annually, have the largest economic impact of any major sector, and account for more than three-quarters of all private-sector research and development in the Nation.

Comments

Docket: EPA-HQ-OA-2017-0190
Title: Evaluation of Existing Regulations
Status: Proposed Rule (April 13, 2017)

NAAQS
NAM supports easing implementation of the 2015 Ozone NAAQs and performing an audit of the NAAQS process. On June 21, 2017, the DC Circuit set oral arguments in the NAAQS implementation lawsuit for September 14. Currently, the EPA is reconsidering existing source Control Techniques Guidelines (CTGs) for ozone nonattainment areas and working on a Presidential memorandum regarding the NAAQS process.

Clean Power Plan
NAM supports replacing the Clean Power Plan and clarifying the use of the word "significant" in relation to endangerment for GHGs, which is a higher threshold than the "cause and contribute" endangerment determination the Agency made for mobile sources under Title II of the Clean Air Act.

This rule threatens 400,000 jobs. On March 28, 2017, the EPA signed a notice to review the Clean Power Plan. The Agency has withdrawn the Federal Plan/Trading Rule/Framework Amendments. The plan to rescind the rest of the CPP is currently under OMB review.

NSPS 111(b)
NAM advocates that this rule inappropriately assumes that carbon capture and sequestration (CCS) is "adequately demonstrated" for utility-scale applications, which is the basis for the mandated standard for all new coal-fired power plants. NAM supports the issuance of a new rule that is based on a more conservative definition of the Best System of Emissions Reduction (BSER) for GHGs. The EPA is currently reviewing the New Source Performance Standards for coal-fired power plants.

ED_0011318_00006596-00001

CAFE Standards

NAM supports the Administrator's decision to review the 2016 midterm evaluation (MTE). According to the Auto Alliance, "no agency has ever set emission limits so far into the future," and the previous administration's determination would have put 1.1 million jobs at risk and cost the industry $200 billion by 2025.

The decision to review the MTE was announced on March 15, 2017. He must make a final determination about whether the standards remain appropriate or should be changed by April 1, 2018. The EPA is working with the DOT to conduct a collaborative and robust review of the standards.

GHG Threshold Rule

On October 3, 2016, the EPA proposed a rule known as the "Threshold Rule." The Threshold Rule was intended to correct aspects of a previous rule identified by the Supreme Court in *Utility Air Regulatory Group v. EPA*. The rule set the *de minimis* threshold for GHG emissions at 75,000 tons per year. NAM supports raising that threshold.

RMP Rule

The RMP Modernization rule modified or added several regulations regarding the prevention of accident releases, emergency response preparedness, and sharing of information with the public. NAM supports a new rulemaking to reconsider the RMP Rule.

This rule could cost about $131.8 million annually, amounting to $1.3 billion over ten years. On June 9, 2017, the EPA finalized its decision to extend the effective date of the rule to February 19, 2019. This extension allows the Agency time to develop a proposal to amend the final rule in late 2017/early 2018, and seek to finalize any changes by late 2018.

Regional Haze

States have been working to implement the Regional Haze (RH) program under the Clean Air Act based on EPA guidance to improve visibility, especially in National Parks. The statute gives states the primary role in implementing air quality programs, including for regional haze. Recently, environmental groups have sued the EPA for failing to act on state RH proposals. As a result, the EPA issued Federal Implementation Plans (FIPs) to supersede the SIPS. NAM supports allowing states to implement the Regional Haze program with federal oversight.

Boiler MACT

The U.S. Court of Appeals for the District of Columbia has directed EPA to revise certain standards of the Boiler MACT rule to account for additional "best performing" boilers while upholding the core framework and methodology of the rule. NAM supports finalizing a cost-effective Boiler MACT rule within the next six months in order to provide regulatory certainty.

Tier 4

In June 2004, the EPA published its final rule on emission standards for nonroad diesel engines. In June 2013, the EPA issued a direct final rule to assist in the transitioning to Tier 4 standards but withdrew provisions of the rule due to adverse public comment. The updated final rule was published in February 2014. NAM supports easing the burden of compliance for the Tier 4 rule.

ED_0011318_00006596-00002

NESHAP 6X
NESHAP 6X regulations require ongoing, quarterly visual emissions monitoring for welding operations and abrasive blasting operations, even if zero visible emissions have been documented in the past. NAM supports limiting the required number of inspections after a site demonstrates a consistent record of zero visible emissions.

Co-location
The EPA requires that activities or facilities located at major sources to be collectively permitted as one single source, subjecting them to more stringent regulations. NAM supports the modification or removal of this requirement.

Waters of the United States
NAM supports rescinding the rule and proposing a new rule that limits federal jurisdiction. This rule could have a negative economic impact between $600 million and $1.2 billion. On February 28, 2017, the EPA signed a notice to review of the rule. On June 26, 2017, the EPA proposed its step 1 repeal of the rule. Consultations and cost-benefit analyses are currently ongoing.

As indicated in the proposed withdrawal, the agency is implementing EO 13778 in two steps to provide regulatory certainty to the regulated community. In Step 1, which is being implemented now, the agencies are taking action to establish legal status quo in the CFR, by recodifying the regulation that in place prior to the issuance of the Clean Water Rule. In Step 2, the agencies plan to propose a new definition that would replace the approach in 2015 Clean Water Rule with one that reflects the principles outlined in the *Rapanos* plurality opinion.

NPDES Permits
Pipelines require a NPDES permit to discharge hydrostatic test water to waters of the U.S. after using the water to test pipelines. NAM supports streamlining this process. In the RRTF 90-day progress report, the Office of Water identified this issue in several comments and proposed preliminary recommendations for reform.

Safe Drinking Water Act Study
The EPA, along with several other federal agencies and numerous state agencies, is evaluating the potential for linkages between produced water disposal and seismicity. NAM recommends supporting current state efforts in this study.

CERCLA 108(b) Rule
On December 1, 2016, EPA proposed regulations for the hardrock mining industry that would require additional financial assurances for miners. NAM supports a rulemaking to require financial assurance only where the degree and duration of the risk associated with hazardous substances justifies it.

On March 22, 2017, EPA extended the comment period on the Hard Rock Mining proposed rule that could cost American businesses $171 million annually. Furthermore, in the RRTF 90-day progress report, the Office of Land and Emergency Management identified this issue in several comments and proposed preliminary recommendations for reform.

ED_0011318_00006596-00003

RCRA

On December 10, 2014, the EPA finalized the "Definition of Solid Waste" rule. The rule went into effect on July 13, 2015. Previously, a 2008 rule excluded recycled materials from the definition of solid waste, exempting the materials from certain RCRA regulations. The new rule provides that exception only in certain circumstances, such as in the case of domestic and processed materials.

NAM supports reviewing the definition of solid waste to ensure that the classification is appropriate. Additionally, NAM supports reviewing existing and proposed policies that may implement duplicative requirements for products and wastes that are already being regulated by other agencies or statutes.

Superfund

NAM supports interpreting regulatory requirements under the Superfund program in a manner that would speed the remediation of these sites while reducing costs and ensuring environmental protections. NAM supports moving final remediation decisions from regional offices to headquarters. Finally, NAM supports eliminating the current practice of re-allocating cleanup costs to the lone surviving company (or companies) when one or more responsible party files for bankruptcy or refuses to participate after cost allocation decisions have been made commensurate with each party's level of contribution to the site's contamination.

Cleanup operations are occurring in East Chicago (IN), West Oakland (CA) and Pompton Lake (NJ). Administrator Pruitt is the first EPA Administrator to visit the East Chicago site. Additionally, the EPA announced new plans to get better results at Superfunds, including a new task force to streamline the cleanup process for Superfund sites, and a new authority for the Administrator to decide remedies that cost over $50 million.

TSCA Prioritization

NAM supports prioritizing chemicals posing the greatest demonstrated risk for TSCA review. Additionally, NAM supports providing more clarity and transparency in the review process. Finally, NAM supports avoiding chemical regulations that are duplicative or overly burdensome. In the RRTF 90-day progress report, the Office of Chemical Safety and Pollution Prevention identified this issue in several comments. Additionally, OCSPP hosted a public meeting on May 1, 2017 on opportunities for regulatory reform as it relates to TSCA.

The EPA is on track to meet the deadlines outlined in TSCA. On June 22, 2017, the Agency finalized the Inventory Update rule, Prioritization rule, Risk Evaluation rule, External Risk Evaluation Guidance, and Notice On Scoping Documents. The Agency has submitted its Fees rule to OMB and plans to eliminate new chemical backlog by the end of July.

Worker Protection Standard

On November 2, 2015, EPA revised the Worker Protection Rule (WPS) to implement further protections for agricultural workers, handlers, and their families. NAM supports rescinding this regulation for being costly and unnecessary. In the RRTF 90-day progress report, the Office of

ED_0011318_00006596-00004

Chemical Safety and Pollution Prevention identified this issue in several comments and proposed preliminary recommendations for reform.

Perchlorate
NAM supports reviewing previous regulations pertaining to perchlorate and subjecting the EPA's data to peer review.

The EPA sent its report on perchlorate to OMB and is considering options to "terminate" peer review process and "consider reversing" determination to regulate from 2011.

Lead Repair, Renovation, and Painting Rule
EPA has issued new requirements on firms performing renovation, repair, and painting projects in homes built before 1978. NAM supports reviewing the requirements and, if justified, change the rule to make it more effective and ensure costs imposed do not exceed benefits. OCSPP hosted a public meeting on May 1, 2017 on opportunities for regulatory reform as it relates to the lead rule.

Vapor Intrusion
EPA Region 9 issued guidance on Vapor Intrusion as applied to federal Superfund sites in the states and territories covered by that regional office. NAM supports withdrawing the Region 9 Vapor Intrusion Guidance (and that of any other regions) and referring the matter to the National Academy of Sciences for further guidance.

Consent Decrees
NAM supports prioritizing the process for consent decree terminations so companies do not have to fulfill unnecessary monitoring and reporting requirements.

General Science Evaluation Process
NAM supports reforming its process for evaluating science to improve transparency and better involve the public.

ED_0011318_00006596-00005

NATIONAL ASSOCIATION OF
Manufacturers

Ross E. Eisenberg
Vice President
Energy & Resources Policy

May 15, 2017

Samantha K. Dravis
Regulatory Reform Officer and Associate Administrator, Office of Policy
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code: 6101A
Washington, DC 20460

Re: Evaluation of Regulations, Docket ID No. EPA-HQ-OA-2017-0190

The National Association of Manufacturers (NAM), the largest manufacturing association in the United States representing manufacturers in every industrial sector and in all 50 states, submits the following comments in response to the request by the Environmental Protection Agency (EPA) for input on regulations that may be appropriate for repeal, replacement or modification, in accordance with Executive Order 13777, "Enforcing the Regulatory Reform Agenda."

Manufacturers deeply appreciate the opportunity to assist the EPA as it reviews the regulations within its jurisdiction. These comments focus on EPA regulations of concern to manufacturers and recommend ways to improve them. These comments also identify improvements to the process by which the regulations listed were made: too often it has been inflexible, unresponsive to stakeholder input, and wedded to outcomes that seemed predetermined. For the Agency to truly reform the way it regulates, it must look not only at individual regulations but also the whole regulatory system.

Our environmental indicators are steadily improving. Since 1990—a period spanning four different presidential administrations and 14 different Environmental Protection Agency (EPA) Administrators—national pollutant concentrations have dropped dramatically. Carbon monoxide concentrations are down 77 percent; lead 99 percent; nitrogen dioxide 54 percent; ozone 22 percent; coarse particulate matter 39 percent; fine particulate matter 37 percent; and sulfur dioxide 81 percent.[1] The United States has reduced more greenhouse gases (GHGs) over the past decade than any other nation on earth. Manufacturers have done their part as well, reducing our emissions 10 percent over the past decade while increasing our value to the economy by 19 percent.

However, the incremental gains we are achieving are coming at an ever-increasing cost. Federal environmental regulations—many based on statutes that are decades old—are increasingly rigid, costly and harm our global competitiveness. Several recent regulations threaten to set new records for compliance costs, collectively strapping manufacturers with hundreds of billions of dollars in new regulatory burdens per year. We have lost the critical

[1] U.S. EPA, "Our Nation's Air: Status and Trends Through 2015," *available at* https://gispub.epa.gov/air/trendsreport/2016/.

balance in our federal environmental policies between furthering progress and limiting unnecessary economic impacts. The state of our national economy, the manufacturing sector and the environment are considerably different than they were 20, 30 or 40 years ago. However, we are still operating with policies designed to address the environmental challenges of a previous era. It is time to modernize our environmental policies to better reflect and address current issues, technologies and opportunities to ensure a more sustainable future.

Take ozone, for instance. The major improvements to ozone that have occurred over the years have largely come at the expense of two types of sources: electric utilities and manufacturers. We are now at a point in time where those two industrial categories have installed just about every cost-effective technology available to them. The only ozone left to control in many regions come from sources the Clean Air Act makes it difficult to regulate, such as small emitters. Making matters worse, in many areas the NAAQS program has been so effective that concentrations have been reduced to natural background levels. Why, then, must the EPA go back to the same well every five years—electric utilities and manufacturers—when it seeks to implement an ever-tighter ozone NAAQS? This is why EPA continues to see diminishing returns at astronomical costs every time it tightens the ozone standard.

Manufacturers will continue to lead by minimizing environmental footprints, reducing emissions, conserving critical resources, protecting biodiversity, limiting waste and providing safe products and solutions so others in the economy can do the same. However, we need better regulations. We need a regulatory process that is not opaque. We need the EPA to look to manufacturers as partners, not just as regulated entities.

Ultimately, we hope this regulatory review process yields a structure that will drive real, sustained reductions in pollution in a manner that provides more transparency, flexibility and collaboration than has been the case in the past. EPA will always be judged by its ability to keep the trend lines for each pollutant heading in a downward direction. This Administration has a unique opportunity to prove that it can accomplish this goal through an improved regulatory structure. Manufacturers look forward to working with EPA to achieve this goal.

Discussion of Individual Regulations

The NAM's Chairman of the Board directly contacted each of our 14,000 members with the request that they identify regulations that are affecting their companies. The list below is largely a compilation of the information we received in response. In accordance with EPA's instructions, we will also identify which of the EO 13777 criteria the regulation meets, and how the NAM recommends the regulation be addressed.[2]

---

[2] EO 13777 specifically requested EPA to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;
(ii) Are outdated, unnecessary, or ineffective;
(iii) Impose costs that exceed benefits;
(iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
(v) Are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard of reproducibility; or
(vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

ED_0011318_00006597-00002

1. National Ambient Air Quality Standards (NAAQS)

Every five years, EPA must decide whether the National Ambient Air Quality Standards (NAAQS) are sufficiently protective of public health. As NAAQS (for particulate matter, ozone, sulfur dioxide, carbon monoxide, lead and nitrogen oxides) have dropped closer to background levels, it is becoming increasingly difficult to pass the test and get an approved permit. Similarly, new technologies needed to meet ever-stringent NAAQS are getting more expensive. Compliance costs for manufacturers are skyrocketing and regulated industries are approaching a permitting gridlock.

The NAM recommends the following actions on NAAQS regulations:

A. National Ambient Air Quality Standards (NAAQS) for Ozone. The 2015 ozone regulation could be one of the most expensive regulations ever issued by the U.S. government. The previous standard of 75 parts per billion (ppb)—the most stringent standard ever—was never even fully implemented, while emissions are as low as they have been in decades and air quality continues to improve. The EPA itself admitted that implementation of the previous standard of 75 ppb, when combined with the dozens of other regulations on the books that will reduce ozone precursor emissions from stationary and mobile sources, will drive ozone reductions below 75 ppb (and close to 70 ppb, the current standard set in 2015) by 2025. The massive costs of a stricter standard are simply not necessary.

- EO 13777 Justification: This regulation could eliminate jobs or inhibit job creation; it is ineffective and potentially unnecessary considering ozone concentrations will likely reach 70 ppb in 2025 by simple operation of other laws; and its costs could exceed its benefits.
- NAM Recommendation: The litigation over the 2015 Ozone NAAQS is being held in abeyance as EPA reviews its position on the rule. The NAM does not engage on the scientific side and leaves that decision to the experts at the Agency. However, we do recommend the EPA take whatever measures are available to ease implementation of the 2015 rule. These should include: a reevaluation of how background ozone is calculated; revocation of the 2008 standards once the 2015 standards are effective; the establishment of procedures for states to demonstrate eligibility for relief under Section 179B when emissions from outside the United States cause the state to fall into nonattainment; and changes to the recently-finalized Exceptional Events Rule[3], where EPA elected to prevent states from considering certain events and sources from exceptional events determination.

B. NAAQS Process Changes. The process of setting a new NAAQS can be frustrating for the regulated community, which lacks meaningful input on the formation of new standards before they are proposed. For instance, because new data and analysis often causes EPA to miss the five-year deadline to promulgate a new NAAQS, outside stakeholders are able to force a rushed timeline through a lawsuit or settlement agreement. Doing so creates a risk that EPA will miss key details or make mistakes it would not make if it had more time. Similarly, while the EPA relies on its

[3] 81 Federal Register 68216 (October 3, 2016)

ED_0011318_00006597-00003

Clean Air Science Advisory Committee (CASAC) for scientific advice on a new NAAQS, it has refused to ask CASAC to opine on economic or energy effects from a new NAAQS, even though Section 109(d) of the Clean Air Act requires it. On the implementation side, the challenges with the ever-tighter NAAQS is exacerbated by a lack of (or inappropriate) emission measurement methods, poor estimates of emissions, use of unrealistic air dispersion models, and several rigid permitting policies.

- EO 13777 Justification: Aspects of the NAAQS-setting process rely in whole or in part on data, information or methods that are not publicly available or that are insufficiently transparent to meet the standard of reproducibility.
- NAM Recommendation: The NAM recommends the EPA perform an audit of the NAAQS process and identify improvements that can be made. Some potential changes include: require CASAC to comply with Section 109(d) of the Clean Air Act and "advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance" of NAAQS; provide flexibility to NAAQS nonattainment areas so that offset requirements are tied to reasonable and available reduction opportunities, with consideration to reasonable cost thresholds; EPA should establish a new permitting process and adjust its modeling criteria to be more reflective of actual impacts; and, with the help of Congress, modify the NAAQS review cycle to more closely align with the pace of implementation of existing standards and consider cost and technological feasibility when conducting NAAQS policy assessments and during implementation.

2. Greenhouse Gases

Manufacturers are committed to addressing climate change through improved efficiency, greater sustainability and reductions in GHG emissions. Manufacturers are leading the way, reducing our GHG emissions by 10 percent over the past decade while increasing our value to the economy by 19 percent. Manufacturers of all shapes and sizes are setting GHG targets to 2020, 2025 and beyond—and are often beating them several years early. They are doing this by innovating, taking risks, driving efficiencies, and streamlining their processes, and relying on internal experts who know their businesses best.

The conundrum manufacturers now face is an oncoming series of GHG regulations that appear to take a piecemeal approach to different aspects of their businesses. For instance, a manufacturer may have set a target to reduce its GHG emissions by 20, 30 or even 50 percent through system improvements that are specific to that manufacturer's operations. A heavy-handed regulation that forces this same manufacturer to switch out its boiler in the name of climate change could be fundamentally at odds with that manufacturer's own internal plan (which did not include the boiler). It also could force the manufacturer to divert expenses that would otherwise be used to meet its GHG targets to comply with the new regulation, which would result in less overall GHG reductions.

As the EPA rethinks the regulatory framework to address GHG emissions, it should constructively engage the manufacturing sector to better understand what we are doing, what we have planned for the future, and what measures we have undertaken that are delivering cost-effective results. The Agency should then work with manufacturers to construct a set of flexible policies that set are reasonable and technically achievable, allow credit for early action,

promote an "all of the above" energy strategy that avoids unnecessary retirements of any fuel source that would not happen absent regular market forces, and are cost-effective, attainable and protect American jobs and the economy.

The NAM recommends taking action on the specific GHG regulations:

A. **Clean Power Plan.** The final Clean Power Plan would fundamentally shift how electricity is generated and consumed in this country, effectively picking winners and losers in terms of both technologies and fuels. The rule also represents an attempt to vastly expand the EPA's traditional authority to regulate specific source categories by setting reduction requirements that reach into the entire electricity supply-and-demand chain. The requirements will be substantial, potentially costing billions of dollars per year to comply. Some studies estimate that compliance with the rule would cost well over $300 billion and cause double-digit electricity price increases for ratepayers in most states. Manufacturers are concerned about these potential costs and reliability challenges as electric power fleets are overhauled in compliance with the regulations. Manufacturers are also keenly aware that the EPA is using this regulation as a model for future direct regulations on other manufacturing sectors—meaning manufacturers could potentially be hit twice by GHG regulations.
   - EO 13777 Justification: This regulation could eliminate jobs or inhibit job creation; its costs could exceed its benefits; and it derives from a Presidential directive that has been rescinded and substantially modified.
   - NAM Recommendation: The President and has already taken strong action to reexamine this regulation, which manufacturers welcomed. The NAM encourages the EPA to replace the Clean Power Plan with a Section 111(d) regulation that better reflects the statute's requirements. In addition, the NAM requests that the EPA delineate what constitutes "significant" endangerment for GHGs, which is a higher threshold than the "cause and contribute" endangerment determination the Agency made for mobile sources under Title II of the Clean Air Act.

B. **NSPS for GHG Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units.** This rule, a precursor to the Clean Power Plan, set performance standards for GHG emissions under Section 111(b). In its final rule, the EPA inappropriately concluded that carbon capture and sequestration (CCS) was "adequately demonstrated" for utility-scale applications and its utilization is the basis for the mandated standard for all new coal-fired power plants. As a matter of fact, CCS had not been adequately demonstrated at the utility scale—making a standard that requires it for all new coal plants an effective ban on those plants. Manufacturers need access to all energy sources to keep energy affordable and reliable. Even the manufacturers of CCS, who would presumably benefit from a rule like this, filed comments with EPA that CCS was not adequately demonstrated and that mandating it in the rule would chill demand for development of this technology. Finally, a regulation requiring technologies that are not commercially available would set a damaging precedent for future regulation of manufacturers' operations.
   - EO 13777 Justification: This regulation could eliminate jobs or inhibit job creation; its costs could exceed its benefits; and it derives from a Presidential directive that has been rescinded and substantially modified.

- NAM Recommendation: Like the Clean Power Plan, the President and has already taken strong action to reexamine this regulation, which manufacturers greatly appreciate. The NAM recommends that EPA issue a new 111(b) rule that bases its standard on a more realistic definition of the Best System of Emissions Reduction (BSER) for GHGs that has been adequately demonstrated. One potential option could be the definition proposed by the NAM-supported Whitfield-Manchin bill in the 113th Congress, which stated that a technology can be BSER once it has been achieved over a one-year period by at least six units located at different commercial power plants in the United States.

C. **Fuel Economy and GHG Emissions Standards for Light-Duty Vehicles.** The EPA, National Highway Traffic Safety Administration (NHTSA) and the California Air Resources Board (CARB) manage a three-headed regulatory program of fuel economy and GHG regulations on light-duty vehicle manufacturers, using authority under the Clean Air Act, CAFE and California's Zero Emissions Vehicle (ZEV) statute. The current regulatory structure stretches to 2025. While these programs were intended to form "One National Program," in practice manufacturers are forced to comply with a patchwork of requirements. In late 2016, EPA made a highly political decision to rush a mid-term evaluation of the requirements for model year 2022-2025 vehicles, cutting short the technical review and opportunity for stakeholder input.
   - EO 13777 Justification: The 2016 midterm determination was insufficiently transparent and relied on outdated data.
   - NAM Recommendation: The EPA has returned the midterm review process to its original schedule, and the Administrator will decide whether the standards remain appropriate by April 1, 2018. The NAM supports the Administrator's decision to reevaluate the 2016 midterm determination and looks forward to working with the Agency on this issue. The NAM also recommends that the EPA take steps within its jurisdiction to harmonize its regulations with the other agencies involved.

D. **GHG Threshold Rule.** The EPA proposed a rule on October 3, 2016, "Revisions to the Prevention of Significant Deterioration and Title V Greenhouse Gas Permitting Regulations and Establishment of a Significant Emissions Rate (SER) for GHG Emissions under the PSD Program," (RIN 2060- AS62) (81 FR 68110), more commonly known as the "GHG Threshold Rule." The GHG Threshold Rule was intended to cure defects in the GHG Tailoring Rule identified by the U.S. Supreme Court in *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427 (2014). The NAM supported the EPA's proposal to establish a significant emission rate (SER) for GHG emissions under the PSD permitting program based on the conclusion that GHG emissions below this threshold would be *de minimis*; however, we are very concerned with the EPA's decision to set the *de minimis* threshold at 75,000 tons per year (tpy). The rule also did not adequately recognize that sustainable biomass is a valued energy input for manufacturers and a vital part of an "all of the above" energy strategy. The forest products industry, among others, uses forest product manufacturing residuals for energy.
   - EO 13777 Justification: This rule as originally proposed would interfere with regulatory reform initiatives and policies, and it derives from Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

- NAM Recommendation: The EPA should establish a *de minimis* GHG threshold above 75,000 tpy, and it should only rely on technologies that are truly commercially available as the basis for establishing a *de minimis* threshold. The NAM further recommends that EPA assess the potential to remove barriers for manufacturers who use sustainable biomass energy, provided it does not advantage one fuel source over another in the competitive marketplace.

3. Other Air Issues

A. New Source Review. U.S. industry and regulators continue to struggle with the complex requirements of the New Source Review (NSR) program. NSR often triggers evaluations that can last for several years when a particular facility attempts to upgrade or install technologies that lead to increased energy efficiency, thus potentially undermining the achievement of appropriate air quality and environmental policy goals. Such obstacles undercut improved air quality by delaying the installation of more efficient technology.

- EO 13777 Justification: NSR as it currently operates is ineffective, and it creates a serious inconsistency with other potential regulatory reform efforts that may be underway.
- NAM Recommendation: The NAM supports ways to streamline and reform NSR requirements, including the development of practical routine repair, replacement and maintenance exemption provisions.

B. Air Permitting. Several EPA policies and statutory interpretations have unnecessarily limited flexibility in permitting, making construction of new facilities exceedingly difficult. These include the treatment of emissions during startup, shutdown and malfunction (SSM) events, better and more timely guidance to states when a federal standard changes, the inappropriate aggregation of minor sources under the Clean Air Act, the "once in, always in" treatment of facilities for MACT and NSPS rules, and the overly conservative and unrealistic assumptions used in modelling by the agency for permitting decisions.

- EO 13777 Justification: Air permitting as it currently functions is partially ineffective, and creates inconsistencies with other potential regulatory reform efforts that may be underway.
- NAM Recommendation: The EPA should consider withdrawing the SSM SIP call and not act on any of the recent SIPs that have been submitted until it makes lasting changes to the treatment of SSM events. It should take a more practical view than the last Administration with respect to aggregation. It should perform a comprehensive review of its air models to remove any biases.

C. Risk Management Plan Rule Amendments (RMP Rule). Issued in late 2016, the RMP Rule imposes new disclosure requirements on more than 10,000 facilities, potentially exposing sensitive business and security data. Additionally, the rule opens the door to frivolous lawsuits and requirements that are intended to dictate manufacturers' formulas and processes. This is an unnecessary regulation—one that would not actually have prevented the fertilizer plant explosion in West, Texas that gave rise to the RMP Rule—and will cost manufacturers of all sizes and in many industries valuable time and substantial resources to comply.

ED_0011318_00006597-00007

- EO 13777 Justification: The RMP Rule imposes costs that exceed benefits and could inhibit job creation. It is also unnecessary and duplicative of other agencies' programs.
- NAM Recommendation: The NAM recommends the EPA undergo a new rulemaking to reconsider the RMP Rule, and make changes to protect sensitive business and security data and limit additional burdens.

D. **Regional Haze.** States have been working to implement the Regional Haze (RH) program under the Clean Air Act based on EPA guidance to improve visibility, especially in National Parks. The statute gives states the primary role for implementing air quality programs, including for regional haze. Recently, ENGOs have sued EPA for failing to act on state RH proposals. As a result, EPA is now second-guessing state judgments in Texas, Oklahoma and Arkansas by issuing Federal Implementation Plans (FIPs) that could result in billions of additional expenses for an imperceptible visibility improvement.
- EO 13777 Justification: Recent Regional Haze regulations impose costs that exceed benefits, eliminate jobs or inhibit job creation, and create inconsistencies or otherwise interfere with regulatory reform initiatives and policies.
- NAM Recommendation: EPA should leave states to implement the Regional Haze program (RIN 2060-AS55) unless there are egregious oversights by states. Recent EPA amendments to the program have made it even more cumbersome.

E. **Boiler MACT.** The U.S. Court of Appeals for the District of Columbia has directed EPA to revise certain standards of the Boiler MACT rule to account for additional "best performing" boilers while upholding the core framework and methodology of the rule. It is time for EPA to conclude this 20-year rulemaking and provide regulatory certainty to manufacturers.
- EO 13777 Justification: Failure to complete the Boiler MACT could interfere with regulatory reform initiatives and policies.
- NAM Recommendation: Within the next six months, EPA should propose revisions to the Boiler MACT emission limits that are cost-effective and meet the court obligations.

F. **Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel, Tier 4.** In June 2004, the EPA published its final rule on emission standards for nonroad diesel engines, with the goal of reducing emissions from these sources by more than 90 percent. In June 2013, the EPA issued a direct final rule (78 Fed. Reg. 36370) to assist in the transitioning to Tier 4 standards, but withdrew provisions of the rule due to adverse public comment. The updated final rule (79 Fed. Reg. 7077) was published in February 2014. The rule's aggressive compliance timelines have been very difficult to meet, and are causing manufacturers to divert much-needed research and development (R&D) resources toward developing compliance technologies to meet the new Tier 4 standard. In industries such as farm and construction equipment, where manufacturers must continually develop new products for ever-changing customer needs, any decrease in R&D spending is potentially very damaging. Complicating this situation is the U.S. requirement to recertify engines and vehicles each and every year, even if there is no change to the engine nor change in the standards. This is called Model Year certification. Almost every other major market in the world (EU, China, Brazil, India) requires certification once to the standard, known as Type Approval.

- EO 13777 Justification: Tier 4 is inhibiting job creation and imposing costs that exceed benefits for some manufacturers.
- NAM Recommendation: EPA should explore improvements to the Tier 4 rule and work with manufacturers to identify ways to ease the burden of compliance.

G. **National Emissions Standards for Hazardous Air Pollutants.** National standards establishing limits on hazardous air pollutants are important and supported by manufacturers. However, some of the standards, residual risk and technology reviews (RTRs) and other policies adopted in recent years have exceeded congressional authority and implemented requirements that provide unnecessary regulation burdens. For example, the NESHAP 6X regulations requires ongoing, indefinite, quarterly visual emissions monitoring for welding operations and for abrasive blasting operations, even after months or years of "zero visible emissions" have been recorded. For one manufacturer, this means having a dedicated employee climb on the roof of eight different manufacturing plants at the required interval (daily/weekly/monthly/quarterly) to do multiple 15-minute observations on each roof, and perform visual emissions of the on-site sandblasting booth at the required interval, only to document that zero visible emissions occurred at every observed location during every monitoring event. Since 2011, this manufacturer has made over 700 visual observations consuming over 1,000 man-hours to comply with this regulation, despite having not once observed a "visible emission" at any of the plants. Additional concerns have been raised by manufacturers with regards to the EPA's Brick MACT, Reciprocating Internal Combustion Engines (RICE) MACT and Plywood and Composite Wood Product MACT, among other industry-specific MACT regulations.
   - EO 13777 Justification: Various NESHAP regulations are inhibiting job creation, imposing costs that exceed benefits, and rely on data that was not publicly available or is insufficiently transparent.
   - NAM Recommendation: EPA should take immediate action to correct the NESHAP 6X, possibly limiting the number of inspections needed after a site demonstrates a consistent record of zero visible emissions. The other MACT standards will need time to untangle, and the NAM recommends EPA work with the regulated entities subject to each MACT to resolve unnecessary burdens. At a minimum, EPA must base any NESHAP regulations on sound scientific data that clearly demonstrate a need to protect public health and consideration of welfare, energy and economic impacts. The EPA's inability to meet arbitrary deadlines should not trigger automatic regulation.

H. **Co-location.** Manufacturers struggle with the co-location provision for determining major source status for the various source categories identified in the NESHAP program. This imposes a competitive disadvantage for area sources that happen to be located at major sources compared to the competition, which may have located their area sources as stand-alone operations, which would not have to comply with a corresponding major source rule. As currently interpreted, the Agency must expend major source compliance demonstration resources on sources emitting only area source quantities of HAPs. True area source operations do not emit HAPs at higher rates or have higher impacts because they are located at a distinctly different major source. Major source determinations should be based solely on emissions from each source category operation at a facility site, not by location or siting decisions made decades before these regulations were even put into place.

- EO 13777 Justification: This regulation is unnecessary and ineffective; it creates a serious inconsistency and otherwise interferes with regulatory reform initiatives and policies.
- NAM Recommendation: A potential solution is for EPA to require area sources to comply with area source MACT rules, rather than a major source rule. The EPA could also remove the co-location provision altogether.

I. **Testing and Diagnostics Requirements for Heavy-Duty On Road Engines.** EPA and California require manufacturers of engines for heavy duty trucks to equip their engines with complex and costly software and emissions sensor systems, and undergo a variety of emissions testing. There are several requirements that are becoming increasingly costly, while less expensive, more efficient alternatives are available.
   - EO 13777 Justification: The costs of this regulation potentially exceed its benefits.
   - NAM Recommendation: The EPA should initiate a process to streamline these requirements and eliminate those that are duplicative and unnecessary.

4. Water Issues

The Federal Water Pollution Control Act, as amended by the Clean Water Act (CWA), established the objective to restore and maintain the quality of the nation's waters. Through limitations on wastewater discharges, water quality in the U.S. has significantly improved. Manufacturers have made major contributions to this national effort and will continue to support this objective. Both federal and state entities should be encouraged to publicly acknowledge these significant improvements and recognize the need to more carefully consider the cost and benefit of all future efforts to improve water quality.

The principle of cooperative federalism is the foundation on which the CWA is built. Congress purposefully allocated varying levels of regulatory and enforcement responsibility to the states, in recognition of the states' historic role as the established guardians of local lands and waters and the geographic, climatic and habitat differences between states that must be taken into account in environmental regulation. The NAM supports this principle and continued federal-state partnerships as an effective means of implementing the goals of the CWA and opposes attempts to further federalize water quality regulations.

The NAM recommends the EPA take action on the following water regulations:

A. **Definition of "Waters of the United States."** On May 27, 2015, the EPA and Army Corps of Engineers finalized a rule to greatly expand federal jurisdiction under the CWA well beyond traditional navigable waters to cover ephemeral tributaries, flood plains, adjacent features and vaguely-defined "other waters." The rule gives federal agencies direct authority over land-use decisions that Congress had intentionally reserved to the states. Its vague definitions subjects countless ordinary commercial, industrial and even recreational and residential activities to new layers of federal requirements under the CWA. For manufacturers, the uncertainty over whether a pond, ditch or other low-lying area near their property is now subject to federal CWA permitting requirements can introduce new upfront costs, project delays and threats of litigation.

- EO 13777 Justification: This regulation is unnecessary and ineffective; it creates a serious inconsistency and otherwise interferes with regulatory reform initiatives and policies.
- NAM Recommendation: As directed by EO 13778, the NAM fully supports a rulemaking to rescind the old rule. Additionally, manufacturers deserve clarity and recommend EPA propose a new rule that clearly limits federal jurisdiction to the text of the statute and Constitution.

B. **Best Available Technology (BAT) Economically Achievable.** The CWA was designed to be implemented in a manner that protects human health and the environment while avoiding costly treatments and other restrictions on industrial discharges that result in little, if any, additional benefit to the quality of U.S. waters. EPA should clarify that BAT limitations should be required only where there is a significant toxics problem.
- EO 13777 Justification: This program creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies.
- NAM Recommendation: The NAM recommends that the EPA should clearly define "significant toxics problem" as situations where present limitations are not protecting receiving waters and where further abatement of toxics would have a measurable, positive effect on receiving waters. Situations where a pollutant is present in the effluent solely as a result of its presence in intake waters should not be considered a significant toxics problem. Additional requirements for non-conventional pollutants should not be applied unless required to meet water quality standards. EPA should promulgate guidance and rulemaking where appropriate to prevent imposing costs that exceed benefits or require non-responsible parties to shoulder an unfair burden.

C. **Selenium Criteria.** EPA continues to develop more stringent selenium criteria to use as the basis for state water quality standards and federal effluent limit guidelines. However, there are currently no proven treatment technologies for selenium and the ones that are being proposed are not cost effective.
- EO 13777 Justification: This regulation imposes costs that exceed benefits, and requires technologies too expensive to be effective.
- NAM Recommendation: EPA should not implement more stringent criteria for selenium independent of the development of cost effective and proven technologies. Absent the availability of commercially demonstrated technologies, the criteria are ineffective and impose costs that exceed benefits.

D. **Stormwater Management.** Most manufacturers operate under multi-sector general permits and must implement best management practices (BMPs) to meet stormwater benchmark concentration levels. If a benchmark level is exceeded, facilities must review their BMPs and determine if additional BMPs must be implemented of if other corrective measures are needed. However, many of the benchmark concentration levels have been set so low that it may not be possible for all operations to meet the benchmarks. In fact, many are so low that nearly all residential and commercial stormwater discharges would exceed them. As a result, many manufacturers could face unnecessary enforcement issues, even though their stormwater discharges are effectively controlled with BMPs.
- EO 13777 Justification: This regulation imposes costs that exceed benefits, creates serious inconsistencies, and is not effective.

- NAM Recommendation: The NAM recommends EPA promulgate guidance or rules as appropriate that adopt a flexible approach to establishing and enforcing permit levels based upon technology and process-specific limitations instead of abstract benchmarks. This will ensure the costs do not exceed benefits and that unnecessary burdens are not placed on manufacturers for no appreciable environmental benefit.

E. **Spill Prevention, Control and Countermeasure Plans (SPCC).** When lined surface impoundments are used to hold treated produced water until the water is reused for a company's subsequent operations in the immediate area, there is confusion as to whether the impoundments should be included in SPCC plans. In 2008, the Bush administration exempted produced water containers from SPCC plans. However in 2009, the Obama EPA indicated that even 1 mg/L can be harmful. EPA's guidance (in form of preamble language and guidance documents) suggests that treated produced water must be included in SPCC plans and that the capacity of the produced water container is to be treated as oil for purposes of the regulation unless there is "no oil." EPA has suggested that there is no amount of treatment that would satisfy EPA that a produced water container is not oil. This uncertainty and lack of clear guidance creates an ineffective control mechanism and often imposes costs that exceed benefits.
   - EO 13777 Justification: This regulation imposes costs that exceed benefits and is ineffective.
   - NAM Recommendation: The NAM recommends EPA establish an analytical method and detection limit so that if the concentration of oil is below, then the impoundment would not be subject to the SPCC plan requirements.

F. **Ballast Water.** The current set of state rules for ballast water creates a patchwork of standards that increase the cost and complexity of complying with the rules. Different jurisdictions have different ballast water treatment standards and different recordkeeping and reporting requirements. This system lacks transparency, consistency, and predictability in the formation and enforcement of scientific standards, thereby creating confusion, imposing additional costs and inhibiting job growth.
   - EO 13777 Justification: The patchwork of state standards creates a serious inconsistency that could interfere with regulatory reform initiatives and policies.
   - NAM Recommendation: The NAM recommends that EPA adopt a nationwide standard for ballast water discharges.

G. **Water Quality Criteria.** Manufacturers support the development of water quality criteria based on a probabilistic risk assessment approach. These criteria serve as recommendations that state and tribal governments may use directly or as guidance in developing their own water quality criteria. The EPA should comply with its existing regulations that provide states with the flexibility to depart from national criteria as long as the state criteria are scientifically sound or based on site-specific conditions, and with existing guidance that provides states discretion to establish acceptable risk levels. Its development of water quality criteria has not always been consistent.
   - EO 13777 Justification: Water quality criteria regulations have been inconsistent.
   - NAM Recommendation: EPA should promulgate guidance or rulemaking as appropriate to ensure the adoption of a risk-based approach to the regulation of effluent discharges. As part of the development of Total Maximum Daily Loads

(TMDLs), EPA should provide guidance that states should assess the technical feasibility and economic practicability of attaining the designated water quality standard based on the social and economic impacts of the costs of compliance. This includes use attainability analyses and the possible modification of a water's designated uses. TMDL allocations should be developed for individual pollutants only where appropriate. EPA should encourage the use of alternative approaches to achieve compliance with applicable water quality standards and reinforce that states can continue to make progress towards nutrient related water quality improvements in a way that does not have to include numeric nutrient criteria.

H. **National Pollutant Discharge Elimination System (NPDES) Permits.** Pipelines require a NPDES permit to discharge hydrostatic test water to waters of the U.S. after using the water to test even new pipelines. Some EPA regions have been slow to issue general NPDES permits that could authorize the discharge of hydrostatic test water following submittal of a Notice of Intent to be covered by the terms of the general NPDES permit. Yet, other EPA regions have issued such general permits. As a result, companies must undertake the time and expense of preparing an application for each location where a discharge is expected to occur and wait until EPA reviews and issues individual NPDES permits. If the location of the discharge moves beyond a short distance, the company has to file an application to amend and wait for the amended NPDES permit to be issued. Issuance typically takes a few to several months.
   - EO 13777 Justification: NPDES permits have been inconsistent and ineffective.
   - NAM Recommendation: The EPA should streamline this process by ensure all regions utilize general permits to the maximum extent practicable.

I. **Safe Drinking Water Act Study.** EPA, along with several other federal agencies and numerous state agencies, is evaluating the potential for linkages between produced water disposal and seismicity. This issue continues to draw attention and may lead to additional regulatory initiatives under the SDWA. Most action, currently, is taking place at the state regulatory level.
   - EO 13777 Justification: This study could create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.
   - NAM Recommendation: The EPA should work more closely with states that exercise primacy over related SDWA programs and find ways to support state efforts.

5. Waste Issues

Waste products are generated by all segments of society, including industrial facilities, commercial establishments, residences and federal, state and local government agencies. To help ensure environmental protection and public health, the NAM supports a comprehensive, efficient and effective hazardous and non-hazardous waste management regulatory system that includes an accessible and affordable infrastructure. These systems should be implemented in ways that ensure effective environmental protection, but minimize complexity and administrative burden. Manufacturers support minimizing natural resource and environmental impacts by increasing efficiencies and conservation to optimize raw material input and to reduce waste output.

ED_0011318_00006597-00013

The EPA has developed a comprehensive regulatory program for the management of hazardous and non-hazardous wastes pursuant to the Resource Conservation and Recovery Act (RCRA). In addition, the NAM supports significant voluntary industrial waste minimization initiatives that minimize volume, reduce toxicity and encourage recycle, reuse and reclaim processes to minimize waste. It is imperative that the distinction between hazardous and non-hazardous waste, as well as the distinction between waste and non-waste, is clarified. The NAM recommends that EPA tailor regulations to address the different types of waste appropriately. Responsible management of hazardous and non-hazardous waste demands that government, the public and industry cooperate in assessing and managing risk and ensuring regulations support various waste activities accordingly.

The NAM recognizes the primary rights and responsibilities of states regarding land use decisions. The EPA should encourage and support states in their efforts to locate private and public waste management facilities properly within their own jurisdictions. Economic development is dependent on adequate and properly safeguarded waste management facilities, including incineration, landfills and other treatment, storage, disposal facilities. Private ownership and operation of such facilities is desirable. State responsibility for providing adequate waste disposal and treatment capacity is also recognized by federal law. Sanctions requiring states to meet this duty to public health and the environment are appropriate and should be vigorously enforced.

The NAM recommends the EPA take action on the following waste regulations:

A. **Proposed CERCLA 108(b) Rule.** This proposed rule, written under section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), could require billions of dollars of additional financial assurances for miners of things like gold, silver, iron and copper—critical materials for countless manufactured products. This would represent billions of dollars that cannot be used for research and development, investing in new processes and projects, or used to spur economic growth and create new jobs. According to the EPA, this will be just the first of several policies potentially tying up huge amounts of capital for chemical manufacturers, the petroleum industry and electric utilities. EPA's obligation under the consent decree spurring the 108(b) rule is to make a final determination, not to issue any specific form of final rule. It is under no obligation to finalize the rule as proposed, and a decision to finalize a no-action rule would be a logical outgrowth of the proposal.
   - EO 13777 Justification: the regulation imposes costs that exceed benefits.
   - NAM Recommendation: Before EPA moves forward with any 108(b) rules, the agency should undertake a rulemaking to establish a framework for identifying and classifying industry sectors based upon prospective risk-assessments based on current best practices. Financial assurance under section 108(b) should only be required where the degree and duration of the risk associated with hazardous substances at particular types of facilities justifies it, and should not be required where other financial assurance mechanisms are already in place.

B. **RCRA.** Where a waste is inappropriately classified as hazardous, regulations unnecessarily discourage reuse, recycling and reclamation, and create other barriers for manufacturers. Manufacturers have found that some RCRA regulations implement duplicative requirements.
   - EO 13777 Justification: Some RCRA regulations are ineffective.

- NAM Recommendation: EPA should consider reviewing several of its RCRA Subtitle C determinations to ensure that the classification is appropriate for that category of waste. Additionally, the NAM recommends EPA review existing and proposed policies that may unnecessarily implement duplicative requirements for products and wastes that are already being regulated by other agencies or statutes—there is currently a pending rule for the pharmaceuticals industry that should be reviewed, for example.

C. **CERCLA/Superfund.** NAM members have a substantial interest and concern regarding the requirements and operations of the Superfund program. While the NAM supports Superfund's goal of protecting human health and the environment, the Superfund program can at times require an extraordinary investment of resources to obtain limited environmental benefits. Private sector spending on superfund also uses funds that could be invested in people, plants and equipment. The current regulatory requirements under CERCLA do not allow contaminated properties to be resolved in an efficient manner. Despite completing the remediation activities, the property owners are often unable to get clearance from the regulatory agencies in a timely manner to sell or develop their properties. While legislative reform is needed, EPA can make meaningful progress under existing law to speed safe, effective remediation.

- EO 13777 Justification: Some CERCLA policies are outdated and in need of reform.
- NAM Recommendation: The EPA should interpret regulatory requirements under the Superfund program in a manner that would speed the remediation of these sites in a timely manner while reducing costs and ensuring the necessary environmental protections. The Administrator should move final remediation decisions from EPA regional offices to EPA headquarters to promote consistency as well as consistently apply cleanup criteria. Remedy selection should be based on sound science and acceptable risk based assessments. EPA should eliminate the current practice of re-allocating cleanup costs to the lone surviving company (or companies) when one or more responsible party files for bankruptcy or refuses to participate after cost allocation decisions have been made commensurate with each party's level of contribution to the site's contamination.

6. Chemical Issues

Manufacturers are committed to manufacturing safe, innovative and sustainable products that provide essential benefits to consumers while protecting human health and the environment. Since the Toxic Substances Control Act (TSCA) was first enacted in 1976, manufacturers have revolutionized the way we make and use chemicals, yet the failed to keep up with those changes. State laws enacted to fill the void resulted in a patchwork of confusing, often contradictory, regulations for manufacturers and consumers to navigate.

After years of uncertainty and nearly a decade of drawn-out work and debate in Congress, the passage of the Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA) marked a much-needed overhaul of our nation's chemical laws. Manufacturers have long advocated for these risk-based reforms. Chemicals are the building blocks for lifesaving products, the newest technologies and everyday products that make life better. By delivering clear, modernized rules, the LSCA reforms will make it easier for manufacturers to ensure the

safety of our products and deliver quality goods to our customers. EPA must rely on the best available scientific information regarding hazard and exposure, employ consistent and objective methods and models, utilize transparent procedures for evaluating data quality and be uninfluenced by policy. If done right, the regulations on chemicals will be clearer and more straightforward, meaning time and resources that would have been spent trying to navigate outdated, confusing rules can now be spent on driving innovation.

The regulation of chemicals should be administered in a manner that protects health and the environment while avoiding unnecessary adverse economic impacts. The ability to systematically and effectively identify hazards, assess risks and manage those risks is critical to successful industrial activity. Those processes include the application of scientifically sound hazard identification and prioritization, objective, credible risk assessment, benefit-cost analysis, flexible, efficient and cost-effective risk management, and adequate opportunity for meaningful public participation in the risk assessment process.

The NAM recommends the EPA take action on the following chemical regulations:

A. **Proposed Procedures for Prioritization of Chemicals for Risk Evaluation.** The NAM recommends the EPA move forward with a final rule, but recommends modifications.
   - EO 13777 Justification: Unless the following modifications are made, the LCSA could be ineffective.
   - NAM Recommendation: The EPA should ensure that prioritization under TSCA is based on a clearly articulated weight of evidence approach that relies on the best available science. Chemicals posing the greatest demonstrated risk should be targeted through predictable prioritization of chemicals active in commerce. Risk to sensitive subpopulations, such as children, should be considered in this process. Tiered and targeted testing should be conducted if necessary information is lacking, and a risk-based process should be used to assess if a chemical is safe for its intended uses. Regulation and prioritization should consider the degree of hazard and reasonable exposure potential associated with intended uses; provide reasonable timeframes for compliance; and ensure transparency, clarity and stakeholder participation. To this end, the agency should provide more clarity to the prioritization process by including definitions of key terms, updating related agency guidance, and ensuring that the rigorous standards required by Section 26 of LCSA are closely followed. This requires a heightened level of transparency to demonstrate compliance with the letter and spirit of the critical reforms. As EPA sorts through chemicals active in commerce, a transparent process that avoids bias, focuses on the substances demonstrating the greatest risk, and seeks to quickly expand the identification of low priority substances will ensure that the reforms are successful. Such a process should be clearly required under the final rule

B. **Proposed Procedures for Chemical Risk Evaluation.** In finalizing this rule, the Agency should provide an approach for implementing risk evaluations that goes beyond the existing EPA guidance to explain how the agency would meet the science requirements and implement the new elements outlined in LCSA. As currently written, the proposal falls short of providing meaningful insight into the process that EPA will use in the future.
   - EO 13777 Justification: Unless the following modifications are made, the LCSA could be ineffective.

- NAM Recommendation: The EPA should provide more clarity to the risk assessment process by including definitions of key terms, updating related agency guidance, and ensuring that the rigorous scientific standards required by Section 26 of LSCA are closely followed. This requires a heightened level of transparency to demonstrate compliance with the letter and spirit of the critical reforms. Sufficient time must also be allowed to ensure an opportunity for meaningful stakeholder engagement; a minimum of 60 days must be given for comment on scoping and a minimum of 90 days for comment on draft risk evaluations. As EPA assesses priority substances active in commerce, a transparent process that avoids bias and focuses on conditions of use demonstrating the greatest risk will help EPA better steward limited resources and maximize efficiency. Risk evaluations must consider controls already in place to control or mitigate risks related to environmental and health exposures including regulations under other statutes, regulations, and industry standards. Section 2608 of LCSA requires that EPA consider whether risks can be prevented or reduced under other laws such as the Occupational Safety & Health Act, the Clean Air Act, the Clear Water Act, and the Consumer Product Safety Improvement Act before taking risk management action under LCSA. When risk-management actions are warranted, EPA must only "impose the least burdens of duplicative requirements." The EPA should also require measures in the final rule to avoid unnecessary efforts to evaluate risks of exposures that are already controlled under other statutes or regulations.

C. **Proposed TSCA Inventory Notification (Active-Inactive) Requirements.** In the proposal, EPA lays out two purposes: First, to refresh the TSCA Inventory to distinguish between active or inactive chemicals in commerce. This will enable EPA to focus on the chemicals that are active in commerce and can then be prioritized for risk evaluation. This reset is a critical first step, as it will help EPA better steward limited resources and maximize efficiency. Second, EPA sets out to ensure that confidential business information (CBI) claims for chemicals on the confidential portion of the Inventory are current. However, substantiation of CBI claims should remain in a separate process, as EPA proposes.

- EO 13777 Justification: Unless the following modifications are made, the LCSA could be ineffective.
- NAM Recommendation: In finalizing the rule, EPA should not require reporting of information not needed to achieve the overall purpose of the inventory reset, which is to identify substances as either active or inactive. Requiring the regulated community to report unnecessary information is burdensome, and in some cases, redundant. Consequently, substances whose identities were claimed as confidential on the 2016 chemical data reporting (CDR) rule should be included on the interim active confidential inventory by EPA without an additional reporting burden. The NAM recommends that the language clarifying "activities for which notification is not required" should include all substances that are exempt from and all substances not currently subject to pre-manufacture notification requirements. Further, the Agency must allow for a correction process for manufacturers and importers up until the time that the active inventory is finalized.

D. **Chemical Data Reporting Rule.** The NAM supports chemical reporting requirements that reduce complexity and ensure that reporting occurs at the point of raw materials import in order to coordinate efforts and make global supply chains

more transparent. Under current EPA interpretation of TSCA Chemical Data Reporting (CDR) rule, most inorganic manufacturing byproducts sent for recycling are treated as new chemicals and therefore are subject to extensive reporting requirements. Inorganic byproducts present a relatively low risk of environmental harm; reporting duplicates other EPA reporting requirements under RCRA and the Toxic Release Inventory (TRI) and discourages recycling. Under LCSA passed last year, EPA is required to conduct a negotiated rulemaking and propose a regulation to reduce the reporting burden for byproducts sent for recycling.

- EO 13777 Justification: Unless the following modifications are made, the LCSA could be ineffective.
- NAM Recommendation: The NAM recommends the EPA provide ample time and resources to encourage robust stakeholder engagement in the negotiation and subsequent speedy proposal of a rule.

E. **Worker Protection Rule.** On November 2, 2015, EPA revised the Worker Protection Rule (WPS) to implement stronger protections for agricultural workers, handlers and their families. The previous WPS regulations were sufficient and the new rules only add extra burdens and costs to businesses. For example, the new WPS rules require that there be a 100-ft zone around pesticide application equipment in which no one but the applicator can be present. This is a *de facto* "buffer zone" which directly conflicts with existing pesticide labels, in which there are already these protective zones, newly implemented, and are workable for crop growers. When fully implemented, the new WPS could reduce a grower's ability to effectively treat all of the grower's crop production land; i.e., in some areas, a significant portion of the available land will not be able to receive pest control practices and these areas will be less productive and less able to compete with foreign crop producers who are not held the old WPS, let alone the new WPS rules.

- EO 13777 Justification: The 2015 WPS is partially ineffective and must be corrected.
- NAM Recommendation: The NAM recommends EPA eliminate the duplicative and confusing WPS and a return to the previous WPS that were in effect prior to November 2015.

F. **Perchlorate.** For several years, numerous stakeholders representing manufacturers, water interests, agriculture interests, and members of Congress have engaged in good faith efforts through a variety of public and regulatory venues to work with EPA on this matter, and ensure regulations are based on the best available science. Regrettably, despite these repeated efforts, the EPA's actions have continued to heighten rather than alleviate concerns about the agency's scientific approach to perchlorate. In particular, the agency is relying on outdated occurrence data, its models were highly criticized by peer reviewers, and the decision-making process has lacked transparency throughout.

- EO 13777 Justification: Among other things, the perchlorate regulatory structure relies on data, information and methods that are not publicly available and are insufficiently transparent to meet the standard of reproducibility.
- NAM Recommendation: The EPA must do a better job of subjecting the scientific and occurrence data underlying its perchlorate decisions to peer review, and must be more transparent, adhere to reasonable timelines, and be based on the best available science.

G. **Lead Repair, Renovation and Painting Rule.** EPA issued new requirements on firms performing renovation, repair and painting projects in homes built before 1978. In doing so, the EPA ignored many of industry's concerns and rushed to finalize a rule before a reliable lead testing apparatus was available, among other problems. NAM members are complying with this rule but continue to struggle with it.
   - EO 13777 Justification: This regulation created inconsistencies that have not entirely been corrected.
   - NAM Recommendation: Manufacturers strongly support lead paint protections and recommend only that the EPA perform a retrospective review of the rule and, if justified, make changes to make the rule more effective and ensure costs imposed do not exceed benefits.

H. **Pre-Manufacturing Notifications (PMNs).** EPA policy shifted without notice, requiring PMNs for any new chemical substance that is persistent, bioaccumulative and toxic (PBT). Many manufacturers may have a substance used as a precursor to a product that is used in very small volume and reacted to become the new product, which is not a PBT. However, EPA is now requiring the filing of a PMN. This is a change in policy without any formal public hearing and goes far above and beyond what other countries require for low volume raw materials. Some manufacturers could consider moving to Canada or Europe, where limited notifications are required for low volumes (<1000 kg), particularly raw materials.
   - EO 13777 Justification: EPA's PMN policy creates serious inconsistencies and otherwise interferes with regulatory reform initiatives and policies.
   - NAM Recommendation: The NAM recommends EPA reverse this change in policy until it undertakes a transparent rulemaking process with adequate stakeholder engagement.

I. **Vapor Intrusion Guidance.** EPA Region 9 issued guidance on Vapor Intrusion as applied to federal Superfund sites in the states and territories covered by that regional office. Although the Guidance was not promulgated as a regulation through notice-and-comment procedures, it is being implemented similarly to a regulation. The NAM's California affiliate, the California Manufacturers & Technology Association, estimate the costs of remediation at commercial buildings just at Silicon Valley Superfund sites are expected to increase by $48 million and the costs of remediation at residential buildings are expected to increase by over $100 million. CMTA further estimates that if the Vapor Intrusion Guidance were implemented nationwide, the aggregate additional costs could be upwards of 100 times greater than the costs at the nine Silicon Valley Superfund sites. In addition, the key study used by EPA Region 9 to justify the Vapor Intrusion Guidance may not be reproducible.
   - EO 13777 Justification: The Vapor Intrusion Guidance imposes costs significantly in excess of benefits and is based on data that is not reproducible.
   - NAM Recommendation: EPA should withdraw the Region 9 Vapor Intrusion Guidance (and that of any other regions) and should consider instead referring the matter to the National Academy of Sciences for further guidance.

7. General Regulatory Issues

In addition to the following general issues, the NAM recommends revising the terms and conditions in the U.S. EPA's standard Administrative Orders which would provide for fair dispute

resolution opportunities, more flexible and efficient settlement and remediation options, and improved, science based methodologies for determining environmental harm and associated penalties.

A. **Consent Decree Termination.** The EPA has not prioritized the termination of consent decrees by processing the termination paperwork. EPA cannot demonstrate an effective enforcement division without showing that consent decrees terminate once companies show substantial compliance.
   - EO 13777 Justification: Current practice is ineffective.
   - NAM Recommendation: EPA should prioritize the process for consent decree terminations so companies do not have to conduct unnecessary monitoring and reporting requirements.

B. **The Process of Evaluating Science.** A common complaint among manufacturers in recent years has been a process at the EPA for evaluating science that is not transparent and minimizes third-party stakeholder input. We routinely hear complaints of this nature across the spectrum of EPA programs, from air and water to chemicals and pesticides.
   - EO 13777 Justification: EPA's process often relies on data, information and methods that are not publicly available and are insufficiently transparent to meet the standard of reproducibility.
   - NAM Recommendation: The NAM recommends the EPA take a hard, honest look at how the agency evaluates science and propose reforms to improve transparency and better involve the public.

Thank you for the opportunity to provide these comments in support of the EPA's Regulatory Reform Agenda. Please do not hesitate to contact me if the NAM can be of further assistance.

Sincerely,

Ross Eisenberg
Vice President
Energy and Resources Policy

Message

From: Kime, Robin [Kime.Robin@epa.gov]
Sent: 6/30/2017 4:02:18 PM
To: Greaves, Holly [greaves.holly@epa.gov]
CC: Dravis, Samantha [dravis.samantha@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]
Subject: Questions for the Record assigned to OP
Attachments: OP Budget QFRs Final.docx

Hello,
Attached are responses. I hope this is helpful. Just let us know if we can do more.
Thank you.
Robin

From: "Greaves, Holly" <greaves.holly@epa.gov>
Date: June 27, 2017 at 1:45:09 PM EDT
To: "Dravis, Samantha" <dravis.samantha@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>
Cc: "Jackson, Ryan" <jackson.ryan@epa.gov>, "Lyons, Troy" <lyons.troy@epa.gov>
Subject: Questions for the Record assigned to OP

Sam/Brittany,

We have received over 250 questions for the record from members of Congress related to the Administrator's House Budget Hearing. I'm writing to ask your help in crafting responses to 17 of the questions that deal with Policy matters.

Responses need to be returned to me and Troy **by noon on Friday** to meet the congressional deadline.

Attached please find the questions assigned to OP. Thanks in advance for your help!

Holly

U.S. House of Representatives
Committee on Appropriations
Subcommittee on Interior, Environment, and Related Agencies
Budget Hearing: Environmental Protection Agency
June 15, 2017

Questions for the Record – Administrator of the Environmental Protection Agency

Office of Policy

Rewriting Several Rules per Executive Orders: WOTUS, Clean Power Plan, and Methane

I was pleased to see two early actions from the President to issue:

- Executive Order 13778 on *Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" rule*, and

- Executive Order 13783 on *Promoting Energy Independence and Economic Growth*.

I have a number of concerns with the WOTUS rule's flawed history -- it was originally proposed before the scientific studies were complete, the Small Business Association believed EPA should have conducted a Small Business Advocacy Review Panel prior to releasing the rule, and in December 2016 the GAO determined that EPA had violated the law by expending funds on a social media campaign to promote rule.

In my opinion, the only clarity that the WOTUS rule offered was that more Federal permits would be required under an Administration that was not approving permit applications. It was a clear example of Federal overreach.

The FY17 Omnibus included language asking EPA (and the Department of the Interior) to keep the Committee apprised of actions to comply with the Executive Order to promote energy independence and economic growth. For EPA, there were a number of specific directives within the Executive Order related to the Clean Power Plan, the methane rule, and other regulations.

Calvert Q1: Please provide an update on what steps the Agency is taking to comply with these Executive orders.

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Calvert Q2: Where is the agency in the process with respect to each of those rules?

Ex. 5 - Deliberative Process

Amodei Q4: Does the EPA plan to include state environmental agencies as co-regulators in the development of a new WOTUS definition to ensure effective implementation if a final rule is pursued?

Ex. 5 - Deliberative Process

Regulation Review

Ex. 5 - Deliberative Process

McCollum Q92: How is EPA going about conducting this review and what scientific evidence and economic assumptions or models is the Agency relying on for the basis of its decisions?

Ex. 5 - Deliberative Process

McCollum Q93: Environmental regulations already undergo a rigorous analysis of costs and benefits as they move through the regulatory process. In its annual accounting to Congress last year, OMB found that benefits of major rules EPA officially adopted from 2005-2015 exceed their costs by up to 13 times (OMB 2016). A 2011 peer-reviewed EPA assessment of the long term benefits and costs of the Clean Air Act and its implementing regulations found that its middle estimate of annual benefits exceeds costs by 30 to one--that's $2 trillion in net benefits vs. $65 billion in costs. Which specific EPA regulations does EPA believe are overly stringent and in need of scaling back?

Ex. 5 - Deliberative Process

McCollum Q94: Administrator Pruitt has expressed concern about the compliance costs of particular industries, please provide an estimate of the change in net benefits to the American public from rolling any regulations back.

Ex. 5 - Deliberative Process

McCollum Q95: Has the Agency considered the additional cost to industry of facing a patchwork quilt of different state requirements instead of one federal standard?

Ex. 5 - Deliberative Process

McCollum Q96: What steps has the EPA taken to implement President Trump's Executive Order on Reducing Regulation and Controlling Regulatory Costs?

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

McCollum Q97: How is EPA choosing which two regulations to repeal for every new regulation promulgated?

Ex. 5 - Deliberative Process

McCollum Q98: In EPA's regulation review has the Agency consistently adhered to the requirements of the Administrative Procedures Act, specifically the notice-and-comment period that gives the public time to respond to any proposed changes by the government?

Ex. 5 - Deliberative Process

McCollum Q99: How does EPA justify delaying the effective date for the companion rule for Pesticide Applicator Protection for an additional year to May 22, 2018?

Ex. 5 - Deliberative Process

McCollum Q103: How does EPA plan to defend the many inevitable lawsuits it will face from rolling back environmental regulations? Is this really the most effective way for EPA to fulfill its mission?

Ex. 5 - Deliberative Process

McCollum Q104: Executive Order 13777 required the head of each agency to designate a Regulatory Reform Officer to oversee the implementation of regulatory reform initiatives and policies to ensure agencies effectively carry out regulatory reforms, consistent with applicable law.

Ex. 5 - Deliberative Process

McCollum Q105: Who have you appointed as the Regulatory Reform Officer for EPA and what are their credentials?

Ex. 5 - Deliberative Process

Environmental Impact on Children's Health

Ex. 5 - Deliberative Process

McCollum Q174: The EPA has put a hold on efforts to make our air cleaner by pausing work on the ozone standard and the Clean Power Plan. Is the EPA calculating the costs to children and their families from all of the health effects of polluted air and accelerated climate change?

Ex. 5 - Deliberative Process

McCollum Q175: As the EPA Administrator overseeing this regulatory review, are you consulting with pediatric associations, patient organizations, or other representatives for children's health to determine the cost burdens that rolling back these regulations would place on impacted families and our health care system as a whole?

Ex. 5 - Deliberative Process

McCollum Q176: How will the benefits to children of strong environmental regulations be weighed in comparison to the costs to some businesses of meeting those regulations in any final decisions?

Ex. 5 - Deliberative Process

Message

From: Hupp, Millan [hupp.millan@epa.gov]
Sent: 6/29/2017 11:54:44 PM
To: McMurray, Forrest [mcmurray.forrest@epa.gov]; Ferguson, Lincoln [ferguson.lincoln@epa.gov]; Graham, Amy [graham.amy@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]
CC: Chmielewski, Kevin [chmielewski.kevin@epa.gov]; Smith, Ex. 7(c) Mickle, John [Mickle.John@epa.gov]
Subject: RE: Manhattan Institute 6.30 (002).docx
Attachments: Manhattan Institute 6.30 (002).pdf

Final briefing.

Lincoln – a hard copy of this did not make it to the Administrator. Could you please have the handy for him to reference if need be? Probably can just be digital.

From: McMurray, Forrest
Sent: Thursday, June 29, 2017 3:54 PM
To: Hupp, Millan <hupp.millan@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Graham, Amy <graham.amy@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Chmielewski, Kevin <chmielewski.kevin@epa.gov>
Subject: Manhattan Institute 6.30 (002).docx

Good afternoon everyone,

He is the administrators updated itinerary for the NY trip tomorrow. There were a few gaps in the itinerary between and after the interviews so I filled it in with coffee and a trip to his favorite bakery. Let me know if you have any questions, concerns, or changes you would like me to make. Thank you!

Forrest McMurray
Special Assistant of Scheduling and Advance
U.S. Environmental Protection Agency
Office: 202-564-5088
Cell: Ex. 6

U.S Environmental Protection Agency
Washington, D.C.

ADMINISTRATOR SCOTT PRUITT

Manhattan Institute for Policy Research

DATE: Friday, June 30, 2017
EVENT TIME: 12:00PM EDT – 1:45PM EDT
LOCATION: Harvard Club of New York City; 35 W 44th St, New York, NY 10036
SPEAKING TIME: 1:00PM EDT – 1:30PM EDT
AUDIENCE: Manhattan Institute members, trustees and their guests
POC: Ralf Mangual: Ex. 6 - Personal Privacy
Security POC: Tom Hovagim Ex. 6 - Personal Privacy
Per Diem: $55.50/day (M&IE only)
$111/entire trip (M&IE only)

Background:
Requested as an opportunity to allow the Administrator to speak to Manhattan Institute members, trustees, and their guests.

Note: This event will have invited members of the press in attendance.

Friday, June 30, 2017

4:30AM EDT	**Depart Residence for Union Station**
5:00AM EDT – 7:45AM EDT	**WAS-NYP** Train: 2150 Reservation # Ex. 6 Staff: Amy and Lincoln
7:45AM EDT	**Train Arrives at New York (Penn Station)** Address: Penn Station, New York, NY 10119 Stop ID: 95105
7:45AM EDT – 8:15AM EDT	**Depart for Fox News Studios** Address: 1211 Avenue of the Americas
8:30AM EDT – 8:40AM EDT	**Mornings with Maria on Fox Business** Address: 1211 Avenue of the Americas *Note: exact time still being ironed out but sometime in the 8 o'clock hour.* Staff: Lincoln, Amy, Forrest
8:40AM EDT- 9:15AM EDT	**HOLD: Coffee** Staff: Lincoln, Amy, Forrest Option: Financier Patisserie (in Fox studio complex)
9:15AM EDT	**Arrive at Fox Studios**
9:30AM EDT – 9:40AM EDT	**Interview with Shannon Bream, America's Newsroom** Location: Fox Studios, Staff: Lincoln, Amy, Forrest

9:45AM EDT- 11:45AM EDT	**Hold: Breakfast** Location: TBD **<u>Other options include…</u>** **Zucker's Bakery** 433 E. 9th Street, New York, NY **Fountain Pen Hospital** 10 Warren St, New York, NY 10007 Staff: Lincoln, Amy, Sam, Forrest
11:45AM EDT- 12:00PM EDT	**Depart for the Harvard Club of New York City** Address: 35 W 44th St, New York, NY 10036
12:00PM EDT	**Arrive at the Harvard Club of New York City** Drop off location:
12:00PM EDT – 1:45PM EDT	**Speaking Engagement: Manhattan Institute** Address: 35 W 44th St, New York, NY 10036 Room name: Biddle Room Staff: Amy Graham, Liz Bowman, Forrest McMurray Hold Room: Slocum Room <u>Run of Show:</u> 12:00PM – 12:30PM: Reception 12:30PM: guest make their way into the Biddle Room? You will sit at the head table during lunch. 12:30PM – 1:00PM: seated lunch is served 1:00PM: Administrator is introduced by James Copeland 1:05PM – 1:40PM: discussion with Howard Husock 1:45PM: Program ends
1:45PM EDT – 2:00PM EDT	**Depart Harvard Club for 2nd Avenue Deli** Address: 162 E. 33rd Street, New York, NY 10016
2:00PM EDT – 3:00PM EDT	**Lunch at 2nd Avenue Deli** Address: 162 E. 33rd Street, New York, NY 10016 Staff: Forrest, Lincoln, and Amy
3:00PM EDT-	**Depart for Penn Station** Address: Penn Station, New York, NY 10119
3:30PM EDT	**Arrive at Penn Station**
4:00PM EDT – 6:53PM EDT	**NYP- WAS** Train: 2V 2165 Staff: Lincoln and Amy

TOPIC/TALKING POINTS:

I hope you enjoyed the weekend. As requested, below is a list of topics that Howard Husock (our VP of Research) may cover (depending obviously on the flow of the conversation). Please let me know if you have any questions. Mr. Husock was an Emmy Award-winning broadcast journalist, so Administrator Pruitt will be in great hands.

<u>Environmental Regulation</u>

Federal, state and local government relationship with EPA
Communicating pro-environment and pro-growth environmental policies
Modernizing previous environmental regulations (Clean Air Act, for example)
Environmental lawsuits and executive overreach

Managing the Administrative State
EPA cost-benefit calculations
EPA accountability and executive power

Clean Power Plan
Clean Power Plan and the future of the coal industry

Nuclear Power
Views on the nuclear sector

Energy Exports
Exporting energy innovation and technology

American Energy Success
The future of U.S. energy technology and energy development

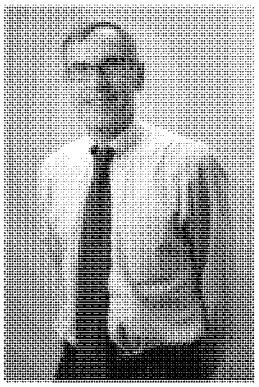
Fuel Diversity
Fuel diversity effects on the electric grid and manufacturing

Climate Change
Proper climate change adaptation and action

Paris Agreement Withdrawal
Big business v. small business response to Paris Agreement withdrawal
"Regulation through litigation"

PRESS: There are invited members of the press but none will be requesting that he answer questions.

NEED TO KNOW PARTICIPANTS:



Howard Husock is vice president for research and publications at the Manhattan Institute, where he is also director of the Institute's social entrepreneurship initiative. A *City Journal* contributing editor, he is the author of *Philanthropy Under Fire* (2013) and a contributor to Forbes.com. From 1987 through 2006, Husock was director of case studies in public policy and management at Harvard University's Kennedy School of Government, where he was also a fellow at the Hauser Center on Nonprofit Organizations. His publications on the nonprofit sector have appeared in the *Wall Street Journal*, *National Affairs*, *New York Times*, *New York Times Magazine*, *Society*, *Chronicle of Philanthropy*, and *Public Interest*. Husock has written widely on U.S. housing and urban policy, including in his book *The Trillion-Dollar Housing Mistake: The Failure of American Housing Policy* (2003) and his monograph *Repairing the Ladder: Toward a New Housing Policy Paradigm* (1996). His work has appeared in the *Journal of Policy Analysis and Management*, *Philanthropy*, and *The Wilson Quarterly*.

A former broadcast journalist and documentary filmmaker whose work won three Emmy Awards, Husock serves on the board of directors of the Corporation for Public Broadcasting. He holds a B.A. from Boston University's School of Public Communication and was a 1981–82 mid-career fellow at Princeton University's Woodrow Wilson School of Public and International Affairs.

Message

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 6/29/2017 3:05:48 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]
CC: Kime, Robin [Kime.Robin@epa.gov]
Subject: Fwd: ACTION REQUIRED: HAC QFRs -- OCHP
Attachments: Environmental Impact on Children.docx; ATT00001.htm

Ex. 5 - Deliberative Process

Sent from my iPhone

Begin forwarded message:

> **From:** "Etzel, Ruth" <Etzel.Ruth@epa.gov>
> **Date:** June 29, 2017 at 9:50:34 AM EDT
> **To:** "McGartland, Al" <McGartland.Al@epa.gov>
> **Subject: Fwd: ACTION REQUIRED: HAC QFRs -- OCHP**
>
> Hi Al,
>
> We have been asked to respond to some questions about benefit cost analysis. We are not aware of any child-specific benefit cost analysis. Is there any work in NCEE that would be relevant?
>
> Please advise.
>
> Thanks!
>
> Ruth
>
> Begin forwarded message:
>
> > **From:** "McCluney, Lance" <McCluney.Lance@epa.gov>
> > **Date:** June 28, 2017 at 10:52:22 AM EDT
> > **To:** "Etzel, Ruth" <Etzel.Ruth@epa.gov>, "Reed, Khesha" <Reed.Khesha@epa.gov>
> > **Cc:** "Allen, Reginald" <Allen.Reginald@epa.gov>, "Benton, Michael" <benton.michael@epa.gov>, "Clark, Rebekah" <Clark.Rebekah@epa.gov>
> > **Subject: ACTION REQUIRED: HAC QFRs -- OCHP**
> >
> > Hello Ruth and Khesha,
> >
> > We have received HAC QFRs from OCFO and attached are the questions related to your program area that needs to be answered.
> >
> > The House is under a very tight deadline -as you know they must complete their 'record' before voting on the proposed appropriation and they have a goal of completing their process before August recess. OCFO has requested that we send our responses by noon this Friday, June 30, 2017. If you can finish any earlier that would be much appreciated. I am asking that you all send answers to me by COB Thursday.

Thank you for your assistance with this matter. If you have any questions, please don't hesitate to contact me or Michael Benton.

Thanks,
Lance

Lance O. McCluney
Assistant Director, Resource Management Staff
Office of Administrative and Executive Services
Office of the Administrator
202-564-2944
mccluney.lance@epa.gov

Ex. 5 - Deliberative Process

Environmental Impact on Children's Health

It is estimated that 88% of the existing global burden of disease attributable to climate change occurs in children younger than 5 years old in both industrialized and developing countries. Climate change is currently affecting child health through increased heat stress, decreased air quality, altered disease patterns of some climate-sensitive infections, physical and mental health effects of extreme weather events, and food insecurity in vulnerable regions. Outdoor air pollution is linked to respiratory problems in children, including decreased lung function, coughing, wheezing, frequent respiratory illness, and asthma exacerbation. Children bear the burden of negative health outcomes resulting from exposure to pollutants across their lifespan.

McCollum Q174: The EPA has put a hold on efforts to make our air cleaner by pausing work on the ozone standard and the Clean Power Plan. Is the EPA calculating the costs to children and their families from all of the health effects of polluted air and accelerated climate change?

McCollum Q175: As the EPA Administrator overseeing this regulatory review, are you consulting with pediatric associations, patient organizations, or other representatives for children's health to determine the cost burdens that rolling back these regulations would place on impacted families and our health care system as a whole?

McCollum Q176: How will the benefits to children of strong environmental regulations be weighed in comparison to the costs to some businesses of meeting those regulations in any final decisions?

Message

From: Rees, Sarah [rees.sarah@epa.gov]
Sent: 6/28/2017 10:42:36 PM
To: Bolen, Brittany [bolen.brittany@epa.gov]; Nickerson, William [Nickerson.William@epa.gov]
CC: Dravis, Samantha [dravis.samantha@epa.gov]; Kime, Robin [Kime.Robin@epa.gov]
Subject: RE: Questions for the Record assigned to OP
Attachments: HAC OP QFRs (June 27 2017) bn slr(002).docx

Hi folks – attached are responses – we did not include responses for the ones that are best suited for OGC; everything else is covered. Let me know if you have any questions.

Cheers,
Sarah

From: Bolen, Brittany
Sent: Tuesday, June 27, 2017 2:11 PM
To: Rees, Sarah <rees.sarah@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>
Cc: Dravis, Samantha <dravis.samantha@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>
Subject: Fwd: Questions for the Record assigned to OP

Sarah/Bill -
Following up on my email earlier re: QFRs on reg reform. Holly sorted through the document and identified the attached questions for OP. Could you please help draft responses to these?
Thanks,
Brittany

Begin forwarded message:

> **From:** "Greaves, Holly" <greaves.holly@epa.gov>
> **Date:** June 27, 2017 at 1:45:09 PM EDT
> **To:** "Dravis, Samantha" <dravis.samantha@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>
> **Cc:** "Jackson, Ryan" <jackson.ryan@epa.gov>, "Lyons, Troy" <lyons.troy@epa.gov>
> **Subject: Questions for the Record assigned to OP**
>
> Sam/Brittany,
>
> We have received over 250 questions for the record from members of Congress related to the Administrator's House Budget Hearing. I'm writing to ask your help in crafting responses to 17 of the questions that deal with Policy matters.
>
> Responses need to be returned to me and Troy **by noon on Friday** to meet the congressional deadline.
>
> Attached please find the questions assigned to OP. Thanks in advance for your help!
>
> Holly

U.S. House of Representatives
Committee on Appropriations
Subcommittee on Interior, Environment, and Related Agencies
Budget Hearing: Environmental Protection Agency
June 15, 2017

Questions for the Record – Administrator of the Environmental Protection Agency

Office of Policy

Rewriting Several Rules per Executive Orders: WOTUS, Clean Power Plan, and Methane

I was pleased to see two early actions from the President to issue:

- Executive Order 13778 on *Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" rule*, and

- Executive Order 13783 on *Promoting Energy Independence and Economic Growth*.

I have a number of concerns with the WOTUS rule's flawed history -- it was originally proposed before the scientific studies were complete, the Small Business Association believed EPA should have conducted a Small Business Advocacy Review Panel prior to releasing the rule, and in December 2016 the GAO determined that EPA had violated the law by expending funds on a social media campaign to promote rule.

In my opinion, the only clarity that the WOTUS rule offered was that more Federal permits would be required under an Administration that was not approving permit applications. It was a clear example of Federal overreach.

The FY17 Omnibus included language asking EPA (and the Department of the Interior) to keep the Committee apprised of actions to comply with the Executive Order to promote energy independence and economic growth. For EPA, there were a number of specific directives within the Executive Order related to the Clean Power Plan, the methane rule, and other regulations.

Calvert Q1: Please provide an update on what steps the Agency is taking to comply with these Executive orders.

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Calvert Q2: Where is the agency in the process with respect to each of those rules?

Ex. 5 - Deliberative Process

Waters of the United States

Ex. 5 - Deliberative Process

Amodei Q4: Does the EPA plan to include state environmental agencies as co-regulators in the development of a new WOTUS definition to ensure effective implementation if a final rule is pursued?

Ex. 5 - Deliberative Process

Regulation Review

Ex. 5 - Deliberative Process

McCollum Q92: How is EPA going about conducting this review and what scientific evidence and economic assumptions or models is the Agency relying on for the basis of its decisions?

Ex. 5 - Deliberative Process

McCollum Q93: Environmental regulations already undergo a rigorous analysis of costs and benefits as they move through the regulatory process. In its annual accounting to Congress last year, OMB found that benefits of major rules EPA officially adopted from 2005-2015 exceed their costs by up to 13 times (OMB 2016). A 2011 peer-reviewed EPA assessment of the long term benefits and costs of the Clean Air Act and its implementing regulations found that its middle estimate of annual benefits exceeds costs by 30 to one--that's $2 trillion in net benefits vs. $65 billion in costs. Which specific EPA regulations does EPA believe are overly stringent and in need of scaling back?

Ex. 5 - Deliberative Process

McCollum Q94: Administrator Pruitt has expressed concern about the compliance costs of particular industries, please provide an estimate of the change in net benefits to the American public from rolling any regulations back.

Ex. 5 - Deliberative Process

McCollum Q95: Has the Agency considered the additional cost to industry of facing a patchwork quilt of different state requirements instead of one federal standard?

Ex. 5 - Deliberative Process

McCollum Q96: What steps has the EPA taken to implement President Trump's Executive Order on Reducing Regulation and Controlling Regulatory Costs?

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

McCollum Q97: How is EPA choosing which two regulations to repeal for every new regulation promulgated?

Ex. 5 - Deliberative Process

McCollum Q98: In EPA's regulation review has the Agency consistently adhered to the requirements of the Administrative Procedures Act, specifically the notice-and-comment period that gives the public time to respond to any proposed changes by the government?

Ex. 5 - Deliberative Process

McCollum Q99: How does EPA justify delaying the effective date for the companion rule for Pesticide Applicator Protection for an additional year to May 22, 2018?

Ex. 5 - Deliberative Process

McCollum Q103: How does EPA plan to defend the many inevitable lawsuits it will face from rolling back environmental regulations? Is this really the most effective way for EPA to fulfill its mission?

Ex. 5 - Deliberative Process

McCollum Q104: Executive Order 13777 required the head of each agency to designate a Regulatory Reform Officer to oversee the implementation of regulatory reform initiatives and policies to ensure agencies effectively carry out regulatory reforms, consistent with applicable law.

Ex. 5 - Deliberative Process

McCollum Q105: Who have you appointed as the Regulatory Reform Officer for EPA and what are their credentials?

Ex. 5 - Deliberative Process

Environmental Impact on Children's Health

It is estimated that 88% of the existing global burden of disease attributable to climate change occurs in children younger than 5 years old in both industrialized and developing countries. Climate change is currently affecting child health through increased heat stress, decreased air quality, altered disease patterns of some climate-sensitive infections, physical and mental health effects of extreme weather events, and food insecurity in vulnerable regions. Outdoor air pollution is linked to respiratory problems in children, including decreased lung function, coughing, wheezing, frequent respiratory illness, and asthma exacerbation. Children bear the burden of negative health outcomes resulting from exposure to pollutants across their lifespan.

McCollum Q174: The EPA has put a hold on efforts to make our air cleaner by pausing work on the ozone standard and the Clean Power Plan. Is the EPA calculating the costs to children and their families from all of the health effects of polluted air and accelerated climate change?

Ex. 5 - Deliberative Process

McCollum Q175: As the EPA Administrator overseeing this regulatory review, are you consulting with pediatric associations, patient organizations, or other representatives for children's health to determine the cost burdens that rolling back these regulations would place on impacted families and our health care system as a whole?

Ex. 5 - Deliberative Process

McCollum Q176: How will the benefits to children of strong environmental regulations be weighed in comparison to the costs to some businesses of meeting those regulations in any final decisions?

Ex. 5 - Deliberative Process

Message

From: Rees, Sarah [rees.sarah@epa.gov]
Sent: 6/28/2017 2:36:13 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Lovell, William [lovell.william@epa.gov]
CC: Kime, Robin [Kime.Robin@epa.gov]
Subject: FW: Questions
Attachments: Class of 85 questions talking points.docx

Hi Samantha – suggested talking points for the questions Megan posed below – these are just my thoughts – hope these are helpful. At the end, I've added quick bullets on the public-facing state of play on WOTUS, Steam Electric, and CPP in case those details come up.

Cheers,
Sarah

From: Rees, Sarah
Sent: Wednesday, June 28, 2017 7:34 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Lovell, William <lovell.william@epa.gov>
Subject: Fwd: Questions

Hi Samantha - Megan sent me some specific questions that the Class of 85 have for us; I'll draft some bullets for each one.

Cheers,
Sarah

Begin forwarded message:

> **From:** <megan.berge@bakerbotts.com>
> **Date:** June 28, 2017 at 12:33:38 AM EDT
> **To:** <Rees.sarah@Epa.gov>
> **Subject: Questions**
>
> Sarah –
>
> The Group is looking forward to meeting with you all tomorrow. We asked them about what questions they might have for Samantha (and your team). They came back with:

- How is EPA tackling the myriad comments submitted in the docket (putting them in buckets? assigning teams?)
- What are EPA's priorities for the coming year?
- Can EPA share how it is tackling some of the "big policy" reforms, such as WOTUS and the CPP? Are they being handled by your office, or driven by the program offices?
- For the issues that already are under review (*e.g.* ELGs), does the agency have any deadlines internal or otherwise for completing those reviews?

- Is there anything you can share about staffing? It seems as though the Office of Policy is pulling double duty; is there a plan to spread the pain (essentially was the question).
- Speaking to the big policy issues, has the agency begun to look at the CSAPR Update rule and the pending petitions for reconsideration?
- How can we help?
- What can industry do that would be most helpful as you go through both the big and the day-to-day reforms?

We fully understand that you guys may not be able to speak to all of these issues.

Thank you again,
Megan

Megan Heuberger Berge
Partner
BAKER BOTTS L.L.P.
The Warner | 1299 Pennsylvania Ave., NW | Washington, DC 20004
Ex. 6 (direct) | Ex. 6 - Personal Privacy

Confidentiality Notice:

The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

Message

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 6/26/2017 2:28:49 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: Re: Next week

The call with doj is at 12:30. I will forward info shortly.

Sent from my iPhone

> On Jun 26, 2017, at 9:34 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:
>
> Hey Al - is the call at 12:30 or at noon? Anthony Campau told me it was at noon...
>
> -----Original Message-----
> From: McGartland, Al
> Sent: Sunday, June 25, 2017 9:39 PM
> To: Dravis, Samantha <dravis.samantha@epa.gov>
> Subject: Re: Next week
>
> Sam -- what a nice note. Thank you. I've enjoyed these past months and I'm glad we work together so well.
>
> I'm determined to get WOTUS done. (I have a 12:30 call with OMB and DOJ on Monday). And, I'm sure you know I will be happy to work on whatever you need.
>
> Finally in planning another Happy hour for cpp and wotus. Once they get signed. Hope that is ok.
>
>
>
>
> Sent from my iPhone
>
>> On Jun 25, 2017, at 7:48 PM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:
>>
>> I think I responded to this already but if not, please enjoy some time off. I will try to be in touch as little as possible!
>>
>> Sent from my iPad
>>
>>> On Jun 23, 2017, at 5:32 PM, McGartland, Al <McGartland.Al@epa.gov> wrote:
>>>
>>> I will be in vacation of sorts next week. I will have my epa computer and phone and expect to work a fair amount. (I have also told my family I will need to work on stuff Ex. 6 - Personal Privacy
>>>
>>> Alex Marten is fully up to speed on Wotus, CPP, and 321 and will be acting office director. We have discussed the remaining coordination to be done on WOTUS -- I will be calling into all relevant meetings.
>>>
>>> My cell phone is Ex. 6 - Personal Privacy
>>>
>>>
>>>
>>> Sent from my iPhone

Message

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 6/22/2017 6:04:29 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
CC: Bolen, Brittany [bolen.brittany@epa.gov]
Subject: Just heard that an OMB pass back on cpp is imminent

Not sure if it includes anything on criteria air pollutant benefits.

Sent from my iPhone

Message

From: Lovell, William [lovell.william@epa.gov]
Sent: 6/19/2017 3:48:26 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]
Subject: RE: NAM
Attachments: 170620_NAM_BP.docx

Please find attached a briefing paper with a short blurb about each point you mentioned. Please let me know if I should expand on any of them.

From: Dravis, Samantha
Sent: Monday, June 19, 2017 10:42 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Lovell, William <lovell.william@epa.gov>
Subject: NAM

These are the rules/items listed in NAM's comment letter – we should decide which we want to address in the limited time we have – some of them will obviously be very quick updates. I skipped over some that I know we are just not looking at right now. Will, can you start preparing a document with bullets for each item?

CPP/NSPS 111b
WOTUS
CAFÉ
Regional Haze
Ozone NAAQS
Boiler MACT
Tier 4
RMP
GHG Threshold Rule
NESHAP 6x and Co Location
NPDES Permits
Safe drinking water act Study
CERCLA 108b
RCRA
Superfund
TSCA Prioritization
Worker Protection Standard
Perchlorate
Lead Repair, Renovation and Painting Rule
Vapor Intrusion
Consent Decrees
General Science Evaluation Process

Message

From: Lovell, William [lovell.william@epa.gov]
Sent: 6/19/2017 2:42:48 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
CC: Bolen, Brittany [bolen.brittany@epa.gov]
Subject: Re: NAM

On it.

Sent from my iPhone

On Jun 19, 2017, at 10:42 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

> These are the rules/items listed in NAM's comment letter – we should decide which we want to address in the limited time we have – some of them will obviously be very quick updates. I skipped over some that I know we are just not looking at right now. Will, can you start preparing a document with bullets for each item?
>
> CPP/NSPS 111b
> WOTUS
> CAFÉ
> Regional Haze
> Ozone NAAQS
> Boiler MACT
> Tier 4
> RMP
> GHG Threshold Rule
> NESHAP 6x and Co Location
> NPDES Permits
> Safe drinking water act Study
> CERCLA 108b
> RCRA
> Superfund
> TSCA Prioritization
> Worker Protection Standard
> Perchlorate
> Lead Repair, Renovation and Painting Rule
> Vapor Intrusion
> Consent Decrees
> General Science Evaluation Process

Message

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 6/15/2017 11:50:32 PM
To: Bolen, Brittany [bolen.brittany@epa.gov]
CC: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: Re: Wotus

Right. He did that by phone. Ex. 6 - Personal Privacy Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Sent from my iPhone

> On Jun 15, 2017, at 7:43 PM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:
>
> Though i see he had time to speak at an event today on SCC.
>
> Sent from my iPad
>
>> On Jun 15, 2017, at 7:39 PM, McGartland, Al <McGartland.Al@epa.gov> wrote:
>>
>> I'm glad Anthony called. Sorry I couldn't give you advance notice so you would had time to think about it. Ex. 6 - Personal Privacy
>>
>> Sent from my iPhone
>>
>>> On Jun 15, 2017, at 6:59 PM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:
>>>
>>> Thanks for the update, Al. Good work on turning around RIA edits quickly. Look forward to reviewing.
>>> RE: CPP let's chat tomorrow. Anthony gave us a call today, too. I think we're fine and I appreciate the early notice.
>>>
>>>
>>>> On Jun 15, 2017, at 5:48 PM, McGartland, Al <McGartland.Al@epa.gov> wrote:
>>>>
>>>> The economic analysis is nearly done. Ex. 5 - Deliberative Process Ex. 5 - Deliberative Process
>>>> Mindy will circulate a draft tonight to give the army corps and others a few hours to review.
>>>>
>>>> I spoke with Jim laity today. Ex. 6 - Personal Privacy also had some comments about CPP.
>>>>
>>>> I can fill you in tomorrow. Better by phone.
>>>> Sent from my iPhone

Message

From: Bolen, Brittany [bolen.brittany@epa.gov]
Sent: 6/15/2017 11:43:42 PM
To: McGartland, Al [McGartland.Al@epa.gov]
CC: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: Re: Wotus

Though i see he had time to speak at an event today on SCC.

Sent from my iPad

> On Jun 15, 2017, at 7:39 PM, McGartland, Al <McGartland.Al@epa.gov> wrote:
>
> I'm glad Anthony called. Sorry I couldn't give you advance notice so you would had time to think about it. Ex. 6 - Personal Privacy
>
> Sent from my iPhone
>
>> On Jun 15, 2017, at 6:59 PM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:
>>
>> Thanks for the update, Al. Good work on turning around RIA edits quickly. Look forward to reviewing.
>> RE: CPP let's chat tomorrow. Anthony gave us a call today, too. I think we're fine and I appreciate the early notice.
>>
>>
>>> On Jun 15, 2017, at 5:48 PM, McGartland, Al <McGartland.Al@epa.gov> wrote:
>>>
>>> The economic analysis is nearly done. Ex. 5 - Deliberative Process
Ex. 5 - Deliberative Process
>>> Mindy will circulate a draft tonight to give the army corps and others a few hours to review.
>>>
>>> I spoke with Jim laity today. Ex. 6 - Personal Privacy but also had some comments about CPP.
>>>
>>> I can fill you in tomorrow. Better by phone.
>>> Sent from my iPhone

Message

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 6/15/2017 11:39:58 PM
To: Bolen, Brittany [bolen.brittany@epa.gov]
CC: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: Re: Wotus

I'm glad Anthony called. Sorry I couldn't give you advance notice so you would had time to think about it. Ex. 6 - Personal Privacy

Sent from my iPhone

> On Jun 15, 2017, at 6:59 PM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:
>
> Thanks for the update, Al. Good work on turning around RIA edits quickly. Look forward to reviewing.
> RE: CPP let's chat tomorrow. Anthony gave us a call today, too. I think we're fine and I appreciate the early notice.
>
>
>> On Jun 15, 2017, at 5:48 PM, McGartland, Al <McGartland.Al@epa.gov> wrote:
>>
>> The economic analysis is nearly done. Ex. 5 - Deliberative Process
Ex. 5 - Deliberative Process
>> Mindy will circulate a draft tonight to give the army corps and others a few hours to review.
>>
>> I spoke with Jim laity today. Ex. 6 - Personal Privacy but also had some comments about CPP.
>>
>> I can fill you in tomorrow. Better by phone.
>> Sent from my iPhone

Message

From: Bolen, Brittany [bolen.brittany@epa.gov]
Sent: 6/15/2017 10:59:52 PM
To: McGartland, Al [McGartland.Al@epa.gov]
CC: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: Re: Wotus

Thanks for the update, Al. Good work on turning around RIA edits quickly. Look forward to reviewing. RE: CPP let's chat tomorrow. Anthony gave us a call today, too. I think we're fine and I appreciate the early notice.

> On Jun 15, 2017, at 5:48 PM, McGartland, Al <McGartland.Al@epa.gov> wrote:
>
> The economic analysis is nearly done. Ex. 5 - Deliberative Process
Ex. 5 - Deliberative Process
> Mindy will circulate a draft tonight to give the army corps and others a few hours to review.
>
> I spoke with Jim laity today. Ex. 6 - Personal Privacy
Ex. 6 - Personal Privacy
>
> I can fill you in tomorrow. Better by phone.
> Sent from my iPhone

Message

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 6/15/2017 9:48:37 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]
Subject: Wotus

The economic analysis is nearly done. Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Mindy will circulate a draft tonight to give the army corps and others a few hours to review.

I spoke with Jim laity today. Ex. 6 - Personal Privacy

I can fill you in tomorrow. Better by phone.
Sent from my iPhone

Message

From: Kime, Robin [Kime.Robin@epa.gov]
Sent: 6/12/2017 5:47:27 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: Invitation to Samantha Dravis to speak at Yosemite Environmental Law Conference in October
Attachments: 2017.05.30 Yosemite_Invitation_to_Samantha_Dravis_(15711207_1)_(15715601_1).PDF; ATT00001.htm; 2016 Environmental Law Conference at Yosemite brochure.pdf; ATT00002.htm

Hello
I will add this to the group of meeting requests and speaking invitations for your review.

Begin forwarded message:

From: "Waterman, Ryan R." <rwaterman@bhfs.com>
To: "Kime, Robin" <Kime.Robin@epa.gov>
Subject: Invitation to Samantha Dravis to speak at Yosemite Environmental Law Conference

Robin,

This email follows the voicemail I just left with you. I'm on the Executive Committee of the Environmental Law Section of the California State Bar Association, and we've extended an invitation to Ms. Dravis to be a keynote Plenary Speaker at our annual Environmental Law Conference at Yosemite.

The conference runs from October 20 – 22, and we could schedule Ms. Dravis for one of three potential slots on either October 20, 21, or 22, depending on what best fits her schedule.

I've attached our invitation to Ms. Dravis to this email for your reference, as well as the conference brochure from last year to provide some context.

As I mentioned in my message, I need to hear from Ms. Dravis soon. Can you please reply by Wednesday, June 14?

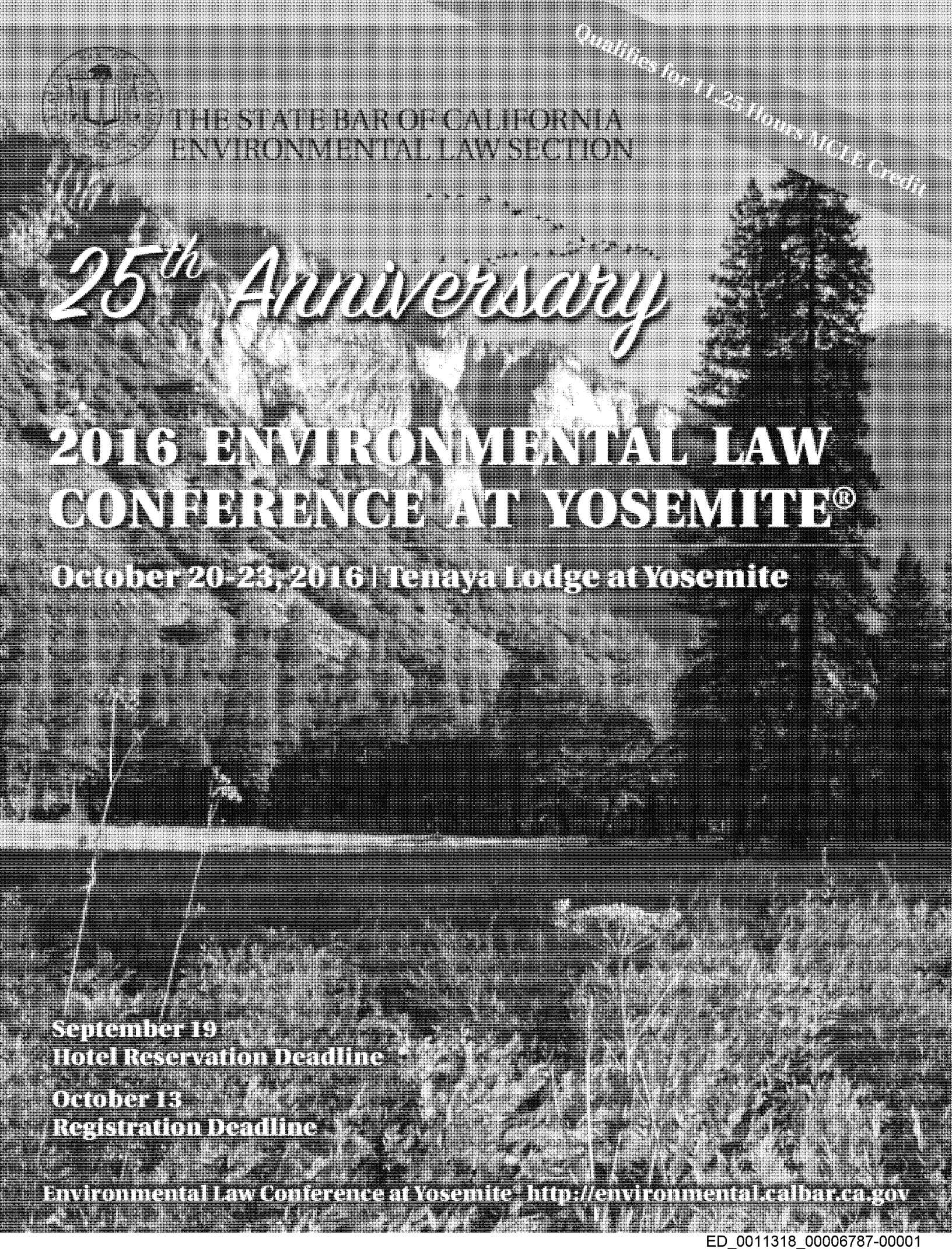
Best regards,

Ryan R. Waterman
Brownstein Hyatt Farber Schreck, LLP
225 Broadway, Suite 1670
San Diego, CA 92101
Ex. 6 - Personal Privacy tel
cell
rwaterman@bhfs.com | Bio | vCard | www.bhfs.com

Subscribe to our Water blog at water.bhfs.com

STATEMENT OF CONFIDENTIALITY & DISCLAIMER: The information contained in this email message is attorney privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby

notified that any dissemination, distribution or copy of this email is strictly prohibited. If you have received this email in error, please notify us immediately by calling (303)-223-1300 and delete the message. Thank you.


THE STATE BAR OF CALIFORNIA
ENVIRONMENTAL LAW SECTION
Qualifies for 11.25 Hours MCLE Credit
25th Anniversary
2016 ENVIRONMENTAL LAW CONFERENCE AT YOSEMITE®
October 20-23, 2016 | Tenaya Lodge at Yosemite
September 19
Hotel Reservation Deadline
October 13
Registration Deadline
Environmental Law Conference at Yosemite® http://environmental.calbar.ca.gov

THE STATE BAR OF CALIFORNIA ENVIRONMENTAL LAW SECTION

2016 Environmental Law Conference at Yosemite®

2016 Yosemite Conference Planning Committee

Co-Chairs:
Eric Adair, Valencia
Nicole Gordon, Los Angeles
Osha R. Meserve, Sacramento

Active Executive Committee Members on the Yosemite Planning Committee

Ellison Folk, San Francisco
Leah Goldberg, San Jose
Deborah Halberstadt, Sacramento
Cara Horowitz, Los Angeles
Marc Luesebrink, Seattle, WA
Gary Lucks, Walnut Creek
Mike Leslie, Los Angeles
Letitia D. Moore, San Francisco
Ryan Waterman, San Diego
Jon Welner, San Francisco
Chelsea Tu, San Francisco
Alisha Winterswyk, Irvine
Howard F. Wilkins III ("Chip"), Sacramento

Additional and generous help from Environmental Law Section Advisors

The State Bar of California is an approved MCLE Providers. Topics, speakers and schedules are subject to change.

Conference Green Initiatives

As an organization of environmental professionals, we will strive to conserve natural resources and to support their sustainable use. Help us reduce our carbon footprint by carpooling to and around the Conference. **Please use this link to add yourself as a driver or join another carpool: https://www.groupcarpool.com/t/vy40mb.** Also don't forget to sign the State Bar Eco Pledge while you're at the Conference if you have not already.

25th Anniversary

The Environmental Law Conference at Yosemite® is nationally recognized as the largest and most prestigious gathering in California of leaders in environmental, land use, and natural resources law. We hope you will join us and many of our nation's top environmental officials, lawyers, and other professionals in the spectacular setting of Yosemite.

Conference Program Materials and Merchandise

Conference registrants will receive a USB storage device with an electronic version of all program materials compliments of **West, a Thomson Reuters business**. Before the Conference, attendees will receive a link with information on how to review and download the program materials. It may be helpful to review a program's reference material before the class. This website is not available to the public, and access is given only to Conference registrants. Late-breaking supplemental materials not available before the Conference will be added at a later date. We are pleased to announce that wireless Internet service will be available in all education program rooms, compliments of **Caldwell Leslie & Proctor PC**. This year's passcode is **CALDWELL**.

The annual Conference t-shirt will be available for pre-purchase on the registration form. Conference products are available while supplies last.

Scholarships

The Environmental Law Section of the State Bar of California is pleased to provide five (5) Michael H. Remy Scholarships which include tuition, transportation, room and board courtesy of **Remy Moose Manley LLP**, and at least 25 tuition scholarships.

PROGRAM SCHEDULE

THURSDAY

Thursday, October 20 | 4:00 pm-7:00 pm
Registration Hours

Thursday, October 20 | 4:00 pm-6:00 pm
Environmental Law Section Executive Committee Meeting

ED_0011318_00006787-00002

PROGRAM SCHEDULE

Thursday, October 20 | 6:00 pm-7:30 pm
Opening Night Reception (RSVP Requested)

Welcome to the 25th Annual Environmental Law Conference at Yosemite® reception sponsored by **Bick Law LLP, Burke Williams & Sorenson, Edgcomb Law Group** and **Greenberg Glusker LLP**. To RSVP, **select Ticketed Event #28** on the Conference registration form.

FRIDAY

Friday, October 21 | 7:15 am-12:15 pm
Registration Hours

Friday, October 21 | 7:30-8:00 am
Continental Breakfast (RSVP requested)

RSVP for this complimentary breakfast on the registration form. **Select Ticketed Event #29.** Breakfast sponsored by **Skadden, Arps, Slate, Meagher & Flom LLP.** Mid-morning refreshment break sponsored by **Stoel Rives LLP**

Friday, October 21 | 8:00-9:00 am
.75 Hour MCLE
Session 1: Friday General Session

Welcome by **Howard F. Wilkins III ("Chip")**, 2015-2016 Chair, Environmental Law Section, Remy Moose Manley LLP. Introduction by **K. Eric Adair,** Hinson, Gravelle & Adair LLP, Valencia. Keynote presentation by **Jonathan B. Jarvis**, Director, National Park Service

Jonathan B. Jarvis

Jonathan B. Jarvis's 37-year career has taken him from ranger to resource management specialist to park biologist to superintendent of parks. Before being confirmed as the 18th Director of the National Park Service on September 24, 2009, Jarvis served as regional director of the bureau's Pacific West Region. As Director, Jarvis has reinvigorated the National Park Service's role as an international advocate for protected areas and recognized world leader in cultural and natural resource management. As the National Park Service celebrates its centennial in 2016, Jarvis is focused on several key areas for the future: enhancing stewardship of the places entrusted to the Service's care; maximizing the educational potential of parks and programs; engaging new generations and audiences; and ensuring the welfare and fulfillment of National Park Service employees.

Friday, October 21 | 9:15-10:45 am
1.5 Hours MCLE
Session 2: The Rising Trend of Comprehensive Environmental Enforcement in California: Latest Developments in Administrative, Civil and Criminal Actions

This panel will discuss the latest trends and developments regarding environmental enforcement throughout California. Our speakers, leading representatives from the local, state and federal levels, will address the full spectrum of enforcement options, from administrative orders, to civil enforcement, including the imposition of injunctive and consent judgment terms, to the criminal prosecution of environmental crimes. This panel will also include a presentation from the defense/regulated community perspective, detailing how the regulated community can best understand and implement strategies to minimize enforcement risks as well as insights on dealing with enforcement agencies and prosecutors once an action has been filed or is being investigated.

Moderator
Gary Meyer, Shareholder, Parker Milliken, Los Angeles

Panelists
Jessica Brown, Deputy City Attorney, Los Angeles
Brett Morris, Office of the Attorney General, Oakland
Sylvia Quast, Regional Counsel, Environmental Protection Agency, San Francisco
K. Eric Adair, Hinson, Gravelle & Adair LLP, Valencia

Friday, October 21 | 9:15-10:45 am
1.5 Hours MCLE
Session 3: Oil and Gas Production and Use in California: Past, Present and Future

This panel will include a brief examination of California's past regulatory history of oil and gas production and use. The discussion will also focus on present day issues such as land use conflicts (e.g., Porter Ranch, underground injection's effect on water supplies, well stimulation treatments (WST), waste water disposal) and the attitudes, activism and varying approaches playing out in different parts of the State. The panel also will address the future of the legal mechanisms and regulatory efforts which will set the tone for the years to come (e.g., gas storage regulations, underground injection control (UIC) regulations, WST regulations), and examine the difficult task of reconciliation of hydrocarbon recovery with climate change response goals.

Moderator
James L. Pierce, Senior Staff Counsel, California Department of Conservation, Sacramento

Panelists
Jennifer L. Hernandez, Partner, Holland & Knight LLP, San Francisco
Briana Mordick, Senior Scientist, Land & Wildlife and Climate Programs, Natural Resources Defense Council, San Francisco
Emily Reader, Senior Oil and Gas Engineer, Division of Oil, Gas and Geothermal Resources, Sacramento

ED_0011318_00006787-00003

Friday, October 21 | 9:15-10:45 am
1.5 Hours MCLE

Session 4: Storage, Conservation and System Optimization: What Is Most Needed for California's Future?

California's quest for new water requires developing a diverse portfolio of water sources for the future. The passage of Proposition 1 in 2014 buoyed the prospects for new water storage above and below ground, and also provided funds for water conservation. Measures employed to respond to California's recent drought have demonstrated that California can conserve significantly more water than previously thought possible. Reoperation of existing dams can also increase storage for drier times. With all the gains possible from conservation and changes in reservoir management, is new storage necessary? If so, where should it be located and what kind of storage is appropriate? This panel will explore the conundrum of determining the right mix of investments to best meet the state's current and future water demands considering current legal and funding hurdles.

Moderator
Chelsea Tu, Attorney, Public Advocates, San Francisco

Panelists
Daniel Curtin, Member, California Water Commission, Sacramento
Peter Gleick, President Emeritus and Chief Scientist, Pacific Institute, Oakland
Ron Stork, Senior Policy Advocate, Friends of the River, Sacramento

Friday, October 21 | 9:15-10:45 am
1.5 Hours MCLE

Session 5: Proposition 65: Recent Developments and Regulatory Reforms

Proposition 65 is 30 years old, but until recently, it has spawned surprisingly few published opinions because the vast majority of cases have settled. In recent years, there have been some novel litigation strategies and published opinions that have significantly changed the Proposition 65 landscape. At the same time, there are pending revisions to the Proposition 65 regulations that could affect state oversight of settlements, provide additional guidance on warning language, and establish new safe harbor levels for certain chemicals. Additionally, recent amendments to the federal Toxic Substances Control Act (TSCA) may have impacts on Proposition 65. This panel will discuss these recent developments. Panelists include lawyers who have been directly involved in recent Proposition 65 litigation and regulatory reforms.

Moderator
Laura Zuckerman, Deputy Attorney General, California Attorney General's Office, Oakland

Panelists
Richard Drury, Partner, Lozeau Drury LLP, Oakland
Michelle Endo, Research Assistant, Center for Environmental Health, Oakland
William Tarantino, Partner, Morrison & Foerster LLP, San Francisco

Friday, October 21 | 11:00 am-12:30 pm
1.5 Hours MCLE

Session 6: California's Clean Energy and Pollution Reduction Act of 2015: What's Next for SB 350?

Over one year has passed since SB 350 was signed into law, codifying significant new targets for renewable energy and energy efficiency in California. This panel will discuss the progress the CPUC, CEC, and CARB have made toward implementing the bill's requirements for a 50% RPS, doubling of energy efficiency, and incentivizing transportation electrification as well as what the regulatory implementation of SB 350 will look like. In addition, while the mandate for a 50% reduction in petroleum use originally proposed by the authors of SB 350 was not ultimately enacted, how are the agencies using existing law and other provisions of SB 350 to nevertheless move towards Governor Brown's goal of significantly reducing petroleum use in the transportation sector? Panelists will address what they anticipate to be the likely direct effects—good and bad—of the bill on renewable energy development, natural resources, and greenhouse gas emission rates, within the state of California.

Moderator
Allison Smith, Associate, Stoel Rives, LLP, Sacramento

Panelists
Kathryn Phillips, Director, Sierra Club California, Sacramento
Clifford Rechtschaffen, Senior Advisor, Office of Governor Edmund G. Brown, Sacramento
Claire Halbrook, PG & E

Friday, October 21 | 11:00 am-12:30 pm
1.5 Hours MCLE

Session 7: The California Supreme Court and Environmental Law

The California Supreme Court, perhaps the most influential state Supreme Court in the nation, currently has 22 environmental cases pending and has decided four CEQA cases in the past year. More than ever before in its history, the Court has the potential to alter the legal landscape of state environmental law. This panel will examine the Court's recent and pending decisions, identify trends in the types of cases that the court is taking and its decisions, and offer observations about the apparent direction of the Court.

Moderator
Jim Moose, Senior Partner, Remy Moose Manley LLP, Sacramento

Panelists
Honorable Barry P. Goode, Contra Costa Superior Court, Martinez
Suma Peesapati, Lecturer, UC Irvine School of Law, Irvine
Associate Justice Ronald B. Robie, Court of Appeal, 3rd Appellate District, Sacramento

ED_0011318_00006787-00004

Friday, October 21 | 11:00 am-12:30 pm
1.5 Hours MCLE

Session 8: Irrigated Lands and the Challenge of Improving Groundwater Quality

Agriculture and related businesses are a significant part of California's economy, environment and culture. California's 20th Century water projects and engineering improvements have made the desert literally bloom in many parts of the state. But irrigation unavoidably contributes nutrients, salts and other pollutants to California's rivers, streams, and groundwater aquifers. This panel will discuss and evaluate how California's thirteen year-old Irrigated Lands Regulatory Program is doing, as agencies, agriculture, and community stakeholders work to apply the state's anti-degradation policy to irrigated lands in the wake of *AGUA v. Central Valley Regional Water Quality Control Board.*

Moderator
Ryan R. Waterman, Shareholder, Brownstein Hyatt Farber Schreck, LLP, San Diego

Panelists
Tess Dunham, Shareholder, Somach Simmons & Dunn, Sacramento
Patrick Pulupa, Attorney III, State Water Resources Control Board, Sacramento
Phoebe Seaton, Co-Director and Attorney at Law, Leadership Counsel for Justice and Accountability, Fresno

Friday, October 21 | 11:00 am-12:30 pm
1.5 Hours MCLE

Session 9: Flint—Could it Happen Here? Is it Happening Here?

California is ahead of many states in terms of having infrastructure in place to help guarantee safe drinking water for all Californians—it was the first state to explicitly recognize a human right to safe, clean, affordable, and accessible drinking water. Yet disadvantaged communities across the State still face daunting challenges. Panelists will discuss clean drinking water concerns facing California communities, what is being done to address those concerns, and whether California is en route to becoming another Flint, Michigan.

Moderator
Leah Goldberg, Senior Deputy City Attorney, City of San Jose, San Jose

Panelists
Robert Brownwood, Assistant Deputy Director, Division of Drinking Water, State Water Resources Control Board, Sacramento
Caroline Farrell, Executive Director, Center on Race, Poverty & the Environment, Delano
Steve Worthley, Tulare County Supervisor, Visalia

Friday, October 21 | 1:00 pm (times vary)

Friday Afternoon Activities

Register on-site ONLY. Space is limited.

Conference attendees and their guests may choose to participate in offsite activities. Sign-up sheets for planned activities will be located at the Executive Committee table.

SATURDAY

Saturday, October 22 | 7:15 am-12:15 pm

Registration Hours

Please note for Saturday only, panels begin at 8:00 am. The Saturday General Session begins at 11:30 am.

Saturday, October 22 | 7:30-8:00 am

Continental Breakfast (RSVP Requested)

RSVP for this complimentary breakfast on the registration form. **Select Ticketed Event #30.** Breakfast sponsored by **Holland & Knight.** Mid-morning refreshment break sponsored by **Integral Consulting Inc.**

Saturday, October 22 | 8:00-9:30 am
1.5 Hours MCLE

Session 10: The Emerging Importance of Methane in Greenhouse Gas Regulation

Methane has been referred to as CO2's "nasty little brother" in terms of climate impacts, but it took center stage in 2016 with the Aliso Canyon gas leak. The leak forced the evacuation of hundreds of people in the Porter Ranch development, was for several months California's single biggest greenhouse gas emissions source, and spurred multiple proposals for legislative action to regulate methane emissions. These developments come on top of heightened scrutiny from regulators over the past few years as the result of methane's potential contribution to global warming. California is targeting methane as part of its short-lived climate pollutant reduction strategy, and the Obama administration has been moving forward with new regulations on methane emissions from the oil and gas sector. This panel will address all of these developments and discuss methane's role as the "pollutant du jour" in the fight against global climate change.

Moderator
Jon Welner, Partner, Jeffer Mangels Butler& Mitchell, LLP, San Francisco

Panelists
Myles Culhane, Managing Counsel, Occidental Petroleum Corporation, Houston, Texas
Tim O'Connor, Director, California Oil & Gas, Environmental Defense Fund, Los Angeles
Elizabeth Scheehle, Branch Chief, Oil and Gas and Greenhouse Gas Mitigation Branch, CARB, Sacramento

Saturday, October 22 | 8:00-9:30 am
1.5 Hours MCLE

Session 11: CEQA Update: A Perennial Favorite

Panelists will discuss in detail key CEQA cases from the past year, summarize recent case law, and provide an update on recent legislative developments.

Moderator
Howard F. Wilkins III ("Chip"), Partner, Remy Moose Manley, LLP, Sacramento

Panelists
Danae Aitchison, Office of the Attorney General, Sacramento
Amanda Monchamp, Partner, Holland & Knight, San Francisco
William Parkin, Partner, Wittwer Parkin LLP, Santa Cruz

ED_0011318_00006787-00005

Saturday, October 22 | 8:00-9:30 am
1.5 Hours MCLE

Session 12: The Bay-Delta Water Quality Control Plan: Lodestar or Overload?

Currently, the State Water Project and the federal Central Valley Project backstop the flows needed to meet Sacramento-San Joaquin Delta Water Quality Control Plan flow objectives for salinity and fish and wildlife. Meeting the objectives can be a major constraint on water deliveries, yet Delta fisheries are in decline. The State Water Resources Control Board is now updating the Plan in a process that could apportion responsibility beyond the two projects. This panel seeks to offer insight into the fascinating intersection of water quality and water right laws and the critical and potentially contentious issues confronting update efforts.

Moderator
Jennifer Harder, Professor, McGeorge School of Law, Sacramento

Panelists
Erin Mahaney, Attorney IV, State Water Resources Control Board, Sacramento
Stefanie Morris, General Counsel, State Water Contractors, Sacramento
Kate Poole, Senior Attorney, Natural Resources Defense Council, San Francisco
Jennifer Spaletta, Principle, Spaletta Law, Lodi

Saturday, October 22 | 8:00-9:30 am
1.5 Hours MCLE

Session 13: Vapor Intrusion: Current Regulatory Status and Implications of the New Short-Term Trichloroethylene (TCE) Screening Levels

Vapor intrusion has become a major driver at hazardous waste sites throughout California and has impacted both environmental clean-ups and real estate transactions. In particular, the USEPA Region 9 policy on short-term exposures to trichloroethylene (TCE) in indoor air has led to increased scrutiny of site investigations and, in some cases, has accelerated remediation activities. This panel will discuss the recent changes in USEPA policy regarding vapor intrusion and in particular how the emphasis on short term TCE exposures has changed how sites are prioritized and investigated. Perspectives will be provided by all sides of the vapor intrusion discussion including both the regulatory and regulated community.

Moderator
Morgan Gilhuly, Attorney, Barg, Coffin, Lewis & Trapp, LLP, San Francisco

Panelists
Elizabeth Brown, Corporate Counsel, EHS and Real Estate, Northrop Grumman Corporation, El Segundo
Dustin Minor, Chief, Hazardous Waste Branch Office of Regional Counsel, Environmental Protection Agency, San Francisco
Nadine Weinberg, Partner, ERM, Portland, Maine

Saturday, October 22 | 9:45-11:15 am
1.5 Hours MCLE

Session 14: New California Environmental Legislation—The Latest from Sacramento

The California Legislature continues to pass groundbreaking environmental laws, which are often adopted nationally and internationally. During the 2016 legislative session, the Governor signed a number of new environmental, natural resources, and land use laws. Join our panel of seasoned legislative staffers for a timely discussion of newly enacted legislation, with a special focus on legislative accomplishments and trends for the future.

Moderator
Gary Lucks, Principal, Beyond Compliance, Oakland

Panelists
Kip Lipper, Chief Policy Advisor on Energy and the Environment, Office of the Senate Pro Tem, Sacramento
Marie Liu, Special Assistant to Assembly Speaker Anthony Rendon, Sacramento
Katharine Moore, Consultant, Senate Natural Resources and Water Committee, Sacramento

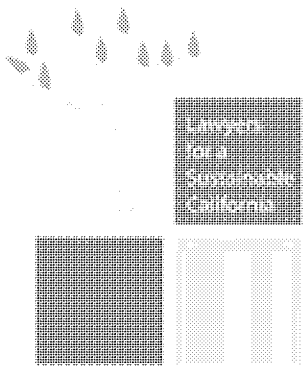
Saturday, October 22 | 9:45-11:15 am
1.5 Hours MCLE

Session 15: Will the Clean Power Plan Awaken?

The Clean Power Plan is the lynchpin of the Obama Administration's approach to tackling climate pollution from the power plant sector, but it was stayed by the U.S. Supreme Court pending the outcome of challenges brought by industry and more than half the states. This panel will assess the effect of the stay on the compliance work of California and other states; provide an update on the litigation; and assess the Plan's future prospects and impacts on the energy sector.

Moderator
Robert Wyman, Partner, Latham & Watkins, Los Angeles

Panelists
Edie Chang, Deputy Executive Officer, California Air Resources Board, Sacramento
Thomas A. Lorenzen, Partner, Crowell & Moring LLP, Washington, D.C.
Vera Pardee, Senior Counsel, Supervising Attorney, Center for Biological Diversity, Oakland



ED_0011318_00006787-00006

Saturday, October 22 | 9:45-11:15 am
1.5 Hours MCLE

Session 16: Perspectives on the History, Successes and Challenges for the Tahoe Regional Planning Agency

This panel will focus on the Tahoe Regional Planning Agency's ("TRPA") Regional Plan Update and the goals and challenges associated with implementing the Update. Among other things, the panel will discuss TRPA's efforts to manage traffic and water quality impacts from projects in the Tahoe Basin and the transfer of development rights, or "TDRs". The panel also will discuss TRPA's Environmental Threshold Carrying Capacities and the Agency's efforts to regulate and restore Stream Environment Zones.

Moderator

Scott B. Birkey, Partner, Cox, Castle & Nicholson, LLP, San Francisco

Panelists

Darcie Goodman Collins, PhD, Executive Director, League to Save Lake Tahoe, South Lake Tahoe
Lew Feldman, Partner, Feldman McLaughlin Thiel LLP, Zephyr Cove, NV
John Marshall, General Counsel, Tahoe Regional Planning Agency, Stateline, NV
E. Clement (Clem) Shute, Jr., Founding Partner, *Winner of the 2015 State Bar Environmental Law Section Lifetime Achievement Award*, Shute Mihaly & Weinberger LLP, San Francisco

Saturday, October 22 | 9:45-11:15 am
1.5 Hours MCLE

Session 17: The Department of Toxic Substances Control: A Conversation with Director Barbara Lee

The critical mission of the California Department of Toxic Substances Control is to protect state residents from the harmful effects of toxic substances. One year ago, Barbara Lee was confirmed as Director of the DTSC and charged with improving DTSC's permitting, enforcement, public outreach, and fiscal management. Join us for a frank dialogue with Director Lee as she discusses DTSC's recent accomplishments and challenges, as well as her future vision for the Department.

Moderator

Ken Alex, Senior Policy Advisor to Governor Edmund G. Brown, Director, Governor's Office of Planning and Research, Sacramento

Panelist

Barbara A. Lee, Director, Department of Toxic Substances Control, Sacramento

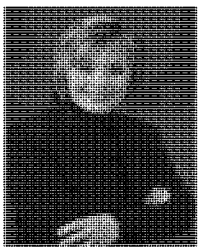
Saturday, October 22 | 11:30 am-12:30 pm
.75 Hour MCLE

Session 18: Saturday General Session

Introduction by **Osha Meserve**, **Soluri Meserve,** Sacramento

Keynote presentation by **Barbara Boxer**, U.S. Senator of California.

Barbara Boxer—U.S. Senator of California


Barbara Boxer

A forceful advocate for families, children, consumers, the environment and her State of California, Barbara Boxer became a United States Senator in January 1993 after 10 years in the House of Representatives and six years on the Marin County Board of Supervisors.

Throughout her career, Senator Boxer has worked to defend our nation's environmental laws, protect our natural heritage and address the threats of climate change. She was the first woman to Chair the Senate's Committee on Environment and Public Works (EPW), a position that she held from 2007 through 2014. She now serves as that Committee's Ranking Member.

Her leadership on the EPW Committee was instrumental in reauthorizing and updating the highway bill and the Water Resources Development Act, both of which have led to significant improvements in our nation's transportation infrastructure and supported millions of jobs nationwide.

Senator Boxer has won numerous awards for her efforts to create a cleaner, healthier environment and for her dedicated work to address the threats of climate change. She has fought to remove arsenic from drinking water and authored an amendment ensuring that drinking water standards protect children. She has led efforts in Congress to protect California's coast from offshore oil drilling and fought to end the unethical use of human subjects in pesticide testing by federal agencies.

ED_0011318_00006787-00007

Saturday, October 22 | 1:00-5:00 pm

Saturday Afternoon Outdoor Presentations

Register on-site ONLY. Space is limited.
Some presentations may involve a short hike, and some programs may not be appropriate for children. Registration is on-site only, and all presentations have limited space. Descriptions and signup sheets are available at the Executive Committee table.

Southern Sierra Tree Die-Off
Aerial surveys by the United States Forest Service show more than 66 million dead trees in Sierra Nevada forests. Learn about drought and bark beetle impacts on forest vegetation as well as forest management approaches designed to mitigate these ongoing impacts.

Moderator
Alisha Winterswyk, Best, Best & Krieger, LLP

Speakers
Dr. Marc Meyer, Southern Sierra Province Ecologist United States Forest Service, Pacific Southwest Region
Burt Stalter, Bass Lake Ranger District Fuels Battalion Chief Sierra National Forest

National Park Service Centennial
Yosemite National Park commemorates the National Park Service Centennial this year, marking 100 years of the National Park Service, established under the National Park Service Organic Act, enacted on August 25, 1916. Hear about the significance of the Act and how the National Park Service is commemorating the Centennial, including insights into President Obama's recent visit to Yosemite as part of the centennial celebration.

Moderator
Julia E. Stein, Pillsbury Winthrop Shaw Pittman LLP

Speaker
Scott Gediman, Assistant Superintendent for Public & Legislative Affairs, Yosemite National Park

Legal Issues in National Park Management
Park management decisions are shaped by a range of environmental and other laws, including the Clean Air Act, Endangered Species Act and the National Environmental Policy Act. This presentation will provide on the ground examples of the legal issues that must be addressed as part of national park management.

Moderator
Christian Marsh, Downey Brand LLP

Speaker
Joe Meyer, Branch Chief, Physical Science and Landscape Ecology Resources Management and Science Division, Yosemite National Park

Saturday, October 22 | 5:30-6:15 pm

A Fireside Chat with **Johanna Wald**, Recipient of the 2016 Environmental Law Section Lifetime Achievement Award

Join us in the Fireside Lounge, adjacent to the Hotel lobby, for an informal chat with **Johanna Wald**, this year's Lifetime Achievement Award recipient. Hear a firsthand account of her stellar career and contributions to environmental law. Facilitated by: **Ellison Folk**, Shute, Mihaly and Weinberger, LLP, San Francisco.

Saturday, October 22 | 6:15-7:00 pm

Saturday Evening Reception (RSVP Requested)

Join us as we gather before dinner for cocktails and hors d'oeuvres set out in the lobby. The reception is sponsored by **Gresham Savage Nolan & Tilden, PC, Langan** and **Ramboll Environ.** To RSVP, **select Ticketed Event #31** on the Conference registration form.

Saturday, October 22 | 7:00-9:00 pm

Saturday Night Dinner Program

Dinner is sponsored by **Antea Group, Downey Brand LLP, Rossmann & Moore LLP, SWAPE** and **Terraphase Engineering Inc.** Wine provided courtesy of **Wilson Vineyards/ Bogle Vineyards. Ticketed Event. Select #s 32 to 36** on the conference registration form.

Presentation of the Environmental Law Section Lifetime Achievement Award given to **Johanna Wald**

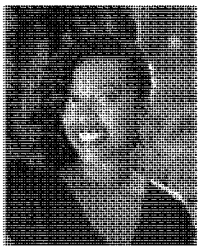
Introductions by **Alisha Winterswyk**, Best, Best & Krieger, LLP, Co-Chair, Lifetime Achievement Award Subcommittee of the Environmental Law Section, and **John Leshy**, Harry D. Sunderland Distinguished Professor of Law Emeritus, University of California, Hastings College of the Law. Remarks by **Johanna Wald**, San Francisco.

The Environmental Law Section is honored to present its third annual *Lifetime Achievement Award* to Johanna Wald, one of the nation's leading advocates for the protection of public lands. A founding member of the Natural Resources Defense Council's California office in 1973, Johanna's landmark lawsuits and advocacy efforts led to fundamental changes in the management of public lands throughout the American West and resulted in the protection of millions of acres of wilderness. Johanna is not only an effective advocate for the environment; her willingness to share her time and wisdom with young attorneys and law students has made her a mentor and role model to attorneys throughout the country. In addition to her legal career in the non-profit sector, Johanna has dedicated thousands of volunteer hours to local and national non-profits. Johanna's legal professionalism, dedication to the environment, and ability to work effectively with diverse interest groups make her a worthy recipient of the Lifetime Achievement Award.

ED_0011318_00006787-00008

Dinner and Keynote Presentation

Introduction by **Nicole Gordon**, The Sohagi Law Group, Los Angeles. Remarks by **Nikki Silvestri**, Co-Founder and CEO, Silvestri Strategies


Nikki Silvestri

Nikki Silvestri

Nikki Silvestri is the Co-Founder and CEO of Silvestri Strategies, a project design and management firm working to support thriving communities, economies, and natural environments.

As the Co-Founder of Live Real and former Executive Director of People's Grocery and Green for All, Nikki has built and strengthened social equity for underrepresented populations in food systems, social services, public health, climate solutions, and economic development. A nationally recognized thought leader, her many honors include being named one of The Root's 100 Most Influential African Americans in 2014.

An accomplished communicator, Nikki is well known for her combination of vulnerability and razor-sharp analysis. In addition to her speaking appearances at conferences and private events, Nikki regularly forwards the message of equitable economies through numerous media channels. BET.com, the Huffington Post, and the San Francisco Chronicle have featured her writing, and her recent television appearances include All In with Chris Hayes and the Melissa Harris Perry Show on MSNBC.

Nikki began her work in social change through the foster care system in Southern California, where she directed Foster Youth Empowerment Workshops. She has a master's degree in African American Studies from UCLA, and is originally from Los Angeles. She currently lives in Oakland, with her husband.

Saturday, October 22 | 9:00-11:00 pm

Saturday Night Dessert Party (RSVP Requested)

Delicious delicacies complete the evening. Enjoy dessert, hosted libations and dancing at the 25th Annual Dessert Party sponsored by **Brownstein Hyatt Farber Schreck LLP, Cox Castle Nicholson LLP** and **Pillsbury Winthrop Shaw Pittman**. To RSVP, **select Ticketed Event #37** on the Conference registration form.

SUNDAY

Sunday, October 23 | 7:15 am-12:15 pm

Registration Hours

Sign in for your MCLE credit at the start of your day.

Sunday, October 23 | 7:30-8:00 am

Continental Breakfast (RSVP Requested)

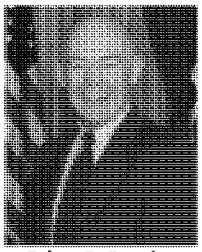
RSVP for this complimentary breakfast on the registration form. **Select Ticketed Event #38**. Breakfast sponsored by **Barg Coffin Lewis & Trapp, LLP**. Mid-morning refreshment break sponsored by **Kronick Moskovitz Tiedeman & Girard**

Sunday, October 23 | 8:00-9:00 am | .75 Hour MCLE

Session 19: Sunday General Session

Introduction by **Michael Hingerty**, Berkeley

Keynote presentation by **John C. Cruden**, Assistant Attorney General for the Environmental and Natural Resources Division (ENRD).


John C. Cruden

John C. Cruden

John C. Cruden was confirmed by the U.S. Senate on December 16, 2014 as the Assistant Attorney General (AAG) for the Environment and Natural Resources Division (ENRD).

Before becoming AAG, Mr. Cruden served as President of the Environmental Law Institute, a nationally recognized bipartisan organization well-known for its work in educating, publishing, and researching environment, energy, and natural resource issues.

Mr. Cruden has a long history of public service at the Department of Justice and in the military. From 1991-1995 he was the Chief of ENRD's Environmental Enforcement Section and then from 1995 to 2011 a career Deputy Assistant Attorney General for ENRD. Prior to joining the Department of Justice, Mr. Cruden served as Chief Legislative Counsel for the Army, and held various military positions including in the Airborne, Ranger, and Special Forces units and as Staff Judge Advocate. Mr. Cruden has on three occasions received the Presidential Rank Award from three different Presidents. He has also received the Department of Justice's Muskie-Chaffee Award, the Federal Bar Association's Younger Award, and the American Bar Association's Award for Outstanding Government Service.

He is also a volunteer swim coach for the Special Olympics and a past recipient of Fairfax County's Volunteer of the Year award for his work with mentally handicapped children. He is married and has two adult children.

ED_0011318_00006787-00009

Sunday, October 23 | 9:15-10:45 am
1.5 Hours MCLE

Session 20: Recent Environmental Law Developments in the U.S. Supreme Court and Ninth Circuit Court of Appeals

The U.S. Supreme Court and U.S. Circuit Courts of Appeals have been active over the past year, deciding numerous major environmental law cases. Other key environmental litigation—including judicial challenges to the Obama Administration's Clean Power Plan and "Waters of the United States" regulatory initiatives—are currently pending. Join a panel of environmental law experts who follow these judicial developments closely for a survey of the most important decided and pending environmental law cases from these courts. The panelists will also discuss general environmental law trends and developments in these tribunals.

Moderator

Richard Frank, Professor of Environmental Practice, Director, California Environmental Law & Policy Center, School of Law, University of California, Davis

Panelists

John Cruden, Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C.
Alice Kaswan, Professor of Law, University of San Francisco, San Francisco

Sunday, October 23 | 9:15-10:45 am
1.5 Hours MCLE

Session 21: CEQA and the People's Voice: Developer Ballot Measures

Following the Supreme Court's 2014 *Tuolumne Jobs* decision, which held that CEQA does not apply to "citizen-sponsored" initiatives, even where the initiative is adopted by local officials rather than the voters, California has seen a sharp increase in development projects being proposed via ballot. Panelists will discuss emerging issues surrounding this "Tuolumne tactic."

Moderator

Dan Selmi, Fritz B. Burns Professor of Real Property Law, Loyola Law School, Los Angeles

Panelists

Celia Brewer, City Attorney, City of Carlsbad
Kristina Lawson, Partner, Manatt, Phelps & Phillips, LLP, San Francisco
Robert "Perl" Perlmutter, Partner, Shute Mihaly & Weinberger, LLP, San Francisco

Sunday, October 23 | 9:15-10:45 am
1.5 Hours MCLE

Session 22: The Coastal Act at 40 and the State of the California Coastal Commission

The California Coastal Commission has had a remarkable year, starting with the controversial removal of Executive Director Charles Lester in early February and followed by the introduction of several bills in the state legislature addressing agency function. The Commission is also faced with increasingly important substantive work under the Coastal Act, including support of implementation of Local Coastal Programs across the state in a way that addresses sea level rise and climate change impacts, ensuring public beach access with their relatively new enforcement authority, and regulation of new ocean industries like desalination plants and offshore renewables. This panel will offer a recap of relevant coastal legislation and an insight into the biggest battles involving the Coastal Act in the coming year.

Moderator

Angela Howe, Legal Director, Surfrider Foundation, San Clemente

Panelists

Commissioner Paula Daniels, former Coastal Commissioner and current Commissioner, California Water Commission, Los Angeles
Jennifer Lucchesi, Executive Director, State Lands Commission, Sacramento
John Erskine, Partner and Chair of the Coastal Legal and Consulting Practice at Nossaman LLP, Sacramento
Jana Zimmer, former Coastal Commissioner and current Attorney/Arbitrator and Lecturer, Environmental Studies Program, University of California at Santa Barbara, Santa Barbara

Sunday, October 23 | 9:15-10:45 am
1.5 Hours MCLE

Session 23: Recent Developments at California Air Districts

There have been significant new political and regulatory developments at California's Air Districts over the past year. The South Coast saw a major political shift on its Board of Directors, which resulted in the removal of its longtime executive officer, and it was drawn into litigation alleging that the Board's recent regulatory amendments were too lenient on industry. In contrast, the Bay Area adopted a suite of stringent new regulations for oil refineries that resulted in legal challenges from industry. The San Joaquin Valley has been active as well, advocating for changes to the Federal Clean Air Act to help it address some of the nation's worst smog problems. This panel will discuss these developments and will provide their thoughts and views on the future directions of air quality regulation in California.

Moderator

Sean B. Hecht, Co-Executive Director, Emmett Institute on Climate Change and the Environment, UCLA School of Law, Los Angeles

Panelists

Richard Corey, Executive Officer, California Air Resources Board, Sacramento
Angela Johnson-Meszaros, Staff Attorney, EarthJustice, Los Angeles
Cathy Reheis-Boyd, President, Western States Petroleum Association, Sacramento

ED_0011318_00006787-00010

Sunday, October 23 | 11:00 am-12:30 pm
1.5 Hours MCLE

Session 24: Climate Change and International Law—What's Next After Paris?

The international community has been working on legal frameworks to address climate change for nearly 25 years. These efforts have culminated most recently in the landmark agreement adopted in December 2015 in Paris, which commits countries to a goal of keeping anthropogenic warming to "well below" 2°C—although without traditionally enforceable legal mechanisms to ensure that this goal is achieved. This panel will examine the strengths and shortcomings of the Paris Agreement, what it means for the United States and other countries, and how public and private actors are responding in subnational regions like California.

Moderator

Alex Wang, Assistant Professor of Law, UCLA School of Law, Los Angeles

Panelists

Alexa Kleysteuber, Deputy Secretary for Border and Intergovernmental Relations, California EPA, Sacramento
Kevin Poloncarz, Partner, Paul Hastings LLP, San Francisco
Alvaro Sanchez, Environmental Equity Director, The Greenlining Institute, Berkeley

Sunday, October 23 | 11:00 am-12:30 pm
1.5 Hours MCLE

Session 25: CEQA Practitioner Roundtable: Help! What now? Approaches for Analyzing Climate Change Impacts
(Limited to 60 People)

Methods for analyzing greenhouse gases under CEQA have become less certain in the wake of the Supreme Court's decision in *Center for Biological Diversity v. Cal. Dep't of Fish & Wildlife (Newhall Land & Farming)*, the Governor's 2015 Executive Order, and 2015 state legislation on climate change. Further complicating the picture are two-year bills pending in the Legislature to set new greenhouse gas targets for 2030 and beyond, and the California Supreme Court's pending decision in *Cleveland Nat'l Forest Found. v. SANDAG*. This practitioner-focused roundtable will explore various approaches for evaluating greenhouse gas emissions, climate change, and climate adaptation in this rapidly evolving area of the law.

Roundtable Moderators

Alexander Crockett, Assistant Counsel, Bay Area Air Quality Management District, San Francisco
Shari B. Libicki, Ph.D., Principal, Ramboll Environ, San Francisco
Aruna Prabhala, Staff Attorney, Center for Biological Diversity, Oakland

Sunday, October 23 | 11:00 am-12:30 pm
1.5 Hours

Session 26: Water Rights Reforms—Are Changes Needed to Our Water Rights and Pricing Systems?

California's historic drought has generated debate about how water should be allocated as well as new proposals for reform. In 2015, the Legislature enacted changes beefing up water measurement requirements for surface water diverters, and strengthening the state's enforcement authority. More expansive water rights reforms have been proposed. Litigation is also ongoing that challenges water rates created to encourage water conservation, which potentially conflict with constitutional and other limitations on rate setting. This panel explores whether major changes to our water rights and water pricing systems are desirable, and if so, what they may be.

Moderator

Rebecca Akroyd, Associate, Kronick Moskovitz Tiedemann & Girard, Sacramento

Panelists

Colin Bailey, Executive Director, The Environmental Justice Coalition for Water, Sacramento
Dave Owen, Professor of Law, University of California at Hastings, San Francisco
Kelly Salt, Partner, Best Best & Krieger LLP, San Diego

Sunday, October 23 | 11:00 am-12:30 pm
1.5 Hours MCLE

Session 27: Environmental and Economic Impacts of California's Bold New Cannabis Future

California's new "Medical Cannabis Regulation and Safety Act," effective January, 2018, creates a broad statutory scheme regulating cannabis, issuing multiple environmental and other mandates, and carrying enormous economic consequences across the state. This panel seeks to explore the magnitude of change that the MCRSA and its mandates may bring to California's economy, with a particular focus on the implications for environmental regulation and enforcement.

Moderator

Paul Hagen, North Coast Environmental Law Office, Arcata

Panelists

Gordon Burns, Undersecretary for Environmental Enforcement, Cal/EPA, Sacramento
Graciela Castillo-Krings, Deputy Legislative Secretary, Office of Governor Edmund G. Brown, Jr., Sacramento
James Devine, The Law Offices of James B. Devine, Ventura
Casey O'Neill, Board Chair, California Growers Association, and Farmer, Happy Day Farms, Laytonville

ED_0011318_00006787-00011

Hotel Reservation Form

October 20-23, 2016, Tenaya Lodge at Yosemite
2016 Environmental Law Conference at Yosemite®

HOTEL RESERVATION DEADLINE: **SEPTEMBER 19, 2016**
HOTEL RESERVATIONS PROCEDURE: Please confirm early as rooms will sell out.
TELEPHONE RESERVATIONS ARE NOT ACCEPTED.

1. To make your hotel reservation please complete the registration form below and send with one night's deposit (check or credit card) via Mail to Tenaya Lodge, P.O. Box 159, Fish Camp, CA 93623 or Fax Attn: Candi – 559-683-0249. Telephone reservations will not be accepted.
2. Deposits: Each room reservation must be prepaid by a credit card or check in the amount of the first night's room and tax. The room rate will be $200 plus occupancy tax per night. Deposit will be required at time of booking.
3. Check-in time is 3:00 pm and check-out time is 11:00 am.
4. Cancellation Policy: Reservations must be canceled 7 days prior to arrival to receive a full refund. Cancellation within the 7-day period will result in forfeiture of your deposit.
5. All reductions to a guest's stay must be received 48 hours or more prior to arrival. If a reduction is made within 48 hours of arrival, the guest will be required to pay for the original length of stay.
6. "No shows" will be charged the contracted nightly rate for each night the reserved room is not occupied by the individual, up to and including the entire length of stay.
7. Early departures and/or late arrival will be charged the contracted nightly rate for each night the reserved room is not occupied by the individual, up to and including the entire length of stay.

Complete the information on this form and send to the Tenaya Lodge by fax or mail. Online reservations accepted. Telephone reservations not accepted. DO NOT MAIL THIS FORM TO THE STATE BAR.

GUEST INFORMATION:

Name: _____

Sharing With: _____

Number of Persons in Room: _____ Date of Arrival: _____

(To avoid duplicate reservations, if sharing a room only one should complete form)

Date of Departure: _____

Firm/Organization: _____

Address: _____

City, State, Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

TYPE OF ACCOMMODATIONS:
(i.e. King, Double, etc. All are on request only.)

_____

SPECIAL NEEDS:
(i.e. wheelchair accessible, pet friendly room, outdoor access for smoking, etc.)

_____

DEPOSIT:
I authorize the Tenaya Lodge to use my credit card for my hotel reservation.

❑ American Express ❑ Diners Club ❑ Discover ❑ MasterCard ❑ VISA

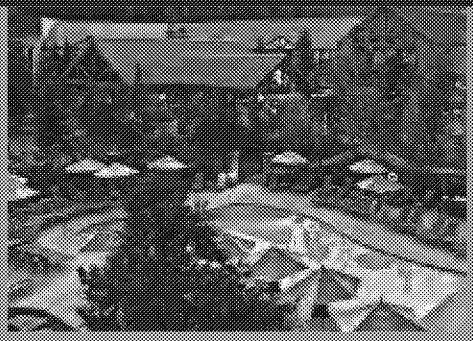
Account Number: _____

Expiration Date: _____

Cardholder's Name: _____

Cardholder's Signature: _____

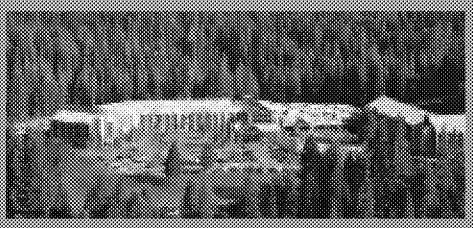
If you have not received a confirmation letter within 1 week, please call the Tenaya Lodge at 559-683-6555.



To book online go to www.tenayalodge.com and enter the

Group Code: 30V99C

FOR ONLINE RESERVATIONS ONLY



Alternate Accommodations Near the Conference Location

The Environmental Law Conference at Yosemite® will be held at the Tenaya Lodge, located in the town of Fish Camp, two miles outside the southern entrance to Yosemite National Park. Although it will be more convenient to stay at the host facility, some attendees may choose to stay elsewhere. Following is a list of alternative accommodations located near the entrance. Keep in mind that Bass Lake and Oakhurst are approximately fourteen miles away.

Fish Camp	
Narrow Gauge Inn	(559) 683-7720
Bass Lake	
Pines Resort and Chalets	(559) 642-3121
Oakhurst	
Oakhurst Lodge	(559) 683-4417
Shilo Inn	(888) 260-7733
Yosemite Gateway, Best Western	(559) 683-2378
Yosemite National Park	
Big Trees Lodge	(888) 413-8869
National Park Camping	(800) 436-7275
Rush Creek Lodge	(209) 379-2373
The Redwoods Cottages	(209) 375-6666
Yosemite West Condominiums	(800) 640-9099
Martin Lively Vacation Rentals	(209) 375-6554
Inside Yosemite Park	

ED_0011318_00006787-00012

2016 Registration Information

Conference Registration—deadline OCTOBER 13, 2016
The Environmental Law Conference at Yosemite® is a popular event that sells out in advance. Conference registration fees are $525 for Section Members (or $610 for non-Section members, which includes one year of Section Membership); $395 for Section members employed by government or non-profit agencies; and $295 for law students. The fee includes educational programs, USB drive, three (3) continental breakfasts and two (2) receptions. Registration is limited and will be on a first-come first-served basis. File the Program Registration Form and Course Selector as soon as possible, but not later than **October 13, 2016.** Mail: Program Registrations, The State Bar of California, 180 Howard Street, San Francisco CA 94105-1639, FAX: (415) 538-2368. Register Online: http://environmental.calbar.ca.gov.

Guests Non-Attorney spouse/guests are complimentary, but seats in education classes are reserved for paid registrants only. Guests who are attorneys must complete a separate registration form and pay the appropriate fee.

Cancellations—deadline Oct. 13, 2016
A refund (less a non-refundable fee of $50) will be made for all registration and/or ticket cancellations received in writing by October 13, 2016. Refunds will not be made for cancellations after **October 13, 2016.**

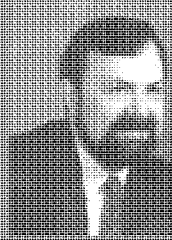
Special Assistance and Registration Information For special assistance please call (415) 538-2582. For registration-related questions call (415) 538-2508.

Hotel Reservations Deadline —September 19, 2016 Each registrant is responsible for his or her own hotel reservation. A limited number of rooms have been reserved at Tenaya Lodge at Yosemite at the rate of $200 single/double occupancy per night plus tax. For reservations, complete the hotel form on the previous page, or book online. Reservations are made directly with the hotel by mail, fax or online. Telephone reservations are not accepted. Online reservations can be made at www.tenayalodge.com.
USE CODE 30V99C.

Kids Kamp The Tenaya Lodge at Yosemite will offer Kids Kamp. Activities include arts and crafts, games, and outdoor play under the supervision of qualified counselors. Reservations required 72 hours in advance. Contact the Guest Experience Center at (800) 635-5807 to make reservations. Be sure to alert staff to special education or dietary needs. Kids Kamp is available on Friday, Saturday and Sunday, from 8:00 AM to 1:30 PM. Children's activities via Kids Kamp will be held Saturday from 6:00 PM to 10 PM.

Outdoor Activities in Yosemite
There are a number of activities that the Tenaya Lodge can coordinate for the entire family. For questions or to book activities, contact Tenaya Lodge Concierge Department at (888) 514-2167, www.tenaylodge.com. Note: there is a 24-hour cancellation policy on all activities.

Scholarship information—The 2016 Yosemite Scholarships Have Been Awarded



The State Bar Environmental Law Section is pleased to offer the **Michael H. Remy Scholarship** in his memory. Many years of private practice, Michael Remy represented a wide variety of public and private clients, as well as nonprofit organizations. Michael assisted large corporations and small entrepreneurs alike in complex permitting and environmental matters throughout the state. Many counties, cities, and special districts relied on Remy's counsel in the processing, settlement and review and litigation of large and small projects. Some of his most enduring environmental accomplishments were leading the successful political and legal efforts to shut down the San Onofre Nuclear Power Plant and representing the Sierra Club and William Hewlett against the conversion of Marble Cañon to a recreational resort by the Square Valley Ski Corporation. In 1989, the Environmental Council of Sacramento named Remy "Environmentalist of the Year." Remy was widely admired and loved by his colleagues, friends and family, who regarded him as a man of extraordinary intelligence, personal integrity, kindness, and generosity. Remy's warm presence is sorely missed by everyone at Remy Moose Manley LLP but even in his absence, his memory continues to provide guidance and inspiration.

This scholarship, sponsored by Remy Moose Manley, LLP, in memory of former Environmental Law Section member and advocate, Michael H. Remy, includes tuition, travel and room for the 2016 Environmental Law Conference at Yosemite. Five (5) scholarships were awarded.

Tuition Only Scholarships

The Environmental Law Section provides more than 20 tuition-only scholarships to attend the 2016 Environmental Law Conference at Yosemite.

The Section thanks the following for their contribution to the 2016 Yosemite Conference Scholarship program.

Alameda Environmental Law
Beatrice Hawley Law Group
Cardwell Leslie
Chatten-Brown & Carstens LLP
Ellis, Scott & Nance
Hanson Gravelle & Adair LLP
Jeffer Mangels Butler & Mitchell LLP
Law Office of Gideon Kanner
Lozeau Drury LLP
Marine Toursim
McLane Bounds LLP
Meyers Nave
Remy Moose Manley LLP
SL Law Group
Silicon Valley Law Group
Solano Press Books
Stuart Messner
The Sawyer Families
The Schlegel Law Group
Warner & Weck LLP

ED_0011318_00006787-00013

October 20-23, 2016, Tenaya Lodge at Yosemite
2016 Environmental Law Conference at Yosemite®

Pre-Registration Deadline: Received by October 13th

3 Ways to Register!

(Please keep a copy of your forms)

1. Online: Register online at http://environmental.calbar.ca.gov
2. Fax: Complete the Registration and Course Selector forms and fax to: Program Registrations at (415) 538-2368. Credit card payments only. Do not mail original form if faxing.
3. Mail: Complete the Registration and Course Selector forms and mail to Program Registrations, The State Bar of California, 180 Howard Street, San Francisco, CA 94105

Note: One registrant per form. Photocopies may be used.

Bar Number: _____

First/Last Name: _____

Firm: _____

Firm Address: _____

City, State: _____ Zip: _____

Phone Number: _____

E-mail Address:* _____

* Required for email confirmation

❑ Check here if you do not want your information released.

Non-Attorney Spouse/Guest(s) Name:

_____

Registration Fees:

❑ Environmental Law Section Members	$525
❑ Environmental Law Section Members employed by Government or Non-Profit Agencies	$395
❑ Law Student Rate	$295
❑ Non Environmental Law Section Members* (*$85 of the non-member registration fee will be credited to 2017 Section membership dues.)	$610

For Registration Information Call (415) 538-2508

Ticketed Events:

Thursday, October 20, 2016

❑ [28] Thursday Welcome Reception # Attending _____ FREE

Friday, October 21, 2016

❑ [29] Continental Breakfast # Attending _____ FREE

Saturday, October 22, 2016

❑ [30] Continental Breakfast # Attending _____ FREE

❑ [31] Saturday Pre-Dinner Reception # Attending _____ FREE

❑ [32] Saturday Banquet (Adults) _____ @ $60 each = _____

❑ [33] Saturday Banquet (Children) _____ @ $35 each = _____

Please Select Entree Choice:

❑ [34] Beef ❑ [35] Fish ❑ [36] Vegetarian

❑ [37] Dessert Reception # Attending _____ FREE

Sunday, October 23, 2016

❑ [38] Continental Breakfast # Attending _____ FREE

Commemorative T-Shirt (while supplies last) :

❑ [39] Adult XLarge $20 ea ❑ [40] Adult Large $20 ea

❑ [41] Adult Med $20 ea ❑ [42] Adult Small $20 ea

❑ [43] Child Large $15 ea ❑ [44] Child Med $15 ea

❑ [45] Child Small $15 ea

Registration Total = _____

Ticketed Events = _____

TOTAL AMOUNT ENCLOSED OR TO BE CHARGED $ _____

Payment Method:

Registration fees may be paid by check, VISA or MasterCard. No other credit cards will be accepted. Make checks payable to The State Bar of California.

❑ VISA ❑ MasterCard

Account Number: _____

Expiration Date: _____

Cardholder's Name: _____

Cardholder's Signature: _____

ED_0011318_00006787-00014

October 20-23, 2016, Tenaya Lodge at Yosemite
2016 Environmental Law Conference at Yosemite®

Listed below are the MCLE sessions for the 2016 Conference. Pre-register to ensure a seat. Keep this form with your Program Registration.

Name:_____

Bar # _____

FRIDAY OCTOBER 21, 2016

8:00 am-9:00 am .75 Hour MCLE Credit

- ❑ Session 1 Friday General Session—**Jonathan B. Jarvis**

9:15 am-10:45 am 1.5 Hours MCLE Credit

- ❑ Session 2: The Rising Trend of Comprehensive Environmental Enforcement in California: Latest Developments in Administrative, Civil and Criminal Actions
- ❑ Session 3: Oil and Gas Production and Use in California: Past, Present and Future
- ❑ Session 4: Storage, Conservation and System Optimization: What Is Most Needed for California's Future?
- ❑ Session 5: Proposition 65: Recent Developments and Regulatory Reforms

11:00 am-12:30 pm 1.5 Hours MCLE Credit

- ❑ Session 6: California's Clean Energy and Pollution Reduction Act of 2015: What's Next for SB 350?
- ❑ Session 7: The California Supreme Court and Environmental Law
- ❑ Session 8: Irrigated Lands and the Challenge of Improving Groundwater Quality
- ❑ Session 9: Flint—Could it Happen Here? Is it Happening Here?

SATURDAY OCTOBER 22, 2016

8:00 am-9:30 am 1.5 Hours MCLE Credit

Note: Sessions begin at 8:00 am on Saturday.

- ❑ Session 10: The Emerging Importance of Methane in Greenhouse Gas Regulation
- ❑ Session 11: CEQA Update: A Perennial Favorite
- ❑ Session 12: The Bay-Delta Water Quality Control Plan: Lodestar or Overload?
- ❑ Session 13: Vapor Intrusion: Current Regulatory Status and Implications of the New Short-Term Trichloroethylene (TCE) Screening Levels

9:45 am-11:15 am 1.5 Hours MCLE Credit

- ❑ Session 14: New California Environmental Legislation—The Latest from Sacramento
- ❑ Session 15: Will the Clean Power Plan Awaken?
- ❑ Session 16: Perspectives on the History, Successes and Challenges for the Tahoe Regional Planning Agency
- ❑ Session 17: The Department of Toxic Substances Control: A Conversation with Director Barbara A. Lee

11:30 am-12:30 pm .75Hours MCLE Credit

- ❑ Session 18 Satuday General Session—**Barbara Boxer**

SUNDAY OCTOBER 23, 2016

8:00 am-9:00 am .75 Hour MCLE Credit

- ❑ Session 19 Sunday General Session—**John Cruden**

9:15 am-10:45 am 1.5 Hours MCLE Credit

- ❑ Session 20: Recent Environmental Law Developments in the U.S. Supreme Court and Ninth Circuit Court of Appeals
- ❑ Session 21: CEQA and the People's Voice: Developer Ballot Measures
- ❑ Session 22: The Coastal Act at 40 and the State of the California Coastal Commission
- ❑ Session 23: Recent Developments at California Air Districts

11:00 am-12:30 pm 1.5 Hours MCLE Credit

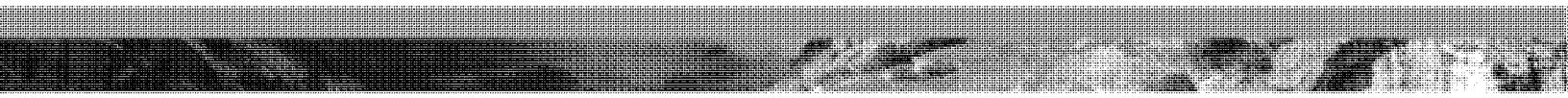
- ❑ Session 24: Climate Change and International Law—What's Next After Paris?
- ❑ Session 25: CEQA Practitioner Roundtable: Help! What now? Approaches for Analyzing Climate Change Impacts
- ❑ Session 26: Water Rights Reforms—Are Changes Needed to Our Water Rights and Pricing Systems?
- ❑ Session 27: Environmental and Economic Impacts of California's Bold New Cannabis Future

ED_0011318_00006787-00015

The State Bar of California
The Environmental Law Section
180 Howard Street
San Francisco, CA 94105-1639

First Class PRSRT Mail
U.S. Postage
PAID
Documation

MIX
Paper from responsible sources
FSC
www.fsc.org
FSC® C102514

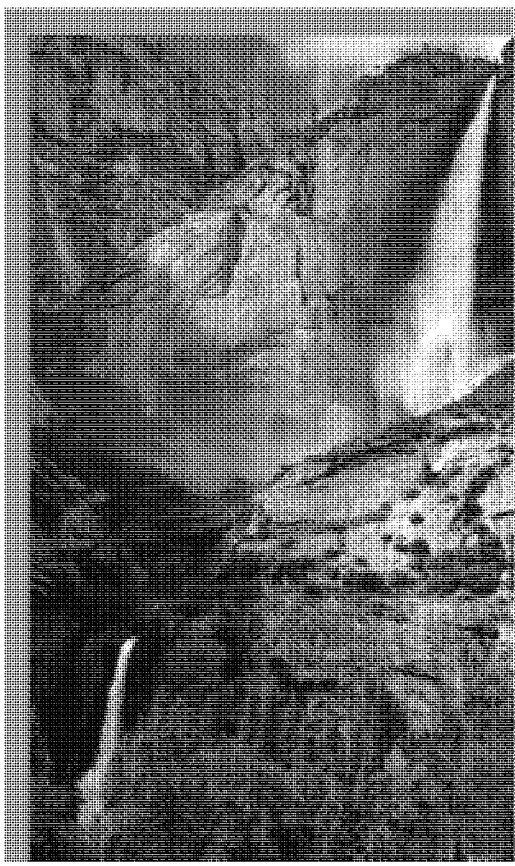


THE STATE BAR OF CALIFORNIA ENVIRONMENTAL LAW SECTION

2016 Environmental Law Conference at Yosemite®

Thank you to our 2016 Conference Sponsors.

AEI Consultants
Antea Group
Ascent Environmental, Inc.
Barg Coffin Lewis & Trapp, LLP
Bick Law LLP
Bogle Vineyards
Brandt-Hawley Law Group
Brownstein Hyatt Farber Schreck
Burke Williams & Sorensen
Caldwell Leslie & Proctor PC
Castellon & Funderburk LLP
Cotchett, Pitre& McCarthy, LLP
Cox Castle & Nicholson LLP
Downey Brand LLP
Dudek
Edgcomb Law Group
EEC Environmental
Flette, Norm and Nancy
Gannett Fleming, Inc.
Gibson Dunn & Crutcher
Gideon Kracov, Attorney at Law
Greenberg Glusker LLP
Gresham Savage Nolan & Tilden, PC
Hanson Bridget LLP
Hinson Gravelle & Adair LLP
Holland & Knight
Integral Consulting Inc.
JefferMangels Butler & Mitchell LLP
Law Office of Jennifer Novak
KP Public Affairs
Kronick Moskovitz Tiedeman & Girard
Langan
Lozeau Drury, LLP
Marilee Hanson
McGuireWoods LLP
Meyers Nave
PC Law Group
Pillsbury Winthrop Shaw Pittman LLP
Ramboll Environ
Remy Moose Manley, LLP
Rossmann and Moore, LLP
Roux Associates, Inc.
SCS Engineers
The Sawyer Families
Skadden, Arps, Slate, Meagher & Flom LLP
Shute, Mihaly & Weinberger LLP
Silicon Valley Law Group
The Sohagi Law Group
Solano Press Books
Soluri Meserve
Stoel Rives LLP
SWAPE
Terra Petra Environmental Engineering
Terraphase Engineering Inc.
TetraTech
The Freshwater Trust
University of the Pacific, McGeorge School of Law
Wactor and Wick LLP
West, a Thomson Reuters Business
Wilson Vineyards



Message

From: Kime, Robin [Kime.Robin@epa.gov]
Sent: 6/5/2017 8:18:42 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]
Subject: Thank you from NWPPA
Attachments: 2017_EPA B. Bolen (ID 492).docx; 2017_EPA S. Dravis (ID 494).docx; 2017_EPA J. Schwab (ID 493).docx

Hi
I am passing along to you the attached incoming thank you letters from NWPPA.

From: Elizabeth K. Whitney [mailto:Elizabeth@meguirewhitney.com]
Sent: Monday, June 05, 2017 4:05 PM
To: Kime, Robin <Kime.Robin@epa.gov>
Subject: Thank you from NWPPA

Hello Robin,

Thanks so much for your assistance setting up a meeting between Samantha Dravis, Justin Schwab, and Brittany Bolen and the Northwest Public Power Association when they were here in April. Attached please find thank you notes for each of the staff that I hope you can assist in routing to the appropriate person.

Please let me know if you have any questions, and thanks again!

Elizabeth K. Whitney
Managing Principal | Meguire Whitney LLC
Ex. 6 - Personal Privacy

NWPPA
Northwest Public Power Association

9817 N.E. 54th Street Vancouver, Washington 98662-0576
(360) 254-0109 FAX (360) 254-5731
E-mail: nwppa@nwppa.org
Web Site: www.nwppa.org

May 19, 2017

Brittney Bolen
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Suite # 4000
Washington, D.C. 20004

Dear Ms. Bolen:

On behalf of the Northwest Public Power Association (NWPPA), I would like to thank you for taking the time to meet with NWPPA representatives during our April 24-26 legislative conference in Washington, D.C.

As we discussed, NWPPA appreciates the President's leadership in reviewing the Clean Power Plan and Waters of the U.S. regulations. NWPPA welcomes the opportunity to host listening sessions in the Northwest region or facilitate focus groups of our member utilities as EPA develops plans for fulfilling the recent Executive Orders relating to these and other environmental regulations. Please do not hesitate to contact me to make these arrangements.

NWPPA is an association of 154 public/people's utility districts, electric cooperatives, and municipalities in nine Western states and one Canadian province. These utilities employ some 20,000 people and serve approximately five million homes. We value the relationship we have with your agency, and hope we can be a resource to on electric utility issues as you advance these and other policy priorities.

Again, thank you for your time and consideration. We look forward to working with you on these issues important to the West.

Sincerely,

Anita Decker
Executive Director

ED_0011318_00006792-00001

NWPPA
Northwest Public Power Association

9817 N.E. 54th Street Vancouver, Washington 98662-0576
(360) 254-0109 FAX (360) 254-5731
E-mail: nwppa@nwppa.org
Web Site: www.nwppa.org

May 19, 2017

Justin Schwab
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Suite # 4000
Washington, D.C. 20004

Dear Mr. Schwab:

On behalf of the Northwest Public Power Association (NWPPA), I would like to thank you for taking the time to meet with NWPPA representatives during our April 24-26 legislative conference in Washington, D.C.

As we discussed, NWPPA appreciates the President's leadership in reviewing the Clean Power Plan and Waters of the U.S. regulations. NWPPA welcomes the opportunity to host listening sessions in the Northwest region or facilitate focus groups of our member utilities as EPA develops plans for fulfilling the recent Executive Orders relating to these and other environmental regulations. Please do not hesitate to contact me to make these arrangements.

NWPPA is an association of 154 public/people's utility districts, electric cooperatives, and municipalities in nine Western states and one Canadian province. These utilities employ some 20,000 people and serve approximately five million homes. We value the relationship we have with your agency, and hope we can be a resource to on electric utility issues as you advance these and other policy priorities.

Again, thank you for your time and consideration. We look forward to working with you on these issues important to the West.

Sincerely,

Anita Decker
Executive Director

ED_0011318_00006793-00001

NWPPA
Northwest Public Power Association

9817 N.E. 54th Street Vancouver, Washington 98662-0576
(360) 254-0109 FAX (360) 254-5731
E-mail: nwppa@nwppa.org
Web Site: www.nwppa.org

May 19, 2017

Samantha Dravis, Associate Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Suite # 4000
Washington, D.C. 20004

Dear Ms. Dravis:

On behalf of the Northwest Public Power Association (NWPPA), I would like to thank you for taking the time to meet with NWPPA representatives during our April 24-26 legislative conference in Washington, D.C.

As we discussed, NWPPA appreciates the President's leadership in reviewing the Clean Power Plan and Waters of the U.S. regulations. NWPPA welcomes the opportunity to host listening sessions in the Northwest region or facilitate focus groups of our member utilities as EPA develops plans for fulfilling the recent Executive Orders relating to these and other environmental regulations. Please do not hesitate to contact me to make these arrangements.

NWPPA is an association of 154 public/people's utility districts, electric cooperatives, and municipalities in nine Western states and one Canadian province. These utilities employ some 20,000 people and serve approximately five million homes. We value the relationship we have with your agency, and hope we can be a resource to on electric utility issues as you advance these and other policy priorities.

Again, thank you for your time and consideration. We look forward to working with you on these issues important to the West.

Sincerely,

Anita Decker
Executive Director

ED_0011318_00006794-00001

Message

From: Hupp, Sydney [hupp.sydney@epa.gov]
Sent: 5/9/2017 12:39:05 AM
To: Schwab, Justin [schwab.justin@epa.gov]
CC: Jackson, Ryan [jackson.ryan@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Brown, Byron [brown.byron@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Greenwalt, Sarah [greenwalt.sarah@epa.gov]
Subject: Re: RE:

How long do you need for the meeting?

Sent from my iPhone

On May 8, 2017, at 8:34 PM, Schwab, Justin <schwab.justin@epa.gov> wrote:

> Working on the new draft and will circulate to the attached list when it is ready. It should be ready soon.
>
> **From:** Jackson, Ryan
> **Sent:** Monday, May 8, 2017 8:34 PM
> **To:** Schwab, Justin <schwab.justin@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
> **Cc:** Hupp, Sydney <hupp.sydney@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>
> **Subject:**
>
> We need to get back on the Administrator's calendar for Wednesday afternoon or Thursday morning to talk CPP. Syd, are there meeting we can bump?
>
> However, we need the new streamlined plan to present when we do it.
>
> Ryan Jackson
> Chief of Staff
> U.S. Environmental Protection Agency
> Ex. 6 - Personal Privacy

Message

From: Bolen, Brittany [bolen.brittany@epa.gov]
Sent: 4/21/2017 2:34:14 PM
To: Hupp, Sydney [hupp.sydney@epa.gov]
CC: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: RE: Meeting Staffing and Briefings

Hey Sydney – thanks for circulating. I've added Sam and I to a couple meetings we've been covering (highlighted below).

From: Hupp, Sydney
Sent: Friday, April 21, 2017 9:31 AM
To: Bangerter, Layne <bangerter.layne@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Freire, JP <Freire.JP@epa.gov>; Graham, Amy <graham.amy@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Hale, Michelle <hale.michelle@epa.gov>; Hupp, Millan <hupp.millan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Konkus, John <konkus.john@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Martin, JohnC <Martin.JohnC@epa.gov>; Munoz, Charles <munoz.charles@epa.gov>; Perrotta, Pasquale <Perrotta.Pasquale@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Wagner, Kenneth <wagner.kenneth@epa.gov>; Willis, Sharnett <Willis.Sharnett@epa.gov>; Woodward, Cheryl <Woodward.Cheryl@epa.gov>
Subject: Meeting Staffing and Briefings

Good morning everyone! So I am going to start sending out a list of upcoming meetings/ speaking engagements and asking that you put yourselves in them as you see fit based off of topic and attendees. Normally I will send this list in conjunction with the daily LXL but since I have several holes needing filled in the LXL for next week I will send that out by COB today. Please write back to me separately ASAP the meetings that you or someone you designate from your team should be added to.

Thank you!

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Sydney Hupp
Office of the Administrator- Scheduling
Ex. 6 - Personal Privacy

Message

From: Bolen, Brittany [bolen.brittany@epa.gov]
Sent: 4/19/2017 7:53:08 PM
To: Kime, Robin [Kime.Robin@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]
Subject: RE: Request from Northwest Public Power Association for appointment April 25-26 2017 (via Pugh)

Yes. I know Teresa. Would be good if we could fit in 30 mins.

From: Kime, Robin
Sent: Wednesday, April 19, 2017 3:52 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Request from Northwest Public Power Association for appointment April 25-26 2017 (via Pugh)

Hi,
The calendar is filling up but/and I'm thinking you may want to take this next week. Thoughts?

From: Kime, Robin
Sent: Wednesday, April 19, 2017 3:50 PM
To: theresapughconsulting@gmail.com; elizabeth@morganwhitney.com
Subject: Request from Northwest Public Power Association for appointment April 25-26 2017 (via Pugh)

Hi Theresa,
I hope you are well. My apologies for the extended delay in our response. I will get back to you tomorrow with respect to this request. I appreciate your help and patience.
Thanks very much and take care.
Robin

From: Theresa Pugh [mailto:theresapughconsulting@gmail.com]
Sent: Wednesday, April 19, 2017 2:02 PM
To: Inge, Carolyn <inge.Carolyn@epa.gov>
Cc: elizabeth@morganwhitney.com
Subject: Request from Northwest Public Power Association for appointment April 25-26 2017 (via Pugh)

Dear Ms. Inge:
This note follows our conversation a few minutes ago. I am writing to see if a meeting with Ms. Dravis is possible during any available opening on April 25-26 for Ms. Anita Decker while she is in Washington, DC. The original note to Ms. Graham, External Affairs, is below. We have not gotten a response from Ms. Graham. I am following up with you because I understand the request was sent to your office. I realize you are inundated with appointment requests.

The letter below clearly explains who Northwest Public Power Association is and what their air and water issues are.

I am managing the logistics for the meeting as a consultant. I can be reached at Ex. 6 - Personal Privacy

Thank you,

Theresa Pugh
Theresa Pugh Consulting, LLC
www.theresapughconsulting.com
Ex. 6 - Personal Privacy

From: Theresa Pugh [mailto:theresapughconsulting@gmail.com]
Sent: Thursday, April 6, 2017 1:02 PM
To: Graham.amy@epa.gov
Cc: dewey.amy@epa.gov; Elizabeth K. Whitney <Elizabeth@meguirewhitney.com>
Subject: Request from Northwest Public Power Association for appointment April 25-26 2017 (via Pugh)

Ms. Amy Graham
Deputy Associate Administrator for Public Engagement
U. S. EPA

Dear Amy:

Good afternoon. I am following up on your outreach to me yesterday regarding clients who might want to meet with Administrator Pruitt, you or other key political appointees.

I am writing today on behalf of **Northwest Public Power Association (NWPPA)'s Executive Director Anita Decker**. Anita will be in Washington D, C. from Washington state on **April 25-26, 2017**. She would like to meet with Administrator Pruitt, you or other political appointees who are assigned to work on electric utility issues of interest to NWPPA.

NWPPA is an electric utility association in the Pacific Northwest representing 151 hydroelectric, nuclear power and natural gas electric utilities (municipal and electric coops) affected by EPA regulations including some that are going to be revisited under recent Executive Orders. Their membership involves many electric utilities (municipal and coop) that would be affected by EPA regulations across several states in the Northwest—not just those in Washington state. **NWPPA's member utilities serve 20 million customers making it one of the largest electric utility organizations in the western part of the United States.**

In specific they are interested in the following:

- **Waters of the US – next steps (realizing it has been addressed in the Executive Order)**
- **Clean Power Plan review and replacement (they are aware of the Executive Order action last week)**
- **General EPA priorities related to the electric power sector**

A link to the NWPPA organization is https://www.nwppa.org/about-nwppa/ and board information at https://www.nwppa.org/about-nwppa/nwppa-board-of-trustees/

The NWPPA attendees at an EPA meeting on April 25 or 26 would include:

Anita Decker
Executive Director
NWPPA
Vancouver, WA

Nicole Case
Legislative Affairs Consultant
NWPPA

Elizabeth K. Whitney
Managing Principal
Meguire Whitney, LLC
Washington, D. C.

Four members of the NWPPA Board of Directors (to be determined by NWPPA based upon their Hill visits and the timing of the EPA meeting)

Please note that they have rather recently met with career staff at EPA. Their desire is to meet with you, Ms. Dravis, or others on board who are discussing policy options with Administrator Pruitt if he is not available. They do not mean to be disrespectful of career staff but are of the view that they would like to meet with Administrator Pruitt or those that he is working on directly with the new directions affecting these rules and policies. *Of course, they understand if Mr. Pruitt or your political appointees team want career staff in the meeting as well.*

Ms. Elizabeth Whitney, Managing Principal of Meguire Whitney, is the primary Washington, D. C. representative for NWPPA is copied on this request. However, she would like me to work with you on any logistical arrangements for the meeting. I am authorized by her firm to reach out to EPA.

With appreciation for your outreach,

Theresa Pugh

Theresa Pugh Consulting, LLC
2313 North Tracy Street
Alexandria, VA 22311
Ex. 6 - Personal Privacy
www.theresapughconsulting.com

Message

From: Kysar, Doug [douglas.kysar@yale.edu]
Sent: 4/7/2017 4:51:51 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: Re: Invitation to guest lecture at Yale School of Management

Dear Samantha,
I thought I would follow up to see whether you've been able to get a green light. I and my students would love to have you visit. If there are any particular restrictions needed (e.g., no audio/videotaping, no non-registered students) we are more than happy to accommodate you. I know this is an extremely busy time but we very much hope you can make it.
Warmly,
Doug

From: "Dravis, Samantha" <dravis.samantha@epa.gov>
Date: Wednesday, March 8, 2017 at 6:55 PM
To: Douglas Kysar <douglas.kysar@yale.edu>
Subject: Re: Invitation to guest lecture at Yale School of Management

Doug, I very much appreciate the invite. Let me run the traps with our ethics office and internal folks. All the best to you!

Samantha

Sent from my iPhone

On Mar 8, 2017, at 5:08 PM, Kysar, Doug <douglas.kysar@yale.edu> wrote:

> Resending to your EPA address. All best, Doug Kysar
>
> ---
>
> **From:** Douglas Kysar <douglas.kysar@yale.edu>
> **Date:** Tuesday, March 7, 2017 at 11:14 AM
> **To:** Ex. 6 - Personal Privacy
> **Subject:** Invitation to guest lecture at Yale School of Management
>
> Dear Ms. Dravis,
>
> Congratulations on your recent appointment at EPA! I am writing in hopes that your busy schedule might permit you to come participate in a course I am teaching at the Yale School of Management. The course is on climate change law and policy and is offered for executive MBA students. We have a talented and engaging group of mid career students from companies such as Halliburton, Rio Tinto, British Petroleum, and others. On Friday April 21 between 9 am – 12:00 pm we are scheduled to discuss the fate of the Clean Power Plan and other domestic policy issues. It would be a wonderful benefit to us if you were able to join us for all or part of the conversation. We would, of course, pay your reasonable travel expenses.
>
> Fingers crossed,
> Doug Kysar
>
> **********
> Douglas A. Kysar
> Joseph M. Field '55 Professor of Law
> Yale Law School
> 127 Wall Street
> New Haven, CT 06511
> Ex. 6 - Personal Privacy

douglas.kysar@yale.edu
****

Message

From: Bolen, Brittany [bolen.brittany@epa.gov]
Sent: 3/31/2017 1:53:18 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: RE: U.S. EPA Notice: Letter from Administrator Pruitt to the Governors regarding the Status of the Clean Power Plan

Thanks. Let me know if what Byron says.

From: Dravis, Samantha
Sent: Friday, March 31, 2017 9:50 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: FW: U.S. EPA Notice: Letter from Administrator Pruitt to the Governors regarding the Status of the Clean Power Plan

---

From: Bennett, Tate
Sent: Thursday, March 30, 2017 5:39 PM
To: Bennett, Tate <Bennett.Tate@epa.gov>
Subject: U.S. EPA Notice: Letter from Administrator Pruitt to the Governors regarding the Status of the Clean Power Plan

Good evening!

Today, Administrator Scott Pruitt sent identical letters to 47 Governors (not including Alaska, Hawaii, and Vermont) describing EPA's posture regarding the status of the Clean Power Plan in light of the Supreme Court's February 9, 2016, stay. Attached is a sample of the letter.

Best Regards,

Tate

Elizabeth Tate Bennett
Sr. Advisor to the Administrator
Office of Congressional and Intergovernmental Affairs
U.S. Environmental Protection Agency

Message

From: Shea, Quin [QShea@eei.org]
Sent: 3/27/2017 8:47:11 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
CC: Hupp, Millan [hupp.millan@epa.gov]
Subject: Following Up on EEI Board Meeting
Attachments: CasesList_032717_Final.docx

Samantha: Thanks again for efforts by you, Millan and others on the EPA team in arranging for Administrator Pruitt to address the EEI Board of Directors. The Administrator's remarks were extremely well received and provided ample food for thought going forward. In that vein, during the Q&A session the Administrator requested a list of current and pending milestones in cases impacting EEI's members. An initial list is attached. Importantly, it focuses on items that EEI has traditionally engaged and/or where industry unanimity has been established. Individual EEI member companies may supplement this list with additional priorities related to their local operations.

I hope you find this note responsive to the Administrator's request. I will follow up with you relative to this and other matters we discussed at the EEI meeting.

Quinlan J. Shea, III (Quin)
Vice President, Environment
Edison Electric Institute
701 Pennsylvania Avenue, NW
Washington, DC 20004
Ex. 6 - Personal Privacy
qshea@eei.org

Currently Active EPA Cases

Air

Arkansas v. EPA – Regional Haze FIP, 8th Circuit. Nos. 16-4270 et al.

- Currently held in abeyance; reconsideration petition proceeding pending

Texas v. EPA – Regional Haze FIP, 5th Cir. No. 16-60118.

- Stay granted, remanded to EPA for reconsideration; stay remains in place, although status report on stay required from EPA in April

Utah v. EPA – Regional Haze FIP, 10th Cir. Nos. 16-9541, et al.

- Petitioners have filed opening briefs (March 10 and 17, 2017)

Wyoming v. EPA – Regional Haze FIP, 10th Cir. Nos. 14-9529, 14-9530, 14-9533 and 14-9534.

- Stay granted, briefing completed and oral argument not yet scheduled. Settlement of one of the cases, No. 14-9533, proposed and comment period closed; EPA deadline to take action on proposed settlement is April 3, 2017

Texas v. EPA – Regional Haze Rule, D.C. Cir. No. 17-1021.

- Petitions for review filed

West Virginia v. EPA – Clean Power Plan, D.C. Cir. Nos. 15-1363, et al.

- Oral argument completed, awaiting decision or further motions, motions to consolidate challenges to denial of reconsideration petitions pending

North Dakota v. EPA – New Source Standard, D.C. Cir. Nos. 15-1381, et al.

- Briefing completed, oral argument scheduled for April 17, 2017

Murray Energy v. EPA – Ozone NAAQS, D.C. Cir. No. 15-1385.

- Briefing completed, oral argument scheduled for April 20, 2017

Wisconsin v. EPA – CSAPR Update Rule, D.C. Cir. No. 16-1406.

- Petitions for review filed

Utility Air Regulatory Group v. EPA – CSAPR > BART Rule, D.C. Cir. No. 12-1342.

- Briefing completed, oral argument not yet scheduled

Murray Energy v. EPA & *ARIPPA v. EPA* – MATS Cost Considerations & Reconsideration Denial, D.C. Circuit. Nos. 16-1127 & 15-1180 et al.

- Briefing completed, oral argument scheduled for May 18, 2017

Center for Biological Diversity v. EPA – NO_2 NAAQS Deadline Suit, 3:16-cv-03796-VC (N.D. Cal.).

- Settled, requires EPA to propose a rule by July 14, 2017 and finalize by April 16, 2018

Sierra Club v. EPA – Kentucky 2008 Transport Deadline Suit, 3:14-cv-03985-JD (N.D. Cal.).

- Motion for summary judgment hearing held March 23, 2017

Walter Coke, Inc. v. EPA – SSM SIP Call, D.C. Cir. No. 15-1166.

- Briefing completed, oral argument scheduled for May 8, 2017

Solid Waste

USWAG v. EPA – Coal Combustion Residuals, D.C. Cir. No. 15-1219.

- Briefing completed, oral argument not yet scheduled

American Petroleum Institute v. EPA – Definition of Solid Waste, D.C. Cir. Nos 09-1038, et al.

- Oral Argument completed, awaiting decision

Water

In re EPA-Corps WOTUS Rule – WOTUS, 6th Cir. Nos. 15-3799, et al.

- Being held in abeyance since the Supreme Court accepted cert on jurisdictional question for the October, 2017 term

SWEPCO v. EPA – ELGs, 5th Cir. Nos. 15-60821, et al.

- Briefing is ongoing, EPA recently received a 30 day extension on its response, oral argument anticipated fall 2017; Petitioners have sought administrative stay and reconsideration

Cooling Water Intake Structures Coalition v. EPA – Cooling Water Intake Structures, 2nd Cir. Nos. 14-4645, et al.

- Briefing completed, oral argument not yet scheduled

Miscellaneous

Title V Petitions

Enforcement cases and related penalties and settlements

Various NSR Cases

Other Cases Relevant to EPA, but where EPA is Not the Lead Agency:

Endangered Species

NRDC v. Sobeck – Blueback Herring listing decision, No. 1:15-cv-00198-RDM (D.D.C.).

CBD+DOW v. Ashe, Northern Long-Eared Bat, Nos. 1:15-cv-00477+910 (D.D.C).

EWAC v. U.S. Dep't of the Interior, Incidental Take of Eagles, No. 1:15-cv-1486 (D.D.C.).

Alabama v. National Marine Fisheries Service, Critical Habitat, 1:16-cv-00593 (S.D. Ala.)

Message

From: Chuck Cunningham [chuckc@visi.net]
Sent: 3/23/2017 8:29:47 PM
To: Benton, Donald [benton.donald@epa.gov]
CC: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: RE: Meeting on 28th with Chuck Cunningham and SAFE Board of Directors
Attachments: Transition EPA Memo 2017-01-09.pdf

Don, much thanks for this introduction.

Samantha, I look forwarding to meeting and working with you on EPA issues of mutual interest. For now, the attachment and the following op-ed should be informative and useful to you: www.detroitnews.com/story/opinion/2017/03/07/energy-security/98821584

From: Benton, Donald [mailto:benton.donald@epa.gov]
Sent: Thursday, March 23, 2017 12:27 PM
To: Chuck Cunningham
Cc: Dravis, Samantha
Subject: Meeting on 28th with Chuck Cunningham and SAFE Board of Directors

Dear Chuck,
As you know I cannot attend the meeting with SAFE and the Administrator on the 28th. I have asked Samantha Dravis, our terrific new head of the policy shop, to join the meeting if possible. If she cannot I will connect you two at a later date.

Samantha, Chuck is a long-time friend and with many years of experience and connections in this town. I think it is important for you and him to meet and get acquainted.

Don
Senator Don Benton
Senior White House Advisor
Office of the Administrator
202.564.4711

Spam
Phish/Fraud
Not spam
Forget previous vote

SECURING AMERICA'S
FUTURE ENERGY

1111 19TH STREET, NW
SUITE 406
WASHINGTON, DC 20036

TEL: 202-461-2360
FAX: 202-461-2379
SECUREENERGY.ORG

Securing America's Future Energy

Memorandum

From: Robbie Diamond, President and CEO of Securing America's Future Energy
To: The Honorable E. Scott Pruitt
Date: January 6, 2017
Re: Regulation of Fuel Economy and Greenhouse Gas Emissions of Cars, SUVs and Pickup Trucks

Cc: Frederick W. Smith, Chairman, President and CEO, FedEx Corporation
General James T. Conway (Ret.), 34th Commandant, U.S. Marine Corps
Co-Chairs, SAFE Energy Security Leadership Council

Introduction

America's foreign oil dependence presents a high-priority strategic challenge, with profound consequences for our economic and national security. The United States currently depends on oil to power more than 90 percent of our massive transportation system. At the same time, the market for oil is unique among commodity markets—it is distorted by the Organization of the Petroleum Exporting Countries (OPEC), the foreign state-owned oil companies (known as National Oil Companies or NOCs) that comprise OPEC membership, and the foreign regimes those companies represent.

These political entities—that control over 90 percent of the world's lowest-cost oil reserves—often share neither our interests nor our values. Their actions in the oil market frequently violate free-market principles, undermining the economic and strategic interests of the United States.

In addition to the funding of hostile regimes through oil revenues, the distortions caused by OPEC and NOCs threatens our economy by creating price volatility and investment uncertainty that harm American businesses and consumers. Instability in oil-producing countries threatens our economic security and our dependence reorders U.S. foreign policy priorities.

Thankfully, American resources and innovation offer us the opportunity to significantly improve our energy security by increasing our domestic oil supply, while reducing demand through efficiency standards and fuel choice. The urgency of these solutions should be understood in the context of the true costs of our oil dependence, which continue to this day.

Vehicle efficiency regulations play an important role as part of a three-pronged strategy to bolster American energy security. The first element of the strategy is increased domestic oil and gas production, which contributes to job and economic growth and also improves the U.S. balance of trade by limiting the nation's spending on imported oil. The second is the continued

Industry Terminology:

National Oil Companies or **NOCs** refer to oil producers that are controlled by their governments. Examples are Saudi Aramco in Saudi Arabia, Pemex in Mexico and Sinopec in China.

Free market oil producers like Exxon Mobil and Shell are referred to as International Oil Companies or **IOCs**.

ED_0011318_00006821-00001

implementation of fuel efficiency standards, which ensure that greater value is extracted from each barrel of oil consumed. The third is support for fuel choice, including domestic electricity and natural gas, which creates flexibility for businesses and consumers and diversifies the transportation sector away from its singular dependence on oil.

As such, the fuel economy regulations of passenger cars, SUVs and pickup trucks—a set of regulations if properly aligned by the EPA, DOT and California Air Resources Board—can play a critical role in realizing President Trump's America First Energy Plan that states:

> ***Make America energy independent … Declare American energy dominance a strategic and foreign policy goal of the United States … Become, and stay, totally independent of any need to import energy from the OPEC cartel or any nations hostile to our interests …***

These standards matter, even in an era of domestic energy abundance, because the price of oil—including domestic oil—is set in the global market, meaning that consumers are subject to high and volatile prices even for the oil that we produce here at home.

The federal government is currently conducting a midterm evaluation of these standards. Although the Obama Administration has unilaterally decided to accelerate the evaluation to limit President Trump's flexibility, the Trump Administration has an opportunity to broker a deal that will increase our energy security and preserve America's global leadership in automotive and mobility innovation. In addition, while not a priority for SAFE, these regulations also generate, as a co-benefit, major reductions in pollution and greenhouse gases. It is the kind of deal that makes sense for the American people and the kind of deal that only a Trump Administration could negotiate successfully.

To maximize the energy security benefits of the fuel economy program we recommend the EPA:

- **Work to create a true harmonized national standard,**
- **Provide early set relief for the industry where necessary from MY 2022 -2025,**
- **Include new technology innovation and business models going forward to align to modern technology, a more free market approach, and harmonize auto company investment in environmental, safety, and other technology, and**
- **Extend the new national program to 2030 to 2035 to provide more certainty while offering technology reviews through the years.**

This would create a more technology neutral, market-based system that offers automakers the certainty over time and technological flexibility while protecting national security and the economy.

About SAFE

Securing America's Future Energy (SAFE) is an organization led by CEOs and retired senior military officers working to reduce our nation's exposure to oil price manipulation by OPEC. You can find a list of the U.S. business executives and retired four-star generals and admirals who lead SAFE in the accompanying appendix and here: http://secureenergy.org/about/energy-security-leadership-council/. The group is co-chaired by General James Conway (Ret.), the 34th Commandant of the U.S. Marine Corps, and Fredrick W. Smith, President, CEO and Founder of FedEx Corporation.

ED_0011318_00006821-00002

Recognizing the energy density and scalability of oil as reasons for its domination of the transportation sector, the lack of a free-market for oil has many dangerous impacts that unnecessarily entrench oil as a transportation fuel beyond its market-based advantages. Most of all perhaps, volatile oil prices undermine investment in other fuel technologies that would create competition and diversify the energy used in America's vast transportation system. Consequently, oil continues to account for more than 90 percent of the energy used in the nation's transportation system. This utter dependence empowers OPEC to set prices without fear that American consumers can shift to alternatives.

As oil dependence represents the deliberate policy of foreign governments—that operate mainly through OPEC—only a U.S. government response has the ability to combat such price manipulation. If implemented, such an effort under the Trump Administration would help protect technology innovators from OPEC's anti-competitive conduct, insulate consumers from destructive oil price spikes, reduce the power of oil-producing regimes (especially Saudi Arabia) to shape U.S. foreign policy, and unburden the American military of the need to expend enormous resources to defend the production and distribution of oil globally.

In addition, the use of oil in transportation today represents the largest source of carbon dioxide emissions. Thus, any serious program for energy security would address the Left's concerns regarding climate change, shifting transportation away from oil-derived gasoline to non-oil sources (e.g., electricity). This result puts one of the important solutions to this national security imperative in the purview of EPA for other reasons, and in fact EPA has more flexibility to deal with this issue than the Department of Transportation.

Background

Three separate regulatory agencies regulate the fuel economy of, and carbon dioxide (CO_2) emissions from, light duty vehicles (passenger cars, SUVs and pickup trucks). Each agency has different historical reasons for regulating vehicles.[1] The National Highway Traffic Safety Administration (NHTSA) at the Department of Transportation (DOT) regulates vehicle fuel economy pursuant to the Energy Policy and Conservation Act of 1975, as amended.[2] The Environmental Protection Agency (EPA) regulates vehicular CO_2 emissions pursuant to the Clean Air Act (CAA).[3] The state of California regulates CO_2 emissions from vehicles under its authorities granted to the state in the CAA.[4] California can issue separate emission standards under the CAA because it established emission standards that predated passage of the Clean Air

---

[1] Environmental Protection Agency and National Highway Traffic Safety Administration, *2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards*, 77 Fed. Reg. 62,624 (Oct. 15 2012) (CAFE Rule).

[2] 49 U.S.C. 32904 (c).

[3] 42 U.S.C. 7521 (a).

[4] 42 U.S.C. 7543.

ED_0011318_00006821-00003

Act in 1970.[5] Importantly, while other states cannot issue their own vehicle standards, they may choose to adopt California's standards.[6]

These overlapping jurisdictions risked creating a patchwork of regulations that would be exceedingly challenging to meet. To address this regulatory threat, NHTSA and EPA worked with California in 2009 to issue coordinated standards so automakers could manufacture and market a single national fleet instead of being required to manufacture and/or market separate vehicles for states that adopt the California standards.[7] Maintaining a single national standard, instead of separate federal and California standards, has been—and remains—a priority for the auto industry.

The original goal of fuel economy standards, when they were first established in 1975, was to enhance the nation's energy security by reducing our consumption of oil, not to produce environmental outcomes.[8] In fact, the importance of reducing fuel consumption over other goals at the time led President Ford to call for a freezing of air regulations for five years so that automakers could focus on improving fuel economy.[9] California set tailpipe emission standards ahead of the national standards primarily to address local air pollution. Later, California expanded the scope of its regulations to address greenhouse gas emissions from vehicles. EPA only in the last decade began to regulate CO_2 emissions after the Supreme Court, in *Massachusetts vs. EPA,* determined that greenhouse gases are classified as pollutants under the CAA. This decision required EPA to issue an "endangerment finding," which concluded that the emission of greenhouse gases threatens both the public health and the public welfare of current and future generations.[10]

Federal vs. State Regulation

As noted above, the auto industry has prioritized regulating vehicle fuel economy and emissions at a federal level and insisting on one national standard, which is one reason that California has had leverage over the auto industry and federal regulators. A single national standard supports U.S. industry by allowing it to build on one platform using the same technology for all 50 states and Canada. Moreover, as noted, fuel economy standards were developed initially to help strengthen America's energy security. A single national standard enhances our economic and energy security by allowing the federal government to address a challenge that is national in scope with a single nationwide framework. Finally, federal regulation of emissions makes sense as a matter of good governance; in contrast to other EPA regulatory programs that generally regulate emissions from fixed infrastructure that operates only in one state, and

---

5 *Id.*

6 CAFE Rule at 62,637.

7 *Id.* at 62,624.

8 *See, President Ford's Address Before a Joint Session of the Congress Reporting on the State of the Union*, January 15, 1975.

9 *Id.*

10 In *Massachusetts v. Environmental Protection Agency*, 549 US 497 (2007), the Supreme Court concluded that EPA could decline to regulate the CO_2 emission from vehicles only if concluded that greenhouse gas emissions do not contribute to climate change. EPA then found that the presence of greenhouse gases in the atmosphere threatened the public health and welfare of current and future generations in the Endangerment Finding, and that the combined emissions and greenhouse gases from new motor vehicles and new motor vehicle engines contributed to the greenhouse gas pollution which threatens public health and welfare n the Cause and Contribution Finding. Environmental Protection Agency, *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule*, 74 Fed. Reg. 66,496 (Dec. 15, 2009).

ED_0011318_00006821-00004

whose emissions and effluents primarily affect the immediately surrounding areas and regions, mobile vehicles that drive across all 50-states are most effectively addressed in a national framework.

Benefits of Fuel Economy Regulation

The regulations enhance our nation's energy security by increasing the economic output per barrel of oil. The 2009 standards saved nearly two billion barrels of oil over five years. Most of that oil would have been imported at prices well above $60 a barrel and often greater than $100 a barrel. It should be noted that the United States still imports approximately 10 million barrels of oil per day[11] and exports approximately 5 million barrels a day of crude oil and petroleum liquids and products.[12] As the December meeting of the OPEC cartel demonstrated, the price of oil is both determined globally and artificially manipulated through collusion which means that the United States remains susceptible to the economic consequences of oil supply interruptions or price shocks. Moreover, the less oil we consume, the lower our net imports of oil, thereby reducing our trade deficit. This will allow consumers the opportunity to spend money—that might have been spent on imported oil—on services and products produced domestically. But the regulation of fuel economy directly addresses the fact that the global oil market does not operate as a free and competitive market. The oil industry has natural boom and bust cycles, but they are manipulated, and their harm is exacerbated by OPEC, which operates as an illegal cartel.

Many of the NOCs that manipulate the oil markets on which we rely confiscated these resources from American oil companies in the 1960s-70s. The countries include:

Saudi Arabia

Venezuela

Iran

Evolution of the Fuel Economy Program

The design of the program has evolved in recent years to a more market-oriented program than it was for its first several decades. It now operates under a footprint-based program, which allows consumers to choose the type of vehicle that meets their transportation needs. The program's initial structure required that all vehicles sold by an automaker achieve an overall average fuel economy (which effectively promoted the sale of smaller cars). So, rather than pushing the sale of smaller cars, the current standard promotes the increased efficiency of cars in every size category in an attempt to prioritize consumer choice.

Current Status and Process Requirements

Under the current program established in 2012, EPA's GHG emission standards apply to model-years 2017-2025.[13] NHTSA, under its long-standing authority to regulate fuel economy only in five-year increments,[14] established CAFE standards only for model years 2017-2021.[15] Nevertheless in the 2012 final rule NHTSA did publish what it called "augural standards,"—in other words, a forecast representing

---

[11] Department of Energy, Energy Information Administration, *U.S. Imports buy Country of Origin*, available at http://www.eia.gov/dnav/pet/pet_move_impcus_a2_nus_ep00_im0_mbblpd_m.htm.

[12] Department of Energy, Energy Information Administration, *Petroleum and Other Liquids: Exports*, available at http://www.eia.gov/dnav/pet/pet_move_exp_dc_NUS-Z00_mbblpd_m.htm.

[13] *Id.* at 66,499.

[14] CAFE Rule at 62,627.

[15] *Id.*

ED_0011318_00006821-00005

the agency's best estimate of future standards.[16]

In establishing the current standards, NHTSA and EPA committed to a midterm evaluation to ensure that the regulations were working as planned.[17] The review was seen as needed to support the NHTSA 2022-2025 rulemaking, which made sense given the relatively long time frame over which the regulations are effective, and the rapid change in both automotive technology and the oil landscape over that time. If the review found the current EPA standards and NHTSA's tentative standards to be appropriate, then NHTSA would confirm the augural standards, for 2022-2025 through a notice and comment rulemaking, and EPA's standards would remain unchanged.[18] If the midterm review concluded that the standards needed to be adjusted (either more or less stringent), then EPA and NHTSA would jointly issue completely new standards.[19] The agencies also affirmed their commitment to coordinate their process with the State of California to continue to maintain a single national program that aligns fuel economy and emissions regulations.

The 2012 rulemaking committed the agencies to complete the midterm review draft Technical Assessment Report (TAR) by November 15, 2017, so that regulators would have adequate time for a reasonable public comment period while enabling the agencies to determine by April 1, 2018 whether the standards established for MYs 2022–2025 are appropriate.[20] EPA and NHTSA accelerated the process and completed the draft TAR in July 2016.[21] EPA then rushed to complete its Technical Support Document despite the objections of the automakers, whose support for the standards in 2012 was predicated on the Obama Administration's commitment to undertake a serious midterm review given the long period over which the new standards would continue to be tightened.[22] The agency issued a proposed finding in November 2016 stating that the current standards remain appropriate for MYs 2022-2025.[23] The comment period closed on December 30, 2016.[24] EPA will likely issue a final determination prior to January 20, 2017. This move outraged automakers and threatens the credibility of the midterm evaluation process.

Industry Position

Automakers have requested modest adjustments for MYs 2022-2025. They are most concerned about the efforts to harmonize the three programs (NHTSA, EPA, and California) given likely rising consumer costs in the later years of the program to cover industry's regulatory compliance. In their view, EPA's

---

16 *Id.*

17 *Id.*, at 62,628.

18 *Id.*, at 62,633.

19 *Id.*

20 *Id.*, at 62, 787.

21 Environmental Protection Agency and National Highway Traffic Safety Administration, *Midterm Evaluation of Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards for Model Years 2022-2025*, 81 Fed. Reg. 49,220 (July 27, 2016).

22 Environmental Protection Agency, *Proposed Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation: Technical Support Document,* EPA, Nov. 2016.

23 Environmental Protection Agency, *Proposed Determination on the Appropriateness of the Model Year 2022–2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards Under the Midterm Evaluation*, 81 Fed. Reg. 87,927 (Dec. 6, 2016).

24 *Id.*

ED_0011318_00006821-00006

rush to finalize its evaluation undercuts the ability to effectively harmonize across the three agencies. Industry also disagrees with EPA's assessment that the standards can be fully met through improvements to standard engines without increased hybridization and/or electrification. Moreover, industry was both caught off guard and furious that the Obama Administration accelerated the process at EPA after the election, in what will likely lead to less harmonization between the three programs instead of more.

Opportunities for Modernization

Industry observers have noted that there will be more change in the auto industry in the next decade than in the last 100 years. New technologies such as autonomous vehicle technology and new business models, such as carsharing and ridesharing platforms like Uber and Lyft, have been developing rapidly over the last several years. Taken together, these changes are on a trajectory to materially impact the U.S. transportation system by 2025, and radically transform transportation in the years that follow.

The current approach to regulating fuel consumption, however, is focused on regulating the efficiency of the individual vehicles and not systems of vehicles. The testing procedures used for the NHTSA program are constrained by law and have not been updated since the program's inception in the mid-1970s. The Administration should examine opportunities to account for the greater efficiency and reduced oil consumption resulting from actual vehicle use, aligning incentives for using efficient technologies, including vehicle to vehicle and vehicle to infrastructure technology, autonomous technology, ridesharing applications which are increasingly owned by the auto companies, and new business models.

Research will be needed to accurately quantify these effects, but these changes can modernize a regulatory system to achieve better results and provide the flexibility to companies in the process. The administration may also be interested in pilot efforts and coordinating with industry to establish a meaningful incentive that encourage the testing of autonomous vehicle fleets.

Challenges and Opportunities for the Trump Administration

The Administration has the opportunity to improve upon the national fuel economy/greenhouse gas standards in a way that maximizes energy security benefits, maintains American leadership in innovation and, as a co-benefit, captures significant reductions in pollution and greenhouse gas emissions.

With the CAFE program marking its 50th anniversary in 2025, the first term of the Trump Administration marks an opportune moment for its wholesale reevaluation. Whether the Administration wants to update the program or replace it with another approach, there is ample time to develop a flexible approach for fuel savings and emission reductions that can promote safety, incorporate new approaches to mobility, and develop new automotive technologies. This approach would allow the Trump Administration to demonstrate its ability to broker a deal between a diverse set of stakeholders, while promoting energy security and making meaningful reductions in the emission of GHGs without being hamstrung by federal rules and agreements that are better resolved at the state level (Clean Power Plan) or do not actually address the nation's energy security needs (Paris Climate Accord).

ED_0011318_00006821-00007

Message

From: Pravettoni, Elena [Elena.Pravettoni@ihsmarkit.com]
Sent: 3/9/2017 4:20:49 AM
To: Konkus, John [konkus.john@epa.gov]
CC: Dravis, Samantha [dravis.samantha@epa.gov]; Ex. 6 - Personal Privacy
Subject: RE: Questions - Mr. Pruitt at CERAWeek
Attachments: Scott Pruitt.docx

Hi John,

Please see the attached outline for the Q&A session. Let us know if you any proposed suggestions or changes.

Thanks,
Elena

From: Konkus, John [mailto:konkus.john@epa.gov]
Sent: Wednesday, March 08, 2017 4:40 PM
To: Pravettoni, Elena
Cc: Dravis, Samantha; Ex. 6 - Personal Privacy
Subject: Re: Questions - Mr. Pruitt at CERAWeek

Would Dr. Yergin be able to send us some questions he is interested in asking? However, I would refrain from questions on the budget.

Thank you,

John

On Mar 8, 2017, at 5:24 PM, Pravettoni, Elena <Elena.Pravettoni@ihsmarkit.com> wrote:

> Dear Samantha and John,
>
> Thanks for making the time for the call with Dr. Yergin last week during what we know was a very busy week!
>
> I wanted to circle back and ask if at this stage there were any specific questions/topics that Mr. Pruitt would particularly like to address in the Q&A part of his session tomorrow with Dr. Yergin.
>
> Thanks very much,
>
> Best,
> Elena
>
> <image001.png>
>
> **Elena Pravettoni**
> Senior Economist | IHS Energy
> 1150 Connecticut Avenue NW | Suite 400 | Washington, DC 20036
> **P:** +1 Ex. 6 - Personal Privacy **Mobile:** +1 Ex. 6 - Personal Privacy
> elena.pravettoni@ihsmarkit.com
>
> <image016.jpg><image017.png><image018.jpg><image017.png><image019.jpg><image017.png><image020.jpg><image017.png><ir
>
> This email message, including accompanying communications and attachments, is strictly confidential, for the sole use of the intended recipier
> Any unauthorized use, review, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply

message. Thank you.

Please consider the environment before printing this e-mail.

Scott Pruitt, CERAWeek 2017 Q&A

1. What do you see as the role of the EPA? Do you see things differently now that you're at its head?

2. What do you like about EPA? What parts do you think are working well?

3. What is the right balance between state and federal regulations?

   Role of federal government to coordinate state measures

4. Clean Power Plan

5. View on fuel efficiency standards – California waiver

6. Methane

7. How can companies reconcile regulatory "patchwork" across states, and do business?

8. Are you surrendering regulatory power to California, massive market that companies don't want to be left out of?

9. Regulatory over-reach?

Message

From: Hale, Michelle [hale.michelle@epa.gov]
Sent: 3/6/2017 11:07:17 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: FW: Mr. John S. Watson's Letter to Administrator Pruitt
Attachments: Administrator Pruitt 2-24-17.pdf; ATT00001.htm; Pres Policy Papers 11_18_16.pdf; ATT00002.htm

Background info for Chevron meeting

From: Jones, Knolyn
Sent: Tuesday, February 28, 2017 11:41 AM
To: Hale, Michelle <hale.michelle@epa.gov>
Subject: Fwd: Mr. John S. Watson's Letter to Administrator Pruitt

Sent from my iPhone

Begin forwarded message:

> **From:** "Wassmer, Maria (MTER)" <MTER@chevron.com>
> **Date:** February 27, 2017 at 12:29:20 PM EST
> **To:** "jones.knolyn@epa.gov" <jones.knolyn@epa.gov>
> **Subject: Mr. John S. Watson's Letter to Administrator Pruitt**
>
> Dear Knolyn,
>
> I would appreciate your assistance in ensuring Administrator Pruitt receives the attached congratulatory letter and attachment from Mr. John S. Watson, Chairman and CEO, Chevron Corporation, and confirming receipt of this email.
>
> Many thanks in advance for your assistance.
>
> Best regards,
>
> Maria
>
> **Maria Wassmer**
> Executive Assistant to the
> Chairman and Chief Executive Officer
> mter@chevron.com
>
> **Chevron Corporation**
> 6001 Bollinger Canyon Road
> San Ramon, CA 94583
> Tel Ex. 6 - Personal Privacy
> Fax (925) 842-1230

Economic Growth and Energy Development

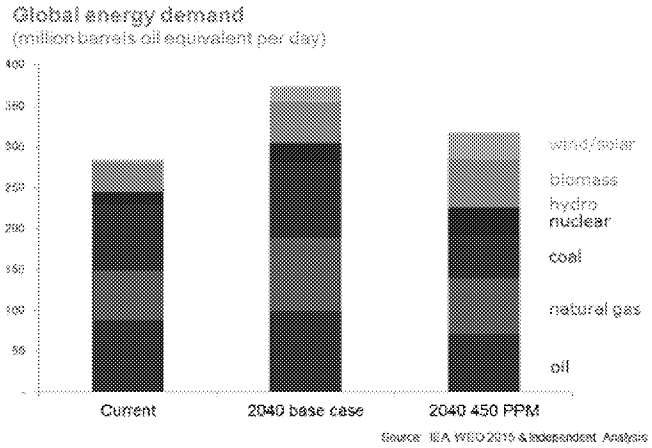
Summary

- U.S. leadership in oil and natural gas production provides a national energy dividend that supports economic growth and high quality middle-class jobs.
- Policies should support domestic energy development.
- Oil and gas development, including on federal lands, provides economic opportunity.
- Energy infrastructure investment is needed to meet changing demand.

Due to continued application of advanced technologies and innovation, the U.S. has transitioned from energy scarcity to energy abundance. Our nation is just beginning to reap dividends from this significant achievement. Families are benefiting from lower energy prices and manufacturers are advantaged by lower feedstock costs. Despite the down turn in prices, Chevron continues to provide high quality jobs and supply energy globally in an affordable, reliable, and responsible manner.

Discussion

The oil and gas industry is a major contributor to the U.S. economy. Globally, oil and gas provide approximately half of all energy needs today and are projected to continue to do so for the foreseeable future. In the U.S., oil and gas provide approximately two thirds of our energy today and are expected to be a comparable part of our energy mix in 2040. This significant component of the economy supported 9.8 million jobs (5.6% of total U.S. employment) and contributed $1.2 trillion to the national GDP at its recent high in 2011 (8% of total GDP). Since 2014, the oil and gas sector has been coping with a down cycle in energy prices, and crude oil prices have fallen by about 50%. Even during this downturn, in 2015 Chevron alone spent over $15 billion with U.S. suppliers, including over $2 billion with small businesses and nearly $800 million with women and minority-owned businesses.



Over the long term, our industry will continue to support millions of U.S. jobs and create thousands of new ones each year. By 2035, the energy and petrochemicals industries are expected to provide up to 1.9 million new high-quality jobs.

A robust oil and gas industry results in positive contributions to other industries and government. Recent advancements in hydraulic fracturing and horizontal drilling provide the basis for fueling economic growth in the decades to come. In addition to supporting high-quality jobs in the energy sector, oil and gas development benefits other industries including manufacturing. Increased domestic natural gas production supports the strong growth projected in domestic manufacturing through 2025. In 2015, domestic production from shale and the accompanying lower natural gas prices contributed to a manufacturing resurgence and resulted in an estimated $190 billion to GDP, 1.4 million new jobs, and $156 billion in disposable income to the U.S. economy. In addition to income taxes, America's oil and natural gas industry also pays the federal government rents, royalties and lease payments – totaling nearly $120 billion since 2000. A continued national energy dividend will

require industry investment, which government policy should encourage.

Increased oil and gas development on federal lands is needed. Onshore and offshore oil and gas resource development is safe, environmentally sound, and compatible with the long-term management of federal lands. Overall domestic oil and gas production has increased more than 70% and 20% respectively from 2010 to 2015. During the same period, production on federal lands decreased by approximately 3% and 40% respectively. Development of onshore and offshore resources could provide up to 130 billion barrels of oil and 1.5 quadrillion cubic feet of natural gas. This is enough energy to fuel 94 million cars for 50 years and heat all 66 million U.S. households that use natural gas heating for more than 300 years.

Maintaining a leadership position on energy requires energy infrastructure investment. U.S. energy infrastructure investment is an opportunity for both job creation and sustaining our national energy dividend. New and modernized energy infrastructure investment is needed as demand for various energy supplies (e.g. oil, gas, and electricity) changes. Uncertainty related to energy infrastructure increases costs and hinders development of all forms of energy. For example, uncertainly related to permitting of new pipelines can hinder development of new efficient natural gas power plants that supply electricity and provide back up for intermittent renewable electricity sources. Increased production and efficient use of natural gas contributes towards affordable energy for consumers and manufacturers.

Recommendations

Support domestic energy production to sustain the U.S. as a global energy leader and support the economy. Policies should balance economic, security, and environmental concerns. This is the case for both the development of new and implementation of existing policies. Policies should encourage expansion of energy production through: 1) increased recognition and consideration of the benefits derived from the oil and gas sector; 2) improved coordination among government agencies to advance project permitting; and 3) elimination of overlapping and duplicative regulations such as methane emissions requirements called for by EPA, BLM, and several states.

Continue and expand development of energy resources on federal lands onshore and offshore. Agencies should be given the authority and directive to go forward with onshore and offshore federal leasing plans. These plans should be designed to assure robust industry participation, resulting in economic benefits for industry and the nation as a whole.

Support strategic and sustained energy infrastructure investment. The review and approval process for energy infrastructure permits should be well defined, transparent, and predictable. Changes to processes should not be applied retroactively. Infrastructure permitting hurdles can negatively impact development and deployment of all forms of energy. Improving these processes should be a high priority.

Regulatory Framework

Summary

- Regulations should protect health, safety, and the environment while promoting a strong economy and energy security.
- Regulations should be based on rigorous cost-benefit analysis, sound science, and pragmatic pathways for implementation.
- Increased stakeholder engagement and transparent communication of costs and benefits is needed.
- Significant expansion of federal regulations could negatively impact investment in energy projects that produce jobs and provide revenues to treasuries.

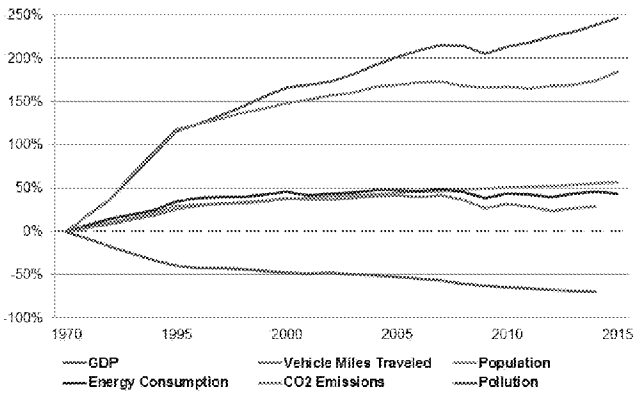
Regulations aim to protect health, safety, and the environment. Along with the U.S. energy resurgence, there has been a notable increase in federal regulations as policies are still adjusting to an era of energy abundance. If regulations become overly burdensome, they hinder investment and innovation. Therefore, it is important that the U.S. have an efficient and effective regulatory framework that reduces economic burden while protecting health, safety and environmental quality. Meaningful regulatory reform could support the continuation of the American energy dividend that has helped improve our economy, environment, and domestic and international security.

Efficient and effective regulations that protect the environment, health and safety are in everyone's interest. Every day, Chevron employees responsibly manage our operations in full compliance with all applicable laws and regulations, including those governing the environment, health, and safety. We make positive contributions to the areas in which we operate and the markets we serve. Chevron's continued investment is valued by the communities we work in and our shareholders.

Discussion

A pragmatic regulatory framework can achieve environmental and economic growth goals. Over the last several decades, the U.S. has made measurable progress in achieving its environmental objectives. The air in urban areas in the U.S. is far cleaner than it was in 1970. From 1970 to 2014, aggregate national emissions of the six common pollutants alone dropped an average of 69% while gross domestic product grew by 238%. For example, since 1980, national averages of sulfur dioxide and carbon monoxide emissions are each down 84%. Particulate matter concentrations (i.e., smoke and soot) are down over 20% since 2000, when trend data began for fine particles. Ozone concentration levels are down 32% from 1980 levels. These are impressive accomplishments, and real examples of responsible development. They are proof that growth does not have to come at the expense of the environment. New regulations, however, could be a barrier to continued economic growth because they may result in diminishing benefits for the costs imposed. For example, the new National Ambient Air Quality Standard for ozone is at background levels in many areas (i.e., any emissions that are not related to human activity in that area).

Economic growth and improved environment



Source: EPA, Status and Trends, 2016

Regulatory expansion could harm the U.S. energy renaissance. Federal regulation is estimated to cost approximately $2 trillion

annually. This represents a cost of over $16,000 annually to the average American household. The cost of all new regulations finalized in 2015 alone is estimated at $197 billion. Regulatory overreach is impacting our ability to grow the energy economy. The EPA's Waters of the U.S. Rule and BLM's Hydraulic Fracturing Rule are examples where agencies took expansive approaches to their authority and courts had to step in. Ensuring agencies stay within their statutory authority is necessary to avoid protracted litigation, reduce uncertainty, and achieve underlying policy objectives.

An effective regulatory framework requires robust cost-benefit analysis, sound scientific basis, and practical pathway for implementation. A principal component of an effective regulatory regime is robust cost-benefit analysis (CBA) to understand the trade-offs of a proposed regulation. Such analyses should consider the reliability of the underlying science and the feasibility of various implementation options. Regulations should be based on transparent, verifiable, and well-vetted (i.e., broadly peer reviewed) data. Today, there are a number of rulemakings that move forward either without, or with inaccurate, CBAs. The regulatory process does not have an effective avenue for challenging CBAs. Concerns about CBAs include: data quality, failure to consider alternatives; failure to consider opportunity costs (jobs and investment); incorrect assumptions; and lack of transparency. CBAs should be subject to adequate review by stakeholders and OMB. For example, CBAs should not rely on inputs, like a social of cost of carbon, unless they have gone through a robust public comment review and are consistent with federal guideline for developing CBAs.

Costs and benefits of regulatory actions should be presented in a standardized and easy to understand manner. CBAs can be complex and their results are reported out in an inconsistent format. This makes understanding and comparing the impacts of a regulation difficult if not impossible. A standardized format for reporting the key inputs and outputs of a CBA (including assumptions, costs, and benefits) that is easily understood by the public will improve transparency and understanding of government actions.

Stakeholder input should be encouraged for regulatory actions. Enforcement actions and settlement agreements reached behind closed doors have been used to create new policies and regulatory actions in lieu of a comprehensive stakeholder engagement process. Excluding stakeholders from the regulatory process diminishes trust in government. Companies want to work with government towards well informed policies and provide data driven insights to improve regulatory actions. Increased engagement with business is needed to avoid unintended consequences. For example, in the Clean Power Plan, industry input helped EPA avoid penalizing efficient cogeneration plants.

Recommendations

Actively enforce the principles of Executive Orders 12866 and 13563 on federal agencies. These Executive Orders outline the regulatory review process and require agencies to fully and objectively assess the costs and benefits of new regulations. The projected costs and benefits for regulations should be publicly reported in a standardized and straightforward format.

Direct OMB to mediate CBA differences between agencies and affected industries. OMB should adopt a process by which stakeholders can challenge the CBA developed by an agency. Such a process would enhance the accuracy of CBAs and result in a better understanding of the environmental impacts and economic consequences of a proposed regulation.

Reform "sue and settle" practices. Agencies should give public notice when they learn of a potential lawsuit that could be settled by

requiring a new rulemaking. Agencies should also be required to publish notices of proposed settlements in the Federal Register.

Reevaluate key existing and proposed regulations. Chevron is committed to working with government on all issues impacting our business. While there are numerous opportunities to improve regulations, we note the following:

Methane Emissions - Refocus methane regulations, particularly those that impact existing sources, to encourage voluntary approaches. New regulation should not be finalized or implemented until the Clean Power Plant litigation is decided as this could inform how the Clean Air Act may be applied for methane regulations.

Federal methane regulations will result in minimal reductions in methane emissions while increasing costs. For example, some of the prescriptive measures required by recent regulations could cost Chevron the equivalent of over $50,000 per ton of carbon dioxide equivalent. Regulatory compliance costs are high because minimal methane emission reduction results from the new regulatory requirements. Many states already have methane regulations in place, making federal requirements duplicative and unnecessary. Additionally, industry is reducing methane emissions on its own and incentivized to do so. Natural gas, the product we sell, is mostly methane. Prescriptive regulatory requirements could hinder effective, risk-based, and voluntary industry efforts.

Renewable Fuels Standard (RFS) – Repeal or reform the RFS. Volumetric mandates for the RFS are waived each year demonstrating that the current RFS is flawed and unworkable.

Key challenges remain for successful implementation of the current RFS including: 1) insufficient quantities of available biofuels; 2) realities of the E10 blendwall (the maximum amount most vehicles can safely take); and 3) vehicle and infrastructure limitations. Unattainable biofuel targets could result in significant negative impacts on the U.S. economy and consumers, and have negligible, if any, environmental benefits.

National Ambient Air Quality Standards (NAAQS) for Ozone - Direct the EPA to withhold implementing more stringent NAAQS for Ozone until 85% of nonattainment areas from a previous standard are in attainment. The NAAQS review timeframe could be extended from 5 years to 10 years, allowing states an opportunity to come into compliance with one requirement before a new one is set.

In 2015, the EPA lowered the ozone standard, despite the fact that the previous standard has not yet been fully implemented. It is nearly impossible for multiple regions of the country to meet the new standard and a significant portion of the country may be designated to be in "nonattainment". More than 700 counties will fall into new nonattainment areas by 2018. Nonattainment designation can stifle growth and industry investment in an area or state.

U.S. Tax Policy

Summary

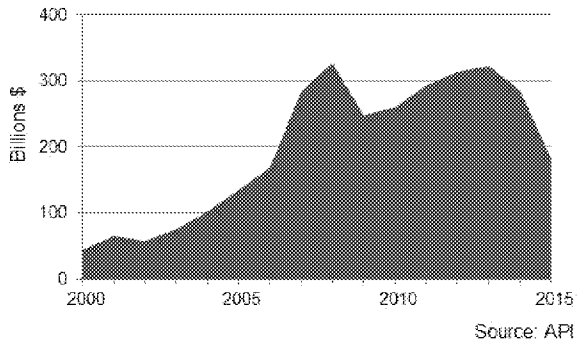
- Tax policy should enhance domestic investment in all forms of energy, including oil and natural gas, and the global competitiveness of U.S.-based companies.
- Tax reform should be fair and equitable and not disadvantage one sector of the economy, especially a sector such as oil and gas that is fundamental to our economy and national security.
- The oil and gas industry pays significant taxes, both domestic and international, and receives comparable tax treatment to other sectors.

Energy markets are global. U.S. energy companies, including Chevron, have multiple opportunities to invest in projects both domestically and overseas. Tax policy, along with regulations and policies impacting access, play a key role in determining which projects companies decide to pursue. Chevron supports tax policy that enhances both domestic investment in all forms of energy as part of the overall energy mix and the global competitiveness of U.S. companies.

Discussion

U.S. tax policy impacts domestic energy investment. Comprehensive tax reform has been contemplated by both parties and may be ripe for discussion by the new Administration and Congress. Policy priorities for both Republicans and Democrats require funding that may be secured through changes to the U.S. tax code. Any changes should enhance companies' ability to succeed by avoiding policies that hinder energy resource development or undermine the global competitiveness of U.S. energy companies. Since 2000, the oil and gas industry has invested over $3 trillion in the U.S. Between 2009 and 2014, our industry created nearly 170,000 jobs at a rate 5 times faster than the economy as a whole. Since 2014, oil and gas jobs numbers decreased 18% to adjust to falling energy prices. From 2011 to 2015, the U.S. oil and gas industry paid an average of 37 cents in taxes out of every dollar earned, compared to about 26 cents for other industrial companies in the S&P500. Today our industry is adjusting to the significant decline in global commodity prices and tax payments are being impacted accordingly. During this downturn, and as commodity prices recover, it is particularly important that tax policies have a fair and predictable impact on the oil and gas sector.

Capital spending for U.S. projects



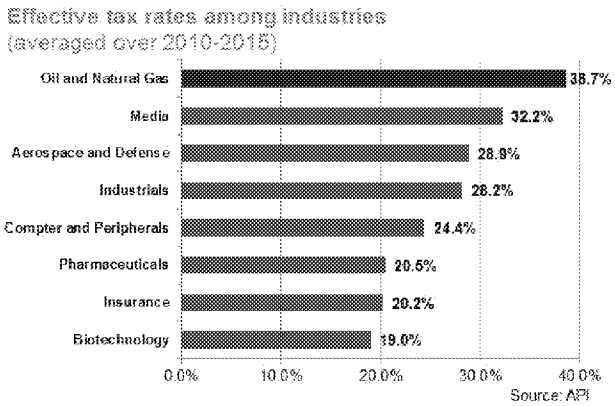
Targeted tax increases on the oil and gas industry are discriminatory and would harm the U.S. economy. Treating the oil and gas industry differently from other sectors is inequitable and ultimately penalizes all businesses and consumers. Repeal of longstanding energy-related provisions in the tax code would destroy high-quality domestic middle class jobs, decrease government revenues, diminish U.S. competitiveness, and be detrimental to national security. Punitive taxes will hurt a vital sector of the U.S. economy, dampen economic growth, and shift domestic oil and gas investments overseas. Expansion of the domestic oil and natural gas industry will provide a significant boost to the U.S. economy and enhance energy security.

The oil and gas sector receives tax treatment similar to those available to other sectors. The tax treatment of the oil and gas industry is sometimes mischaracterized as subsidies. The

tax deductions and provisions used by our industry are generally the same or mirror provisions available to virtually every other company in the U.S. In this regard, specific provisions include:

- Intangible Drilling Costs - ability to deduct intangible drilling costs. A basic principle of tax policy is to tax income after costs. Current tax policy allows the industry to deduct intangible drilling costs, just as other sectors deduct research expenses.
- Dual Capacity Taxpayers' Foreign Tax Credits - prevent double taxation on the income oil and gas companies earn overseas. These credits are similar to those received by virtually every other U.S. firm earning income abroad. They ensure our industry stays competitive with foreign energy companies.
- Domestic Manufacturer's Deduction ("Section 199") - encourages U.S. industries to maintain and create jobs at home. The program provides for a 9% deduction (6% for oil and gas).

Even with the current tax treatment, our industry has a demonstrated history of paying its fair share of taxes. From 2010 to 2015, our industry had an average effective tax rate of 38.7%, above the federal statutory rate of 35%.



Comprehensive tax reform should provide non-discriminatory treatment among different energy sources and all sectors should be treated equitably. If done correctly, comprehensive tax reform should encourage oil and gas companies to continue developing the energy resources the U.S. needs. Piecemeal tax reform efforts, such as international only or a patent box, are more likely to favor one industry over others. They would lessen the chance of achieving comprehensive tax reform that could lower the rate for all industries.

Recommendations

America needs a tax policy that enhances both domestic investment in all forms of energy and the global competitiveness of U.S.-based companies. Tax reform should be guided by the following principles:

- Reform should be comprehensive.
- All existing provisions of the tax code should be considered for reform.
- Taxes should be simplified.
- Reform should be equitable across all industries and sectors.
- To prevent double taxation of foreign-earned income, a fully-functioning foreign tax credit provision should be retained, unless it is replaced with a competitive territorial tax system.
- Tax reform should not discriminate among different energy sources or technologies or involve transfers from one energy sector to subsidize other components of the energy portfolio.

Climate Change

Summary

- Climate policy should require global engagement, be balanced and measured, transparently communicate costs and benefits to consumers, and support continued research, innovation, and application of technology.
- Significant progress can be made in reducing emissions through the expanded use of energy efficiency and natural gas.
- Increased focus on technology and innovation through early phase research and development is needed to meet long term climate objectives.

Thoughtful decision making on this issue has never been more important. Governments should pursue policies that concurrently address national environment, economic, and security priorities. They should avoid policies that increase energy costs, particularly for those least able to afford it.

In the U.S., policy actions can be taken that are complementary to all of our priorities, such as: enabling natural gas, promoting energy efficiency, and investing in early stage research for step-change innovations.

Oil and gas development can support our long-term climate objectives. Industry innovation, such as the use of hydraulic fracturing combined with horizontal drilling, has resulted in the resurgence of domestic oil and gas production. This has led to U.S. energy abundance, lower energy costs, increased use of natural gas, and reduced U.S. GHG emissions to 1991 levels.

Chevron is taking practical and cost-effective actions to control our GHG emissions and support complementary government efforts. We are promoting energy efficiency, investing in natural gas, developing world-scale CO2 storage projects, and reducing flaring. We have improved our energy efficiency by over 34% since 1992. Chevron has also invested in two of the world's largest CO2 injection projects: Gorgon in Australia and Quest in Canada. As a member of the World Bank sponsored Global Gas Flaring Reduction Partnership, we are working to minimize gas venting and flaring. We have reduced gas flaring by nearly 40% from 2011 through 2015. The CDP (formerly the Carbon Disclosure Project) consistently ranks Chevron among the best in disclosing information about climate change practices and GHG emissions. In 2015, the CDP gave Chevron a score of 99 out of 100.

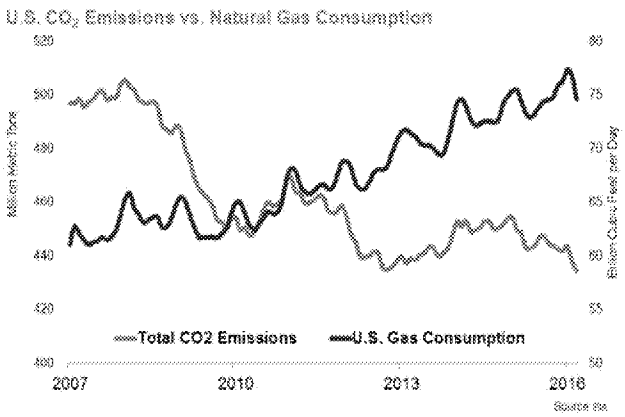
Discussion

Government policy for climate change should adhere to the following principles: global engagement, a balanced and measured approach, transparency, and advancement and application of technology. Policymakers should consider these criteria when considering policy options.

> Reducing GHG emissions is a global issue that requires global engagement and action.
>
> Balanced and measured policies can ensure: 1) long-term economic, environmental, and energy security needs are met; 2) costs are allocated equitably, gradually, and predictably; and 3) actions consider both GHG mitigation and climate change adaptation.
>
> The costs, risks, trade-offs and uncertainties associated with GHG reduction and climate change adaptation efforts and policies must be transparent and openly communicated to global consumers.
>
> Continued research, innovation, and application of technology are essential to enable significant and cost-effective mitigations to climate change risks over the long term.

Increased production and use of natural gas supports climate change objectives. It also advances national economic and environmental priorities. Natural gas fueled electricity

generation helped reduce U.S. energy related carbon dioxide emissions to 25 year lows, reaching 1991 levels during the first half of 2016. At the same time, the oil and gas industry produced natural gas more efficiently. From 1990 to 2015, U.S. natural gas sector methane emissions remained flat as production increased over 50%. Natural gas is a significant and increasing part of the national and global energy mix (29% and 23% respectively in 2015). Natural gas is essential for increased use of renewable electricity because it addresses intermittency challenges inherent to wind and solar. The U.S. has an opportunity to supply this lower carbon economic fuel to markets around the world to enable them to reap similar benefits.



Energy efficiency continues to be a cost-effective option. Since 2000, energy efficiency has helped the U.S. economy grow by nearly 30% while energy demand has remained flat. Improved energy efficiency, including in the transportation sector, can help meet climate change policy objectives. Increasing energy efficiency, such as through a 20% improvement in U.S. energy intensity, could save enough energy to meet the needs of California, New York and Florida combined. At Chevron, we have focused on, and successfully improved, our energy efficiency for decades and aim to sustain this trend going forward.

Increased research and development of lower carbon technologies should be encouraged. All forms of energy will be needed to meet the world's needs, including renewables that are scalable and economic without subsidies. Chevron has invested in technologies including solar, advanced biofuels, and hydrogen. Our experience tells us that innovation is needed to identify and advance low carbon technologies. Increased government support for early phase research will accelerate innovation, which industry can then use for technology commercialization. Chevron has partnered with universities, federal labs, and companies to advance technologies for all forms of energy.

Recommendations

Pursue climate policies that require global engagement, are balanced and measured, transparently communicate costs and benefits to consumers, and support continued research, innovation, and application of technology. Climate policies should be assessed against these criteria.

Support cost effective and scalable options for reducing GHG emissions, including energy efficiency and increased production and use of natural gas. Significant progress can be made towards our climate objectives through established and proven pathways.

Promote technology neutral, early phase research and development in low-carbon technologies. Increased focus in this area can accelerate the innovation needed for breakthrough technologies that can be adopted globally, at scale, and without subsidies. The Administration should invest in technology innovation related to all forms of energy and allow markets to pick winner and losers.

Security and Global Engagement

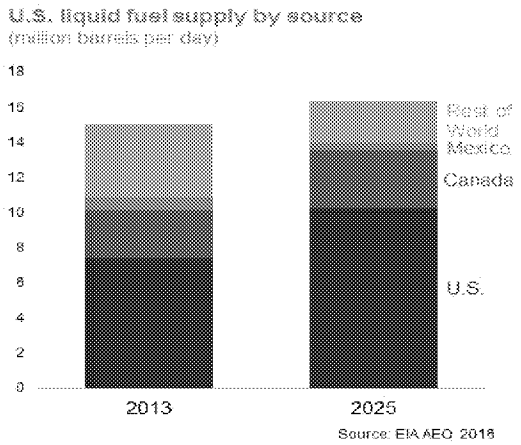
Summary

- Abundant domestic and global energy supplies support U.S. energy security.
- Affordable, reliable energy is essential for security because it promotes strong economies, sustained improvements in the quality of life, and poverty eradication.
- Maintaining energy security as the world's demand increases requires U.S. engagement and leadership abroad in calling for policies that promote efficient and open energy markets.

Over the past decade U.S. oil production has risen from around 5 million barrels per day to around 8.5 million barrels per day, and during the past two years domestic production surpassed imports for the first time since 1993. Natural gas production has grown nearly 50% since 2005 and is projected to soon exceed domestic consumption, making the U.S. a net gas exporter and reducing its emissions. Along with these clear benefits, this has enhanced national and global energy security. Federal policies are still catching up to an era of energy abundance and leveraging our energy resource to further improve security for the U.S. and our allies.

Discussion

Abundant reliable energy promotes national and global security. For energy to support a vibrant economy, it must be widely available, affordable and reliable—the basic principles of energy security. While the energy resurgence of the past decade has supported the U.S. economy and security, more is possible. Abundant affordable energy supplies make the global system more resilient to disruption, whether from geopolitical or natural causes, and bolsters both domestic and global economy and security. The U.S. has the resources and technology to increase global energy production and supply to markets, effectively increasing and diversifying the global energy mix.



Affordable, reliable energy is essential for security. Global energy demand is expected to increase by around one third by 2040. Oil and gas will continue to make up about half of the global energy mix for the foreseeable future. Increasing demand will be driven by population growth and the continued development of emerging economies. Abundant oil and gas production will promote strong economies, sustained improvements in the quality of life, and poverty eradication. Diverse, reliable and affordable energy promotes stability and ultimately is in the U.S. national interest. We need to continue developing oil and gas as part of the overall energy mix.

Well-functioning global energy markets are essential. Today's energy markets are complex and global. Just as consuming economies seek secure reliable energy supplies, producing economies need reliable buyers. No modern economy is fully self-sufficient. Regional market disruptions can result in global price shocks and have far reaching geopolitical implications. Global security, economic growth, and U.S. national interests are all positively influenced by access to open, transparent, and well-functioning markets. Participation in global markets, including through trade agreements that provide

a level playing field for U.S. companies, should be pursued.

U.S. leadership on energy requires continued global engagement. Key areas of focus should include: maintaining physical security of critical energy assets and supply routes; maintaining constructive dialogues with global energy partners, producers and consumers; and supporting rule of law and good governance through continuous engagement by U.S. agencies and embassies.

Recommendations

Encourage expansion of domestic and global energy production. Robust global energy production and ability to export U.S. oil and gas enhances our domestic and global energy security.

Encourage the free flow of energy from the U.S. to and from markets abroad. Support development of necessary domestic and cross-border infrastructure, including pipelines and terminals.

Engage on energy policy abroad with energy partners. Continued leadership by the Departments of State (regional and functional bureaus), Energy (International Affairs and Fossil Fuels), and Commerce on energy issues is vital to coordinating policy, crucial to maintaining sustained engagement with energy partners across the globe, and supporting the competitiveness of U.S. companies abroad. These agencies are well positioned to support U.S. economic interests, foreign policy priorities, and development objectives. They also serve an important role in reinforcing the longstanding U.S. commitment to transparency and good governance. U.S. leadership will be crucial in the coming years for sustaining these efforts. As such, an Assistant Secretary for the Bureau of Energy Resources should be created in the State Department to ensure energy diplomacy is fully integrated with our foreign policy.

Implement trade agreements, including the Trans-Pacific Partnership, with comprehensive investor-state dispute settlement mechanisms. High quality investment agreements support economic growth and a level playing field, the rule of law, and good governance. They provide predictability for long-term, large-scale investments abroad. Ensuring that trade agreements contain core protections and meaningful investor-state dispute settlement provisions, as outlined in the 2012 U.S. Model Bilateral Investment Treaty, are vital to protecting American companies abroad. They provide recourse against unfair treatment, support the rule of law, and provide a level playing field.

Engage with industry early when considering sanctions to avoid unintended consequences. During the past few decades, Congress and the executive branch have imposed economic sanctions on a variety of countries in the pursuit of foreign policy goals. Policy makers should engage with the private sector to avoid unintended consequences on energy supplies, markets and the economies of partner nations, while achieving foreign objectives.

Creating Prosperity and Unlocking Progress

Summary

- The U.S. private sector is a major contributor to international development.
- Investments in global development promote U.S. security and prosperity.
- Public-private partnerships support U.S. and global development.

Public-private partnerships are essential for economic development. By leveraging the capabilities, best practices, and resources of both the private and public sectors to drive economic growth and job creation, we collectively contribute to the overall prosperity of communities where we operate.

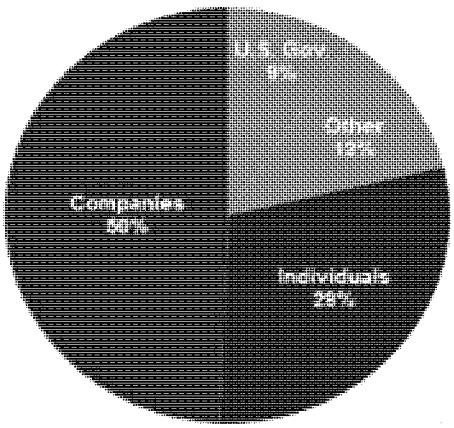
Affordable energy is a catalyst for economic growth and prosperity. Chevron provides energy responsibly and works with our partners to strengthen communities. Wherever we work, our Operational Excellence Management System provides a disciplined approach to working safely, protecting the environment, and operating reliably and efficiently. Our success is tied to the success of the communities where we work.

Discussion

U.S. companies support economic growth through their investments; by promoting best practices; and investing in public private-partnerships. Private companies provide 50% of financial flows to developing countries; 50 years ago it was only 30%. Chevron invests significant capital in major projects which require local goods and services. Our projects create jobs and generate revenue for local communities in the U.S. and abroad. In 2015, we invested more than $54 billion in total goods and services around the world. Our work, however, extends beyond our direct business investments, supplying energy, and providing stimulus to local economies through jobs and the taxes we pay.

We make strategic social investments around the globe that focus on health, education, and economic development. Our public-private partnerships in these areas involves working closely with NGOs, development agencies, and communities to understand a community's needs and develop programs that effectively meet those requirements.

U.S. investment in developing countries



Source: CSIS, 2010

Chevron continues to innovate in public-private partnerships at home and abroad. From our first work with USAID in the early 2000s on the Angola Partnership Initiative, designed to help the country recover from decades of civil war, we remain committed to working with our partners and communities. Over the past 10 years, Chevron has invested over $1.9 billion in partnerships and programs in the U.S. and around the world to develop skilled workers, improve access to healthcare, and boost local economies. We work with local governments, community leaders, NGOs, think tanks, and development agencies to create long-term programs that address critical needs across the globe. By leveraging the expertise and resources of our public-private partnerships, we help drive scalable and sustainable results.

As of 2016, Chevron has established and invested in world class public-private partnerships in many countries where we operate, including: United States, Kazakhstan,

Angola, Nigeria, Bangladesh, Indonesia, and Thailand.

Education and economic development are key areas to drive development. Science, technology, engineering, and math education (STEM) is increasingly a driver of development. Few factors are more important to the success of our business and a country's competitiveness than individuals trained in STEM fields.

Chevron has a firm commitment to increasing and diversifying the long-term pool of STEM talent. Since 2013, we have invested over $150 million in education in the U.S. and over $300 million worldwide. In the U.S., we partner with leading organizations to prepare tomorrow's innovators for college and future careers. Our partnership with Project Lead the Way has brought project-based engineering curriculum to over 100 schools and has reached more than 100,000 students in 10 states including Pennsylvania, California, and Washington, D.C. The Appalachia Partnership Initiative is working to address education and workforce development in 27 counties in Pennsylvania, West Virginia and Ohio. Our partnerships with organizations such as Fab Foundation and Techbridge bring hands on STEM programs to students to arm them with skills needed to succeed in the jobs of the future. Abroad, our STEM partnerships in Thailand and Kazakhstan, as well as our enterprise and workforce development in Bangladesh and Nigeria aim to promote economic growth and development across these nations.

Improved health is a critical need in many nations that public private partnerships can help address. Since 2008, Chevron has partnered with The Global Fund, directing $60 million to programs in Asia, West Africa, and South Africa. As The Global Fund's inaugural Corporate Champion and one of its largest single corporate partners, our support of The Global Fund contributed to 17 million lives saved. In addition, since partnering with Pact in 2012, Chevron has provided $5.3 million to support HIV testing and counseling for over 53,000 pregnant women in Africa.

Supporting global development helps countries, businesses and communities grow. Investing in public-private partnerships is an important component for long term viability of a nation and our business. Through decades of experience, we have learned that our business success is deeply linked to society's progress and prosperity. This is why everywhere we work, we strive to build lasting partnerships to create prosperity now and for decades to come.

Recommendations

Support public-private partnerships in the U.S. and abroad. Whether to attain the UN 2030 Agenda for Sustainable Development or to expand existing partnership efforts through USAID or the Department of State, public-private partnerships can support U.S. interests. The new Administration should continue to support these efforts.

Support U.S. companies in advancing energy projects overseas. Engagement with other nations to advance U.S. company energy projects promotes both local and U.S. interests. Improving lives and growing economies in developing countries improves U.S. economic partnerships and security.

Message

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 6/14/2017 2:54:53 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]
CC: Kime, Robin [Kime.Robin@epa.gov]
Subject: RE: Request for Review: OECD CBA Book -- also update on WOTUS

Cool.

On WOTUS – we have the comments from OMB. We should have a redraft of the RIA today. Ready to send to OMB tomorrow early unless OW has issues.

Ex. 5 - Deliberative Process

From: Dravis, Samantha
Sent: Wednesday, June 14, 2017 10:45 AM
To: McGartland, Al <McGartland.Al@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Kime, Robin <Kime.Robin@epa.gov>
Subject: RE: Request for Review: OECD CBA Book

I have asked Jane to set up a briefing on this and I will ensure that we are involved.

From: McGartland, Al
Sent: Tuesday, June 13, 2017 10:08 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Kime, Robin <Kime.Robin@epa.gov>
Subject: Fwd: Request for Review: OECD CBA Book

Hi. This is not urgent and not critical but it's something worth you knowing about.

EPA deals with the OECD a great deal. The Organization for Economic Cooperation and Development enjoys the same status as the United Nations or the World Bank -- it as an organization funded by all member countries. The US is the largest donor.

The OECD has several standing committees that meet once or twice a year -- every member country has a member in each standing committee. For example OECD has a "Working Party on Integrating Environmental and Economic Policies." This group produces reports on how economic policies affect the environment and how environmental policies affect the economy.

When I started at EPA, the EPA representative for these standing committees was designated by the Administrator. For example, the head of the policy office was the representative to the "Committee on Integrating Environmental and Economic policies."

Now OITA picks the lead and almost exclusively sends people that work in OITA -- they do not ask the Administrator or the Political leadership to designate the representative.

When economic issues come up -- and this is often since the OECD is an economic organization--OITA often contacts us for input and sometimes requests that we attend meetings in Paris -- home of OECD. But it is always in a secondary role. OITA has their person --with little economic or policy expertise -- as the lead rep for epa. I doubt OITA ever discusses the OECD with you or the Administrator. When things slow down, maybe it would be good to get a briefing from OITA on the OECD and how EPA interfaces with them?

Below is a en email chain on the most recent OECD activity. The OECD is producing a book on Cost Benefit Analysis. OITA has asked us for comments -- but is intending on representing EPA in Paris when the book is discussed. OITA can't possibly know what our concerns are; nor do they even know what cost benefit analysis is.

Sent from my iPhone

Begin forwarded message:

> **From:** "Marten, Alex" <Marten.Alex@epa.gov>
> **Date:** June 13, 2017 at 6:32:26 PM EDT
> **To:** "McGartland, Al" <McGartland.Al@epa.gov>
> **Cc:** "Bowen, Jennifer" <Bowen.Jennifer@epa.gov>, "Snyder, Brett" <Snyder.Brett@epa.gov>, "Newbold, Steve" <Newbold.Steve@epa.gov>, "Garbaccio, Richard" <Garbaccio.Richard@epa.gov>
> **Subject: Fwd: Request for Review: OECD CBA Book**
>
> Al, we got the following review request from OITA on a draft of a new book from the OECD. Of note is that there is a chapter on How BCA is used in practice by member countries for assessment of energy and environmental policy. I was going to take a quick look at that chapter to ensure accuracy of how they describe US use of BCA and will let you know if there are any comments we may want to forward. Please let me know if you think anyone else should be looped in.
>
> --
> Alex L. Marten
> phone: (202) 566-2301
> email: marten.alex@epa.gov
>
> Begin forwarded message:
>
>> **From:** "Mourant, Alex" <Mourant.Alex@epa.gov>
>> **To:** "Marten, Alex" <Marten.Alex@epa.gov>, "Newbold, Steve" <Newbold.Steve@epa.gov>, "Garbaccio, Richard" <Garbaccio.Richard@epa.gov>
>> **Subject: RE: Request for Review: OECD CBA Book**
>>
>> Very sorry. Thanks for letting me know. This should be the correct document.
>>
>> From: Marten, Alex
>> Sent: Monday, June 12, 2017 11:01 AM

To: Mourant, Alex <Mourant.Alex@epa.gov>; Newbold, Steve <Newbold.Steve@epa.gov>; Garbaccio, Richard <Garbaccio.Richard@epa.gov>
Subject: RE: Request for Review: OECD CBA Book

Hi Alex,

Maybe you attached the wrong document? The attachment appears to be a report on waste prevention.

--
Alex L. Marten
phone: (202) 566-2301<tel:%28202%29%20566-2301>
email: marten.alex@epa.gov<mailto:marten.alex@epa.gov>

From: Mourant, Alex
Sent: Monday, June 12, 2017 10:53 AM
To: Newbold, Steve <Newbold.Steve@epa.gov<mailto:Newbold.Steve@epa.gov>>; Garbaccio, Richard <Garbaccio.Richard@epa.gov<mailto:Garbaccio.Richard@epa.gov>>; Marten, Alex <Marten.Alex@epa.gov<mailto:Marten.Alex@epa.gov>>
Subject: RE: Request for Review: OECD CBA Book

Hello all,

Following up on this conversation from late last year, OECD has just shared with us a more complete draft of their updated book on CBA and the Environment, which had a few chapters that you had reviewed. This draft will be discussed at a meeting early next month (July 5-7th), and countries are being asked verify and complement the information presented in Chapter 16: Current Use of Cost-Benefit Analysis (pages 353-380). At this meeting, countries are being asked for endorsement to declassify the book. However, we will still have a window to offer our written comments through the end of August.

I'd like to request input on Chapter 16, and the others, time permitting, in preparation for this meeting. Comments should be sent to me by Friday, June 30th, so there's ample opportunity to compile them with the others in preparation for the meeting.

Please let me if there are others who should be included in this request.

Best,
Alex Mourant

From: Mourant, Alex
Sent: Tuesday, November 15, 2016 10:33 AM
To: Newbold, Steve <Newbold.Steve@epa.gov<mailto:Newbold.Steve@epa.gov>>; Garbaccio, Richard <Garbaccio.Richard@epa.gov<mailto:Garbaccio.Richard@epa.gov>>; Marten, Alex <Marten.Alex@epa.gov<mailto:Marten.Alex@epa.gov>>
Subject: Re: Request for Review: OECD Paper on Distributional Effects of Environmental Policies and CBA

Steve,

Thanks so much for getting through what you could and sharing your comments.

The session on CBA ended a short while ago. I shared your point on time inconsistency with the author of the book, and they had said that this was a topic that was cover more in-depth in the 2006 version, but in the academic world that he inhabits, there has been a movement away from it. He suggested that they would take a look at it again though.

Ex. 5 - Deliberative Process

Best,

Alex

From: Newbold, Steve
Sent: Thursday, November 10, 2016 10:03:01 AM
To: Mourant, Alex; Garbaccio, Richard; Marten, Alex
Subject: Re: Request for Review: OECD Paper on Distributional Effects of Environmental Policies and CBA

Hi Alex,

I have read the section on discounting in the draft CBA report that you sent in your earlier email. Overall, I found this to be a good summary of current issues on discounting procedures for benefit-cost analysis, so I see no red or even yellow flags to raise here. In fact I think it can serve as a nice reference for our own purposes.

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

I'm afraid I won't be able to read the remainder of the report before the end of today, so I hope these brief comments are of some use to you.

****
Steve Newbold
U.S. EPA
National Center for Environmental Economics (NCEE)
EPA West, 4316T, MC 1809T
1200 Pennsylvania Ave NW
Washington, DC 20004
(202) 566-2293
****

From: Mourant, Alex
Sent: Thursday, November 3, 2016 1:50 PM
To: Garbaccio, Richard; Marten, Alex; Newbold, Steve
Subject: Request for Review: OECD Paper on Distributional Effects of Environmental Policies and CBA

Richard, Alex, and Steve,

I'll be attending an upcoming OECD meeting (the Working Party on Integrating Environmental and Economic Policies) taking place on November 14th-15th. I'm seeking commentary to inform interventions to make at the meeting. There will be a number of papers of interest that will be discussed, but I'm flagging two papers on which you may be able to provide valuable insight and commentary.

1. The first paper, "Distributional and Labour Market Impacts of Environmental Policies" (document ending in 18) discusses the distributional consequences of energy efficiency measures versus a carbon tax for different skills categories. The authors used a CGE model to assess the long-term impacts of the two policies considered.

2. The second paper, "Cost-Benefit Analysis and the Environment" (the document ending in 19) is the draft of a few chapters of a book that the OECD plans to publish on providing an update on the current state of CBA theory and practice. The attachment includes the chapters on discounting, equity and distribution, sustainability and economy-wide effects, ecosystem assessment, and current-use of cost-benefit analysis.

Please let me know if you or anyone else at your shop would be able to take a look at either of these papers. I'm asking for comments by next Thursday, the 10th.

Thanks in advance.

Best,

Alex Mourant

International Environmental Program Specialist

Office of Global Affairs and Policy

Office of International and Tribal Affairs

U.S. Environmental Protection Agency

Phone: (202) 564-3180

<ENV-EPOC-WPIEEP(2016)19-REV1-ENG.pdf>

Message

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 5/31/2017 5:33:57 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
CC: Bolen, Brittany [bolen.brittany@epa.gov]
Subject: addressing EOs on EJ and Children

Per your email yesterday and the guidance we developed for addressing these Executive Orders, I drafted language for the CPP rule to address these Executive Orders. I sent the language to OAR. They said they wanted to edit a bit but would not change too much. I worry some, but will wait to see what they do.

Message

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 5/23/2017 8:33:23 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
CC: Bolen, Brittany [bolen.brittany@epa.gov]; Kime, Robin [Kime.Robin@epa.gov]
Subject: misc updates/issues

1. The work on the CPP RIA is going well. Hopeful that a draft will be available earlier than Friday and a final version for OMB submission early next week.

2. I sent you a separate email about coordinating the response to the letter signed by 94 economists -- OMB will take lead.

3. Will be sending a separate paper on your participation in the Review of the Data Quality Act Request for Reconsideration. I recommend we find 15 minutes to brief you on this – it will save time.

4. I started the response to letter from Senators; SCC and cobenefits. Also probably worth a discussion after I have 2-3 options for you to consider.

5. Thanks for OK'ing my travel!

6. If we don't hear from the Appellate court on Murray soon, I will need to discuss with you how to get more resources on the deliverable due to the court on July 1.

Message

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 4/28/2017 12:29:41 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: preamble to CPP

I am not aware of the schedule for wrapping up the CPP draft – Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process EPA also estimated that the electric power bills of low income households would go down due the to big investments in energy efficiency. Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Message

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 4/28/2017 4:36:49 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: RIA CPP

We issued a pens down order on all the contributors to the RIA. We need to ship this to be combined with the Preamble by 2:00 pm.

This is not the high quality product we like to do where we can explore additional issues – like how these costs (or cost savings will affect the performance of the economy etc. But we do a very credible job quantifying the cost savings.

There will be lots to discuss moving to the final and we would like to get your input early so we can do some additional work to support the rulemaking if it is needed.

Message

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 4/27/2017 2:46:40 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
CC: Bolen, Brittany [bolen.brittany@epa.gov]
Subject: Re: CPP RIA

Ok. Understood. The cost savings will be around $25 billion per year.

Sent from my iPhone

On Apr 27, 2017, at 10:27 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

> Our understanding is that you are working from the final rule RIA, not the 2016 denial.
>
> ---
>
> **From:** McGartland, Al
> **Sent:** Thursday, April 27, 2017 10:12 AM
> **To:** Dravis, Samantha <dravis.samantha@epa.gov>
> **Subject:** Re: CPP RIA
>
> How do you want to treat the later study that was used for the denial of petitions to reck sided the CPP in December 2016?
>
> We are cranking on it.
>
> Sent from my iPhone
>
> On Apr 27, 2017, at 10:03 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:
>
>> Sarah and Al:
>>
>> I am not sure what the specific delay is on this or why the timeline for completing the RIA is set where it is, but we need the RIA done no later than COB tomorrow. I would prefer it be done today. I was not aware that there was an issue with how benefits were used as negative costs in the last rule until just a few days ago.
>>
>> Nonetheless, we have been given clear and unequivocal direction that this needs to proceed ASAP. Please let me know if for some reason this cannot happen.
>>
>> Samantha

Message

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 4/27/2017 2:28:02 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
CC: Bolen, Brittany [bolen.brittany@epa.gov]
Subject: Re: CPP RIA

Ok.

Sent from my iPhone

On Apr 27, 2017, at 10:27 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

> Our understanding is that you are working from the final rule RIA, not the 2016 denial.
>
> ---
>
> **From:** McGartland, Al
> **Sent:** Thursday, April 27, 2017 10:12 AM
> **To:** Dravis, Samantha <dravis.samantha@epa.gov>
> **Subject:** Re: CPP RIA
>
> How do you want to treat the later study that was used for the denial of petitions to reck sided the CPP in December 2016?
>
> We are cranking on it.
>
> Sent from my iPhone
>
> On Apr 27, 2017, at 10:03 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:
>
>> Sarah and Al:
>>
>> I am not sure what the specific delay is on this or why the timeline for completing the RIA is set where it is, but we need the RIA done no later than COB tomorrow. I would prefer it be done today. I was not aware that there was an issue with how benefits were used as negative costs in the last rule until just a few days ago.
>>
>> Nonetheless, we have been given clear and unequivocal direction that this needs to proceed ASAP. Please let me know if for some reason this cannot happen.
>>
>> Samantha

Message

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 4/27/2017 1:43:40 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: Re: My other cars

A combination of economists in oar and their middle managers. Some in North Carolina office And some in the office of atmospheric programs (climate office). According to them they are writing the RIA and they have different instructions.

I could get my guys on it.

Sent from my iPhone

> On Apr 27, 2017, at 9:37 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:
>
> Who is "they"??
>
> -----Original Message-----
> From: McGartland, Al
> Sent: Thursday, April 27, 2017 9:37 AM
> To: Dravis, Samantha <dravis.samantha@epa.gov>
> Subject: Re: My other cars

Ex. 5 - Deliberative Process

>
> Sent from my iPhone
>
>> On Apr 27, 2017, at 9:10 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:
>>
>> We need the RIA done tomorrow. Is that possible??
>>
>> Sent from my iPhone
>>
>>> On Apr 27, 2017, at 7:52 AM, McGartland, Al <McGartland.Al@epa.gov> wrote:
>>>

Ex. 6 - Personal Privacy

>>>
>>> Anyway. We probably should touch base about CPP RIA. It can wait a day or two if you are busy.
>>>
>>>
>>>
>>>
>>> Sent from my iPhone
>>>
>>>> On Apr 26, 2017, at 9:41 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:
>>>>

Ex. 6 - Personal Privacy

>>>>
>>>> -----Original Message-----
>>>> From: McGartland, Al
>>>> Sent: Wednesday, April 26, 2017 9:06 AM
>>>> To: Dravis, Samantha <dravis.samantha@epa.gov>
>>>> Subject: My other cars
>>>>

Ex. 6 - Personal Privacy

>>>>
>>>> I will report back on the WOTUS meeting. Have you reached an agreement with OMB about review time? And if so does this group need to to know. They will ask me. (If Sarah isn't there).
>>>>
>>>> Sent from my iPhone

Message

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 4/27/2017 1:36:54 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: Re: My other cars

Ex. 5 - Deliberative Process

Sent from my iPhone

> On Apr 27, 2017, at 9:10 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:
>
> We need the RIA done tomorrow. Is that possible??
>
> Sent from my iPhone
>
>> On Apr 27, 2017, at 7:52 AM, McGartland, Al <McGartland.Al@epa.gov> wrote:
>>
>> Ex. 6 - Personal Privacy
>>
>> Anyway. We probably should touch base about CPP RIA. It can wait a day or two if you are busy.
>>
>>
>>
>>
>> Sent from my iPhone
>>
>>> On Apr 26, 2017, at 9:41 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:
>>>

Ex. 6 - Personal Privacy

>>>
>>> -----Original Message-----
>>> From: McGartland, Al
>>> Sent: Wednesday, April 26, 2017 9:06 AM
>>> To: Dravis, Samantha <dravis.samantha@epa.gov>
>>> Subject: My other cars
>>>

Ex. 6 - Personal Privacy

>>>
>>> I will report back on the WOTUS meeting. Have you reached an agreement with OMB about review time? And if so does this group need to to know. They will ask me. (If Sarah isn't there).
>>>
>>> Sent from my iPhone

Message

From: Bolen, Brittany [bolen.brittany@epa.gov]
Sent: 4/24/2017 1:51:58 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: RE: Update due to Government Accounting Office (GAO) on Report Recommendations for Regulatory Analyses.

Ex. 5 - Deliberative Process

From: Dravis, Samantha
Sent: Monday, April 24, 2017 9:31 AM
To: McGartland, Al <McGartland.Al@epa.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>; Brown, Byron <brown.byron@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Re: Update due to Government Accounting Office (GAO) on Report Recommendations for Regulatory Analyses.

Please do draft an update and share it only with me, Brittany, Byron and Ryan.

Sent from my iPhone

On Apr 24, 2017, at 9:15 AM, McGartland, Al <McGartland.Al@epa.gov> wrote:

> In 2014, GAO issued a critical report about EPA's regulatory analyses. See report entitled "EPA Should Improve Adherence to Guidance for Selected Elements of Regulatory Impact Analyses" (http://www.gao.gov/products/GAO-14-519). GAO reviewed seven of EPA's Regulatory Impact Analyses (RIAs) to examine the extent to which EPA adhered to OMB's Circular A-4 guidance.
>
> GAO had four recommendations for EPA, below. GAO requests updates from EPA on the progress of the open recommendations twice a year, with the next update due on May 12. While the last administration was lukewarm on providing a specific response to a couple of the recommendations, we may be able to have a stronger response now – particularly on the recommendation pertaining to employment analysis and the agency's review process for RIAs. For example GAO wanted NCEE to review all the analyses before it goes to OMB. The prior Administration was not willing to adopt that recommendation.

Ex. 5 - Deliberative Process

GAO Recommendations and Status report:

1. To improve future adherence to OMB guidance for conducting RIAs, the EPA Administrator should enhance the agency's review process for RIAs to ensure the transparency and clarity of information presented for selected elements in and across RIAs.

- Status: Open. "As of 2016 EPA had not enhanced these aspects of Regulatory Impact Analyses nor did it express that it planned to do so. GAO will continue to monitor any EPA progress on this recommendation and update its status accordingly."

2. To improve future adherence to OMB guidance for conducting RIAs, the EPA Administrator should improve the accuracy, transparency, and clarity of the information included in the executive summaries of each RIA.

- Status: Closed. Implemented.

3. In addition, to enhance the usefulness of EPA's RIAs, the EPA Administrator should identify and prioritize for research key categories of benefits and costs that the agency cannot currently monetize that, once monetized, would most enhance the agency's ability to consider economic trade-offs associated with different regulatory alternatives.

- Status: Open. "EPA is making progress in the spirit of this recommendation and GAO is keeping this recommendation open until we can determine how EPA is using the SAB's work to develop its regulatory impact analyses."

4. In addition, to enhance the usefulness of EPA's RIAs, the EPA Administrator should continue efforts to update and improve the agency's approach to estimating employment effects.

- Status: Open. "EPA is making progress in the spirit of this recommendation and GAO is keeping the recommendation open until seeing the outcome of these efforts in the form of an updated Guidelines for Preparing Economic Analyses."

Message

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 4/21/2017 11:31:31 AM
To: Dravis, Samantha [dravis.samantha@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]
CC: Kopits, Elizabeth [Kopits.Elizabeth@epa.gov]; Kime, Robin [Kime.Robin@epa.gov]
Subject: CPP economic analysis

Good morning. Yesterday, Elizabeth and I met with oar economists responsible for doing the CPP economic analysis. We want to keep that analysis moving.

Given the tight deadlines and the comments made by Jim Laity we are planning to drive cost saving estimates from the original RIA. If that RIA said something was a cost this analysis will claim that as a cost savings. This will produce sizable cost savings.

Ex. 5 - Deliberative Process

Sent from my iPhone

Message

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 4/19/2017 9:58:33 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: Re: OD Meeting

I will find out.

Sent from my iPhone

On Apr 19, 2017, at 5:45 PM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:

> Okay. When is the next one?
>
> ---
>
> **From:** McGartland, Al
> **Sent:** Wednesday, April 19, 2017 5:45 PM
> **To:** Dravis, Samantha <dravis.samantha@epa.gov>
> **Subject:** Re: OD Meeting
>
> I had two of my guys listening in to federalism consult. I'm anxious to hear if states responded in how they would continue to protect valuable ecology.
>
> I think it's important that you do attend some of these -- sends a signal that what states say matters.
>
> Thanks for being so engaged on the OMB stuff. Your leadership will pay big dividends. I do need to circle back with you on whether and how to engage OIRA on CPP economic analysis.
>
> Sent from my iPhone
>
> On Apr 19, 2017, at 2:17 PM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:
>
>> Guys, I am very sorry to postpone our meeting today, but I would really like to attend some of the WOTUS Federalism consultation and my presence there has been requested. I will look forward to seeing you on Friday and Robin will reschedule.

Message

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 4/12/2017 12:20:39 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]
Subject: Electric power research institute (EPRI) workshop

EPRI is an industry-funded research arm of the electric power industry. They are having a workshop may 10 that should be helpful to us as we think through what happens when we remove the Clean Power Plan from the books.

Provided you all are ok with it we will probably send a few people. (It's in DC). We know several of their economists well.

Sent from my iPhone

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:

Ex. 5 - Deliberative Process

Respectfully yours,

E. Scott Pruitt

Message

From: Bennett, Tate [Bennett.Tate@epa.gov]
Sent: 4/2/2017 2:11:02 PM
To: Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Freire, JP [Freire.JP@epa.gov]
CC: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: RE: Letter to McAuliffe

Sorry, was navigating email troubles this weekend. Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

-----Original Message-----
From: Gunasekara, Mandy
Sent: Saturday, April 1, 2017 6:17 PM
To: Freire, JP <Freire.JP@epa.gov>
Cc: Bennett, Tate <Bennett.Tate@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Re: Letter to McAuliffe

Yes- I like this. Will you send the link to the article you referenced?

Sent from my iPhone

> On Apr 1, 2017, at 6:09 PM, Freire, JP <Freire.JP@epa.gov> wrote:
>

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process Call me if this sounds confusing or if you want a better sense of why?
>
> J.P. Freire
> Environmental Protection Agency
> Associate Administrator for Public Affairs
> Mobile: Ex. 6 - Personal Privacy

Message

From: Bennett, Tate [Bennett.Tate@epa.gov]
Sent: 4/2/2017 2:11:56 PM
To: Freire, JP [Freire.JP@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]
Subject: RE: Letter to McAuliffe

Can easily crank out Monday AM. Sorry for the delayed response!

-----Original Message-----
From: Freire, JP
Sent: Saturday, April 1, 2017 10:06 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Bennett, Tate <Bennett.Tate@epa.gov>
Subject: RE: Letter to McAuliffe

FYI, Ryan has signed off on the idea. Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

-----Original Message-----
From: Dravis, Samantha
Sent: Saturday, April 1, 2017 7:39 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Freire, JP <Freire.JP@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>
Subject: Re: Letter to McAuliffe

I like it too.

Sent from my iPhone

> On Apr 1, 2017, at 6:17 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:
>
> Yes- I like this. Will you send the link to the article you referenced?
>
> Sent from my iPhone
>
>> On Apr 1, 2017, at 6:09 PM, Freire, JP <Freire.JP@epa.gov> wrote:
>>

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process Call me if this sounds confusing or if you want a better sense of why?

>> J.P. Freire
>> Environmental Protection Agency
>> Associate Administrator for Public Affairs
>> Mobile: Ex. 6 - Personal Privacy

Message

From: Bennett, Tate [Bennett.Tate@epa.gov]
Sent: 4/2/2017 2:15:19 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Freire, JP [Freire.JP@epa.gov]
CC: Richardson, RobinH [Richardson.RobinH@epa.gov]
Subject: Protest Tomorrow

WHAT: On Monday April 3rd, outside of the Environmental Protection Agency (EPA) lab, U.S. Senator Cory Booker, Congressman Frank Pallone (NJ-06), state and local elected officials, New Jersey Sierra Club and local environmental groups will stand in solidarity against President Trump's anti-environmental agenda and abandonment of the fight against climate change. The event will focus on the Trump administration's budget cuts and weakening of the Environmental Protection Agency (EPA), withdrawal from initiatives to combat climate change including the Clean Power Plan, and failure to support clean energy programs that will create jobs in New Jersey and throughout the country.

"The EPA budget is a disaster to the environment, especially in New Jersey. This is part of President Trump's war on the environment. Not only is Trump cutting the budget, he is getting rid of environmental protections. By getting rid of 1/3 of its staff and cutting the budget, it is a one-two punch to eliminate the EPA. His cuts will mean that there will not enough personnel to make sure our water is safe to drink, our land is clean, our air is breathable, and our 118 Superfund Sites are cleaned-up. By cutting enforcement, Trump will create a polluters holiday because there will be no one to sure to make sure they aren't violating the law. This is an outrageous attempt to protect corporate polluters instead of our health and climate,"**said Jeff Tittel, Director of the New Jersey Sierra Club.** "We are joining together to save the EPA and stand up for clean air, clean water, toxic sites cleaned-up, and action on climate change. We fought 45 years ago for Congress to create the EPA and now we will fight all over again to stop the President from dismantling it."

Sign Up for E-News

WHEN: Monday, April 3rd, 10:30 a.m.

WHERE: 2890 Woodbridge Ave., Edison, NJ

Elizabeth Tate Bennett
Sr. Advisor to the Administrator
Office of Congressional and Intergovernmental Affairs
U.S. Environmental Protection Agency

Message

From: Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]
Sent: 4/2/2017 2:17:05 PM
To: Bennett, Tate [Bennett.Tate@epa.gov]
CC: Freire, JP [Freire.JP@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]
Subject: Re: Letter to McAuliffe

I'll help you out with that Tate.

Sent from my iPhone

> On Apr 2, 2017, at 10:11 AM, Bennett, Tate <Bennett.Tate@epa.gov> wrote:
>
> Can easily crank out Monday AM. Sorry for the delayed response!
>
> -----Original Message-----
> From: Freire, JP
> Sent: Saturday, April 1, 2017 10:06 PM
> To: Dravis, Samantha <dravis.samantha@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
> Cc: Bennett, Tate <Bennett.Tate@epa.gov>
> Subject: RE: Letter to McAuliffe
>
> FYI, Ryan has signed off on the idea. Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

>
> -----Original Message-----
> From: Dravis, Samantha
> Sent: Saturday, April 1, 2017 7:39 PM
> To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
> Cc: Freire, JP <Freire.JP@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>
> Subject: Re: Letter to McAuliffe
>
> I like it too.
>
> Sent from my iPhone
>
>> On Apr 1, 2017, at 6:17 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:
>>
>> Yes- I like this. Will you send the link to the article you referenced?
>>
>> Sent from my iPhone
>>
>>> On Apr 1, 2017, at 6:09 PM, Freire, JP <Freire.JP@epa.gov> wrote:
>>>

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process I was just reading about his refusal to do so until CPP is off the books. Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

>>>
>>> This would be an important way of demonstrating our commitment to cooperative federalism, particularly with a democratic governor. Call me if this sounds confusing or if you want a better sense of why?
>>>
>>> J.P. Freire
>>> Environmental Protection Agency
>>> Associate Administrator for Public Affairs
>> Ex. 6 - Personal Privacy

Message

From: Bennett, Tate [Bennett.Tate@epa.gov]
Sent: 3/30/2017 4:35:23 PM
To: jbroderick@rga.org
CC: Dravis, Samantha [dravis.samantha@epa.gov]; Wagner, Kenneth [wagner.kenneth@epa.gov]; Bowles, Jack [Bowles.Jack@epa.gov]
Subject: Administrator Pruitt writes Governors on CPP
Attachments: Sandoval.pdf

Hi there!

We just wanted to flag with RGA that Administrator Pruitt is today sending the attached letter to the U.S. Governors regarding the EPA's current posture on the CPP. Please do not hesitate to let us know if your team has any questions, and we look forward to working together in the many days to come.

Best.

Tate

Elizabeth Tate Bennett
Sr. Advisor to the Administrator
Office of Congressional and Intergovernmental Affairs
U.S. Environmental Protection Agency

Message

From: McGartland, Al [McGartland.Al@epa.gov]
Sent: 4/18/2017 9:32:44 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: Follow up to OMB.

Anthony wants to revisit the omb review time for step 1. He emphasized they are on board but 1 week will be too difficult to conduct interagency review. Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Sent from my iPhone

Message

From: Sachs, Robert [Sachs.Robert@epa.gov]
Sent: 4/21/2017 8:23:53 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]
CC: Kenny, Shannon [Kenny.Shannon@epa.gov]; Sachs, Robert [Sachs.Robert@epa.gov]; Shaw, Nena [Shaw.Nena@epa.gov]
Subject: Final Documents for the Department of Commerce
Attachments: FINAL EPA Response to Commerce 4-21-2017 with appendix.pdf

Samantha –

The text of the cover letter is below and the entire response is in the attached PDF. Brittany and I discussed having you send the response to Earl today and then we can distribute internally next week. Earl's email is ecomstock@doc.gov.

Please let me know if you need anything else.

Thanks and have a great weekend.

Nena (from Bob's computer)

Cover Letter
RE: EPA's Input to the Department of Commerce's Plan to Streamline Permitting and Reduce Regulatory Burdens for Domestic Manufacturing

Dear Mr. Comstock:

Thank you for your leadership on the January 24, 2017 Presidential Memorandum on "Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing." At the interagency coordinating meeting on March 28, 2017, participating agencies were asked to provide to the Department of Commerce responses to the following four requests: (1) Briefly describe any of your agency's reforms in progress now that pertain to this effort; (2) Provide specific regulatory reform targets regarding your Agency; (3) Provide a brief description of permitting processes related to manufacturing and describe ways they may be simplified; and (4) Other advice and input as desired.

Environmental permitting can be a complex and burdensome system for domestic manufacturers to navigate as they seek to expand and create economic growth, and delays result in negative impacts for new projects and improvements manufacturers seek to make. The costs associated with environmental permitting are not well documented. The "hidden cost of environmental regulation" includes facilities that are never built and jobs never created because of environmental permitting.

We can and need to do better to streamline these processes while continuing to protect human health and the environment. The process started by this Presidential Memorandum is just the beginning. In the attached Executive Summary and the body of EPA's response, we are proposing a range of reforms including modernizing the NPDES regulatory requirements consistent with CWA amendments and recent case law, as well as revising Title V regulations to streamline and clarify processes related to the submission and review of Title V petitions. These and other streamlining efforts will help provide the certainty and timeliness important for fostering an environment for economic growth. The Administrator is committed to bringing EPA back-to-basics, streamlining our permitting processes to create economic and job growth in the manufacturing sector is crucial to that effort.

I sincerely hope EPA's submission assists the Department of Commerce in developing a comprehensive Permit Streamlining Action Plan (Action Plan). If you have any questions, please feel free to contact me or Nena Shaw at shaw.nena@epa.gov.

Sincerely,

Samantha Dravis
Senior Counsel/Associate Administrator, Office of Policy
U.S. Environmental Protection Agency

United States Environmental Protection Agency

Response to Department of Commerce Questions on Permit Streamlining and Reducing Regulatory Burdens for Domestic Manufacturing

April 21, 2017

ED_0011318_00006974-00001

Contents

Introduction 3

Executive Summary 4

I. Summary of Pertinent EPA Statutes and Regulatory/Permitting Programs Potentially Affecting Domestic Manufacturing 5

Table 1. 5

I.A Clean Air Act 9

I.B. Clean Water Act 11

I.C. Safe Drinking Water Act 12

I.D. Resource Conservation and Recovery Act 13

I.E. Toxic Substances Control Act 14

I.F. Federal Insecticide, Fungicide, and Rodenticide Act 15

II. Opportunities to Simplify EPA's Regulatory Programs and Associated Permitting Processes 16

II. A. Continuous Improvement Efforts to Streamline Permitting Processes and Minimize Regulatory Burden 17

Table 2 17

II.A.1. AIR – Clean Air Act (NSR, NAAQS, PSD) 19

II.A.2. WATER – SDWA, CWA (SEC 402, SEC 404), NPDES 21

II.A.3 LAND – RCRA Subtitle C, TSCA 21

II. B. Potential Improvement Efforts to Streamline Permitting Processes and Minimize Regulatory Burden for Domestic Manufacturers 22

II.B.1. AIR – Clean Air Act (Title V, NSR) 22

II.B.2. WATER – SDWA, Clean Water Act (SEC 402 [NPDES], SEC 404), ... 23

II.C. EPA Actions Regarding Specific Regulatory Reform Targets 24

Appendices

ED_0011318_00006974-00002

Introduction

On January 24, 2017, President Trump signed the Presidential Memorandum on Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing. The stated purpose of the memorandum was to "support the expansion of manufacturing in the United States through expedited reviews of and approvals for proposals to construct or expand manufacturing facilities and through reductions in regulatory burdens affecting domestic manufacturing." The Environmental Protection Agency (EPA), which is tasked with the mission of protecting human health and the environment, is equally committed to engaging in robust regulatory reforms to reduce unnecessary burdens on domestic manufacturing consistent with the President's directive.

There are over 250,000 manufacturers in the US with more than 11.4 million employees, making manufacturing the fourth largest industry providing domestic jobs.[1] Nearly six in 10 U.S. export dollars come from manufacturing.[2] Despite manufacturer's positive economic impact, environmental regulations have resulted in manufacturers spending nearly twice the amount on regulatory compliance than is spent by the average U.S. business.[3] For small manufacturers, the amount spent on regulatory compliance is about triple that of the average U.S. business.[4] According to the National Association of Manufacturers, federal environmental regulations impose nearly 75,000 air, water, and waste-related restrictions on U.S. manufacturers.[5] Mining projects typically lose one-third of their value due to permit approval delays.[6] The World Bank ranks the US 39th in the world with regard to the ease for businesses in dealing with construction permits.[7] Accordingly, review of EPA's permitting processes is timely.

EPA implements a host of environmental statutes that affect domestic manufacturing. Certain permitting requirements impose direct costs (e.g. time and resources to prepare the permit application), costs associated with uncertainty and delay (e.g. financial costs and potential penalties), and opportunity costs of delay and cancellation (e.g. forgone production and emissions reductions).[8] Delays in the approval of permits by federal or State permitting authorities can also postpone or prevent manufacturers from building, expanding or beginning operations, even if the affected operations may be deemed suitable as proposed. The costs associated with environmental permitting are not well documented, yet the "hidden cost of environmental regulation" are acute for manufacturers, including the facilities that are never built, projects foregone, and jobs that are not created. Given the extraordinary potential of the U.S. manufacturing sector to contribute to the growth of the national economy and assist in the restoration of the nation's infrastructure, EPA is committed to comprehensive regulatory reform and streamlining of its permitting and other processes.

---

[1] https://www.census.gov/library/visualizations/2016/comm/manufacturing_day2016.html; http://www.nam.org/Newsroom/Top-20-Facts-About-Manufacturing/

[2] https://www.census.gov/library/visualizations/2016/comm/manufacturing_day2016.html

[3] Paul Noe. *Smarter Regulation for the American Manufacturing Economy*. 2016. https://spea.indiana.edu/doc/mpp/noe-reg.pdf

[4] Paul Noe. *Smarter Regulation for the American Manufacturing Economy*. 2016. https://spea.indiana.edu/doc/mpp/noe-reg.pdf

[5] Pareto Policy Solutions, LLC. Report to the National Association of Manufacturers. *Holding US Back: Regulation of the U.S. Manufacturing Sector*. 2017. http://www.nam.org/Data-and-Reports/Reports/NAM-Belton-Regulatory-Study/

[6] http://mineralsmakelife.org/assets/images/content/resources/SNL_Permitting_Delay_Report-Online.pdf

[7] http://www.doingbusiness.org/rankings

[8] Arthur Fraas et. al., EPA's New Source Review Program: Time for reform? (47 ELR 10026, 10030)

ED_0011318_00006974-00003

Executive Summary

Pursuant to the Presidential Memorandum, the Department of Commerce (DOC) asked participating departments and agencies to provide a report on its statutory, regulatory and permitting requirements that may affect domestic manufacturing; to describe any ongoing or potential efforts to improve these processes; and to identify any specific regulatory reform targets that may reduce burdens on manufacturers. This paper serves as the Environmental Protection Agency (EPA) response to DOC's request. The paper is organized as follows:

- Section I provides a high-level summary of relevant EPA statutes, regulatory requirements and permitting programs, including estimates of the regulated universe by statute and by program, and a summary of delegated and authorized states by regulatory or permitting program.
- Section II summarizes the EPA's to streamline its permitting processes and identifies several opportunities in which EPA's various regulatory programs and associated permitting processes might be further simplified.
- Appendix A includes background documents summarizing EPA's past efforts to quantify time taken for permit issuance.
- Appendix B includes process maps addressing relevant EPA statutes, associated regulatory programs and permitting processes.

Through the potential streamlining efforts described herein, EPA believes the Agency can create greater environmental results in the long-term and achieve the following goals:

- Speed manufacturers' "time-to-market" for new and improved products/facilities;
- Reduce the burden on manufacturer resources responding to the permitting process;
- Reduce the frequency and severity of unintended permit violations; and
- Increase clarity surrounding permitting requirements.

EPA is taking regulatory reform very seriously, and under Administrator Pruitt's leadership, it has been proactive in soliciting input from a broad range of stakeholders that will inform plans over the next few months by the Agency's Regulatory Reform Task Force in response to several Executive Orders. The regulatory programs that affect domestic manufacturers also affect other industrial sectors, and the Task Force is looking to synthesize information from multiple sources, including the DOC's Request for Information (RFI), comments in EPA's regulatory reform docket, input from public meetings, and recommendations from EPA programmatic offices to inform its regulatory reform work over the next few months. EPA believes through these efforts, the Agency can maintain environmental protections and meaningfully improve its permitting and regulatory programs to reduce burdens on domestic manufacturers, consistent with the President's directives.

ED_0011318_00006974-00004

I. Summary of Pertinent EPA Statutes and Regulatory/Permitting Programs Potentially Affecting Domestic Manufacturing

EPA implements several major environmental statutes through regulatory or permitting programs that may affect domestic manufacturers. In some cases, the permitting program is mandated directly by statute, and in other cases, the permitting program is the result of regulations promulgated by EPA in response to a statute. A summary of these statutes and programs are summarized in **Table 1.**

Table 1.

Summary of Pertinent EPA Statutes, Regulatory Requirements, and Permitting Programs
AIR
Clean Air Act
New Source Review (NSR), National Ambient Air Quality Standards (NAAQS) In areas that attain NAAQS, NSR permits are referred to as Prevention of Significant Deterioration or "PSD" permits. In NAAQS nonattainment areas, they are referred to as Nonattainment NSR or "NNSR" permits.
✓ PSD Pre-construction for new major sources, major modifications of existing sources of criteria pollutants.
✓ Minor NSR construction permits.
✓ Major Construction Nonattainment NSR Permit for new major sources or major modifications to major sources in a nonattainment area.
Title V Operating Permits / Petitions
✓ *Title V (Part 70) sets forth operating permits issued by state/local/tribal air permitting authorities; Title V (Part 71) sets for the federal air quality operating permit program where EPA issues permits to a limited number of sources [e.g. Indian Country; outer continental shelf (beyond the State's seaward boundaries); EPA's objection to a state issued Part 70 operating permit and the state does not fully respond to EPA's objections; and, a state's Part 70 operating permit program that is expired or withdrawn].*
WATER
Safe Drinking Water Act
SDWA Underground Injection Control (UIC) Program. Injection of all materials underground must be authorized either under general rules or specific permits. There are six well classes with varied regulatory or permitting requirements. Note: In 1984 banned the use of Class IV injection wells (hazardous or radioactive waste).
✓ Permits for Class I industrial and municipal waste injection, including deep well injection of hazardous fluids below the lowermost underground source of drinking water (USDW).
✓ Permits for Class II Enhanced Oil Recovery wells.
✓ Permits for Class III uranium in-situ recovery (ISR) wells.
✓ Registration of Class V wells injecting non-hazardous fluids into/above USDW.

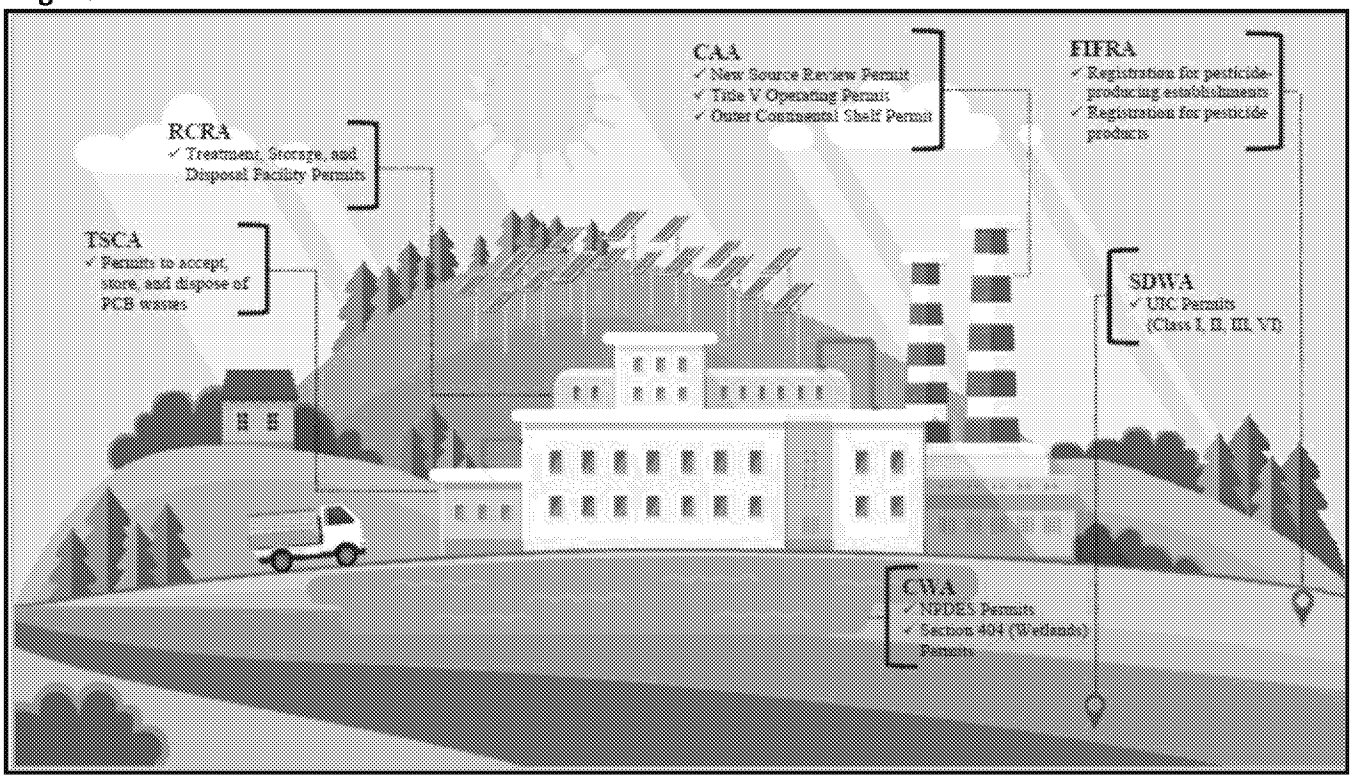
ED_0011318_00006974-00005

Summary of Pertinent EPA Statutes, Regulatory Requirements, and Permitting Programs
✓ Permits for Class VI Geologic Sequestration of Carbon Dioxide (CO2).
Clean Water Act (CWA)
CWA Section 402, National Pollutant Discharge Elimination System (N). Discharge of wastewater or storm water from a point source (e.g. pipe, ditch, channel) into a surface water of the U.S. (e.g. lake, river and/or ocean).
✓ "Major" NPDES permits for existing sources with major modifications, including, but not limited to, a new outfall, a new or changed process resulting in the discharge of new pollutants, or an increase in production resulting in an increased discharge of pollutants.
✓ "Non-Major" industrial NPDES permits that are identified by EPA on a national or regional basis as a focus area, for new sources or new dischargers.
✓ Pretreatment Permits to dispose of pretreated wastewaters and sanitary sewage in Publicly Owned Treatment Works (POTWs).
✓ Individual permits for facilities discharging pollutants of concern at a level of significance to impaired water bodies that have 60+ points on the major/minor NPDES permit rating worksheet.
CWA Section 404, NPDES. Dredge and Fill Wetlands Permits, wherein the U.S. Army Corps of Engineers has authority to issue permits, but the EPA develops the environmental criteria for permit application; determines the geographic jurisdiction and applicability of exemptions under the program; and comments on draft permits.
✓ New construction of manufacturing plants or plant expansions (including parking lots or rainwater collection lakes, water bodies) that will affect "waters of the United States" (WOTUS).
LAND
Resource Conservation and Recovery Act (RCRA)
RCRA, Subtitle C – Hazardous Waste Discharges. Owners/operators of facilities that treat, store or dispose of hazardous materials must have a permit to govern their operations.
✓ New permits for operation, closure, post-closure activities.
✓ Modifications to existing permits that address new treatment processes.
✓ Corrective action cleanups involving possible off-site impacts.
RCRA, Subtitle D – Criteria for Municipal Solid Waste Landfills. Minimum criteria established for owners/operators of municipal solid waste landfill (MSWLF) units.
✓ New permits for location, design, construction, operation, closure and/or post-closure of MSWLFs.
✓ Modifications to existing permits.
Toxic Substances Control Act (TSCA)
TSCA Polychlorinated-biphenyls (PCB).
✓ PCB waste disposal activities in commercial landfills where there will be potential releases of PCBs and/or dioxins to the air, water and ground exceeding the regulatory levels from its operations
✓ Approvals for PCB commercial storage.
✓ Disposal facility and risk-based cleanup approvals for permits that may involve activities with significant public health or environmental impacts.
Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
✓ All pesticides distributed or sold in the US must be registered by EPA.

ED_0011318_00006974-00006

These regulatory and permitting programs span all types of entities across all types of media and boundaries. Manufacturers that engage in industrial or commercial activities impacting a combination of air, land, and water may need to obtain a variety of permits to satisfy multiple environmental statutes across a variety of regulatory regimes and geographic areas.[9] As illustrated in **Figure 1**, a single facility or "unit" may be subject to different EPA permitting programs. For example, some EPA programs require an **individual permit** for a single facility while other EPA permitting regimes require a separate permit for each potential pollution source or operating unit along the manufacturing chain. Under either scenario, a single manufacturer may, depending on its activities, be required to apply for and maintain multiple environmental permits to satisfy several statutory and regulatory regimes.

Figure 1.

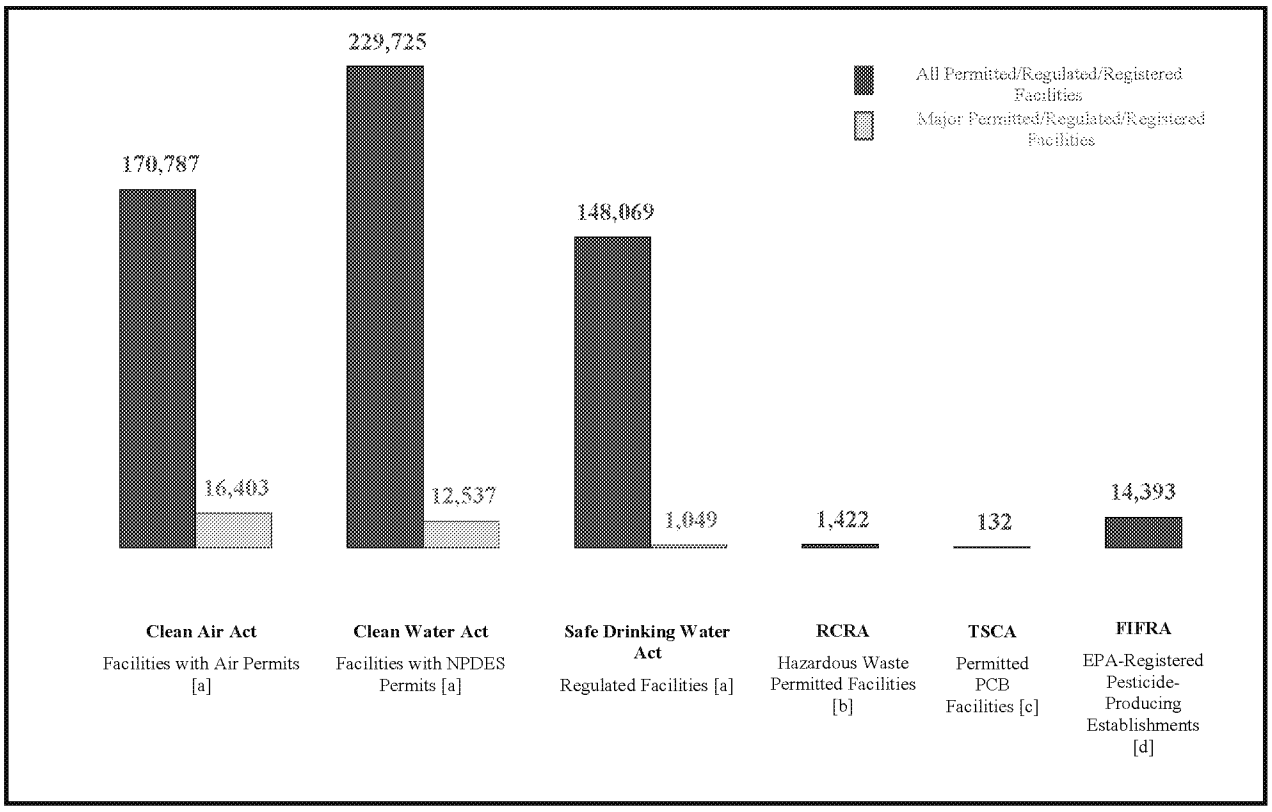


In addition to unit-specific permits, EPA may issue a "**general permit**" that governs a common geographic area or certain categories. For example, EPA issues over 80,000 general permits a year for construction. EPA has also issued a total 500,000 general permits for vessels, pesticide applications, and different types of stormwater. Accordingly, a general permit can cover a multitude of pollution sources and/or companies. In order for a company's activities to be covered under a general permit, it is required to file a "Notice of Intent" rather than apply for an individual permit. **Figure 2** provides an overview of the number of regulated and permitted facilities by statute based on EPA's Enforcement and Compliance History Online (ECHO), a web application that tracks facility-level compliance with multiple federal statutes and EPA regulatory requirements.[10]

[9]To address the potentially burdensome nature of obtaining myriad permits, the EPA has issued exemptions for classes of companies operating in various industry sectors.
[10] Available online at https://echo.epa.gov.

ED_0011318_00006974-00007

Figure 2.

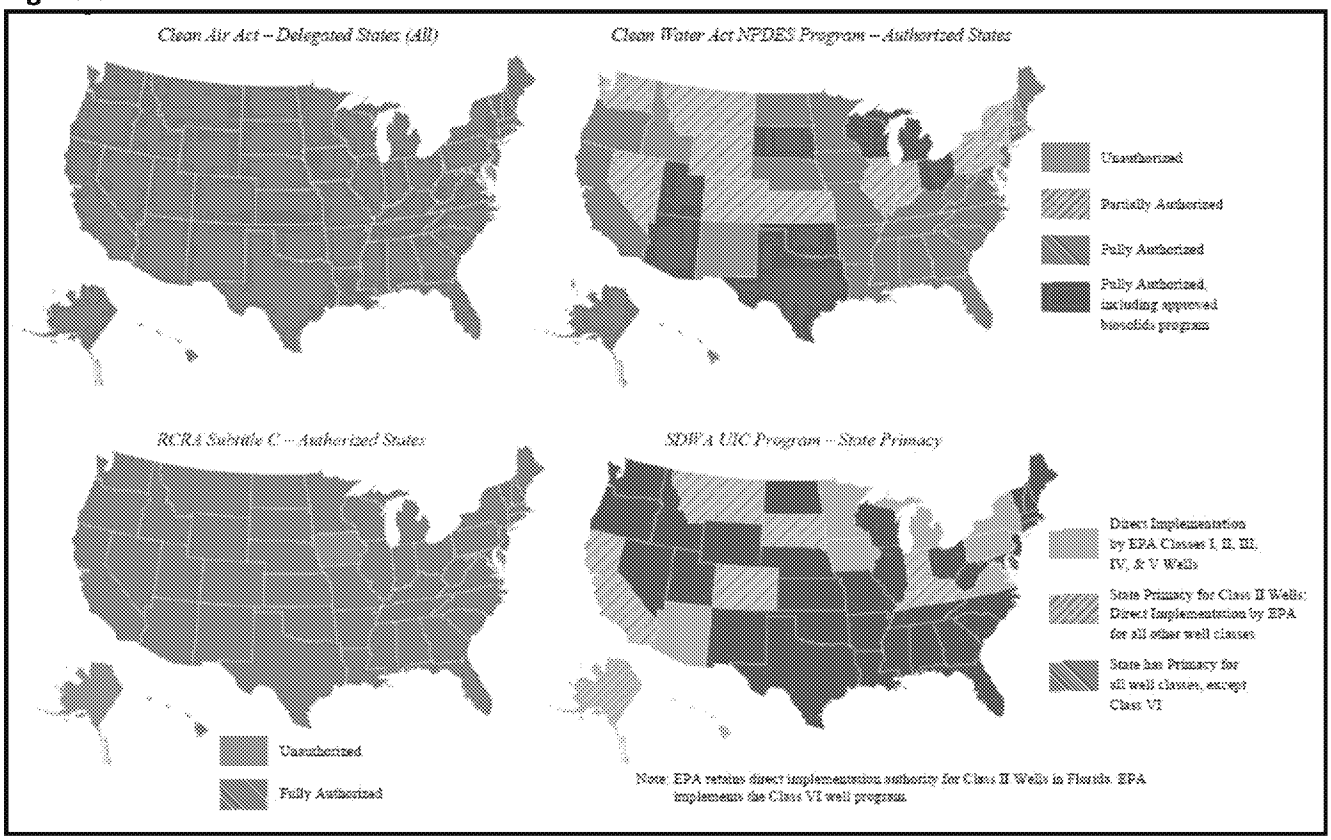


Sources: [a]EPA, ECHO Web Application, Facility Search; [b]EPA, Biennial Hazardous Waste Report, 2015 Reporting Cycle; [c]EPA, Disposal and Storage of Polychlorinated Biphenyl (PCB) Waste webpage; [d]EPA, ECHO Web Application, Pesticide Dashboard, National Pesticide Establishment Dashboard View; "Major" generally indicates a "large" facility or establishment. What constitutes large (or major) varies by statute by rule.

Responsibility for implementing these complex permitting programs does not rest solely on the EPA; it may be authorized or delegated to a state or tribal government under certain statutes. In order for EPA to authorize or delegate authority, a state or tribal government must demonstrate its program is equivalent to or more stringent than the federal program in a written agreement with EPA. An authorized or delegated state or tribal nation accepts primary responsibility for implementing the specific environmental program while EPA maintains a critical oversight role of the state or tribal authorized or delegated program. EPA also retains the authority to monitor compliance and enforcement activities in authorized or delegated states or tribal nations. **Figure 3** illustrates EPA-authorized, EPA-delegated, or EPA-approved state programs by statute.

ED_0011318_00006974-00008

Figure 3.



The following subsection provides a more detailed summary of relevant EPA statutes, regulatory requirements and permitting programs, including estimates of the regulated universe by statute and program.

I.A Clean Air Act

A majority of EPA's regulatory and permitting programs stem from the Clean Air Act (CAA), which was enacted by Congress in 1970 and subsequently amended in 1977 and 1990. Key permitting programs under the CAA include: the new source review permit program, the Title V operating permit program, as well as a number of other permit programs that apply to specific sources under specific circumstances.

New Source Review (NSR) Permit Program.[11] Under the NSR program, sources seeking to build a new facility, or undertake a major modification (e.g., a change that significantly increases emissions as defined in applicable regulations), must apply for and obtain a permit to ensure that the area in which the source is located will continue to attain or maintain the national ambient air quality standards (NAAQS). Facilities must comply with permit requirements, which may include: 1) what construction is allowed; 2) what air emissions limits must be met; and, 3) how the facility or pollution source can be operated. To ensure compliance with emissions limits, permits also contain monitoring, record-keeping, and reporting requirements. Minor NSR permits cover pollutants from stationary sources that do not require a prevention of significant deterioration (PSD) or non-

[11] The New Source Review Permit Program is authorized by U.S. Code, Title 42, Chapter 85, Subchapter I, Parts C and D, as well as Section 110(a)(2)(C) of Part A.

ED_0011318_00006974-00009

attainment NSR (NNSR) permits (i.e., emissions at levels below defined major source emission thresholds). States are able to customize the requirements of the minor NSR program as long as their program meets minimum requirements. Since the purpose of the NSR program is to attain compliance with the NAAQS, EPA may approve state, local, or tribal authorization to issue a NSR permit through a State Implementation Plan (SIP) revision.

Title V, Operating Permit Program.[12] The Title V program was established with the 1990 CAA Amendments. Operating permits apply to large industrial and commercial facilities and pollution sources. The operating permit essentially incorporates all applicable CAA requirements for the source, and ensures that there is adequate monitoring, recordkeeping, and reporting to assure compliance with these requirements. Sources with operating permits are required by the CAA to certify compliance with applicable permit requirements at least annually, and the permits themselves must be renewed every five years. These permits describe: 1) which pollutants are being released; 2) how much of each pollutant may be released; and, 3) what measures or steps are required to reduce pollution.

EPA may authorize Title V operating permitting authority to a state, local, or tribal government. In these cases, the authorized state, local, or tribal government has the primary responsibility for running permitting programs in their jurisdictions, including reviewing permit applications and issuing permits. In certain geographies, such as some U.S. territories, or states where no corresponding permitting program is implemented, EPA has the role of issuing permits.

Outer Continental Shelf (OCS) Air Permits. The CAA also includes a number of other permit programs that apply to specific sources under certain circumstances. For instance, the OCS Air permits establish the applicable air pollution control requirements, including provisions related to permitting, monitoring, reporting, fees, compliance, and enforcement, for facilities subject to the CAA section 328 and 40 CFR Part 55. These regulations apply to OCS Sources that are located beyond state seaward boundaries. Applicants located beyond 25 nautical miles from the state seaward boundary are subject to federal air quality requirements and will likely need an OCS permit to comply with the EPA's PSD preconstruction permit program, and/or Part 71 of the Title V operating permit program, among other federal requirements.

The OCS regulations are generally implemented and enforced by the EPA Regional Offices, but may be delegated to an adjacent or corresponding state or local air permitting agency. OCS sources are typically involved in oil and gas exploration, development, or production or offshore wind farm installation, and do not include Deepwater Ports involved in liquefied natural gas (LNG) import and export.

- As of April 12, 2017, ECHO indicates **170,787 active and operating facilities with air permits under the CAA**. This includes, **16,403 "major" facilities**.[13] As previously noted, "Major" generally indicates a "large" facility or establishment; what constitutes large (or major) varies by statute, by rule.

[12] Title V of the Clean Air Act is codified as U.S. Code, Title 42, Chapter 85, Subchapter V, Sections 7661 to 7661f. The Code of Federal Regulations, Title 40, Chapter I, Subchapter C, Parts 70 and 71 detail the requirements of the Operating Permit Program.
[13] See EPA's ECHO web application, Facility Search Feature, criteria: 1) Active/Operating; 2) Must Have Air Permit; and, 3) Major. https://echo.epa.gov/facilities/facility-search?srch=adv.

ED_0011318_00006974-00010

I.B. Clean Water Act

In 1972, Congress enacted the Clean Water Act (CWA), which amended the 1948 Federal Water Pollution Control Act.[14] There are two key permit programs under the CWA: the National Pollutant Discharge Elimination System and the Section 404 Permit Program.

National Pollutant Discharge Elimination System (NPDES). NPDES governs pollutant discharges from a "point source" into navigable waters.[15] Industrial, municipal, and other facilities must obtain permits if they discharge pollutants directly to surface waters. NPDES permits specify an acceptable level of a pollutant in a discharge and contain limits on discharges to water, monitoring and reporting requirements, and other provisions to ensure that discharges do not harm water quality of human health. They may also require compliance with certain generic best management practices, such as installing a screen over a pipe to prevent debris from entering a waterway. In so doing, NPDES permits ensure that mandatory standards for clean water are met. NPDES permits may not be issued for a term longer than five years; permittees that wish to continue discharging beyond a five-year term must submit an application for permit renewal. NPDES permits come in two forms: "individual" and "general" permits. NPDES individual permits reflect site-specific conditions of a single discharger, and are unique to that discharger. NPDES general permits are written to cover multiple dischargers with similar operations and types of discharges.

- As of April 12, 2017, ECHO indicates **229,725 facilities active and operating facilities with a NPDES permit**. This includes **12,537 "major" facilities**.[16]

Section 404 Permit Program. EPA also plays an essential role in the Section 404 Permit Program, which regulates the discharge of dredged or fill material into waters, including wetlands, as required under Section 404 of the CWA.[17] Except for certain farming and forestry activities, all development, infrastructure, and mining projects must receive a 404 permit before they can discharge dredged or fill material into water. The U.S. Army Corps of Engineers administers the 404 program on a day-to-day basis and enforces permit provisions, but EPA develops the environmental criteria to be used for the permit application, and determines the geographic jurisdiction and applicability of exemptions for the program.

When an entity applies for a Section 404 Permit, it must demonstrate that steps have been taken to avoid impacts to wetlands, streams, and other aquatic resources, that potential impacts from discharges have been minimized, and that compensation will be provided for all remaining unavoidable impacts. Similar to NPDES permits, general Section 404 permits can be issued on a nationwide, regional, or state basis for particular categories of activities, which eliminates the need

---

[14] U.S. Code, Title 33, Chapter 26.

[15] EPA's regulations to implement and administer the NPDES permit program are located in the Code of Federal Regulations, Title 40, Part 122.

[16] See EPA's ECHO web application, Facility Search Feature, criteria: 1) Active/Operating; 2) Must Have Water Permit (ICIS-NPDES); and, 3) Major. https://echo.epa.gov/facilities/facility-search?srch=adv

[17] U.S. Code, Title 33, Chapter 26, Subchapter IV, Section 1344; https://www.epa.gov/cwa-404/c LEAN -water-act-section-404. EPA guidelines are established by EPA in the Code of Federal Regulations, Title 40, Part 230.

ED_0011318_00006974-00011

for individual review and allows activities to proceed with little or no delay, if the general permit's conditions are met.

I.C. Safe Drinking Water Act

Congress passed the Safe Drinking Water Act (SDWA) in 1974 to protect public health by preserving the quality of the nation's public drinking water supply.[18] The Act authorizes EPA to set national standards for drinking water quality, and then to act in concert with states and local water systems to ensure that these standards are met by taking actions to protect rivers, lakes, reservoirs, springs, and ground water wells. The key permitting regime under the SDWA is the Underground Injection Control Program.

Underground Injection Control (UIC) Program.[19] Among other requirements, the SDWA required EPA to develop minimum federal requirements for practices at injection wells to prevent contamination of underground sources of drinking water, which EPA does through its promulgation of the UIC Program. Under this program, all injection must be authorized under either general rules or specific permits. Because there are different classes of injection wells, the permit requirements differ.

Class I wells are those used to inject hazardous and non-hazardous waste into deep, confined rock formations; the permits for Class I wells address aspects of their siting, construction, operation, monitoring and testing, reporting and recordkeeping, and closure. Class II wells are used to inject fluids, primarily brines, associated with oil and natural gas production; Class II wells used for disposal purposes must be permitted, with the permits indicating construction, testing, and inspection requirements. Class III wells, which inject fluids used to dissolve and extract minerals, must be operated under individual or area-based permits, with construction, operation, testing, monitoring, and closure requirements. In 1984, EPA banned the use of Class IV injection wells. These wells may only operate as part of an EPA- or state-authorized ground water cleanup action. Class V wells are used to inject non-hazardous fluids underground. Most Class V wells are used to dispose of wastes into or above underground sources of drinking water. Class VI wells are used to inject carbon dioxide into deep rock formations and feature similar permit requirements, along with additional, tailored requirements that address the unique nature of injecting carbon dioxide.

Similar to programs promulgated under the CAA and CWA, states and tribes can acquire the primary responsibility to implement the UIC Program within their borders. In areas where a state or tribe has not applied for, or not been granted the ability to administer and implement the Program by EPA, EPA is responsible for Program implementation through one of its Regional offices.

- As of April 12, 2017, ECHO indicates **148,069 facilities with a registered identification number under the Safe Drinking Water Act.** This includes **1,049 "major" facilities**.[20]

[18] U.S. Code, Title 42, Chapter 6A, Subchapter 12.
[19] Code of Federal Regulations, Title 40, Parts 144 through 148.
[20] See EPA's ECHO web application, Facility Search Feature, criteria: 1) Active/Operating; 2) Must Have SDWA ID; and, 3) Major. https://echo.epa.gov/facilities/facility-search?srch=adv.

ED_0011318_00006974-00012

EPA also maintains a National UIC Inventory, which is updated annually.[21]

- The latest available National UIC Inventory (Federal Fiscal Year 2015) indicates a total of **62,381 permitted wells**, including Class I wells, Class II disposal wells, Class III wells, and Class VI wells.[22] In total, this inventory identifies: 140 Class I Hazardous Wells; 682 Class I Other Wells; 38,864 Class II Disposal Wells; 144,991 Class II Recovery Wells; 505 Class II Other Wells; 96 Class III sites; 22,688 Class III Wells; 29 Class IV Sites; 20 Class IV Wells; 476,898 Class V Wells; and, 7 Class VI Wells.

I.D. Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA) was passed by Congress in 1976.[23] The Act describes a national waste management framework mandated by Congress and gives EPA authority to develop a waste management program through regulations providing explicit, legally enforceable requirements.[24]

The requirements of RCRA, as implemented by EPA, institute a national system of solid waste control. Hazardous waste is regulated under Subtitle C of the Act; EPA has developed a comprehensive, cradle-to-grave **Subtitle C program** that ensures hazardous waste is managed safely from the moment it is generated through its final disposal. Specific regulations under this program establish criteria and regulatory requirements, including **permitting**, for hazardous waste generators and transporters, as well as facilities that treat, store, and dispose of hazardous waste.

Specifically, owners or operators of facilities where hazardous waste is treated, stored, or disposed must have a permit which governs the operational, closure, and post-closure standards of the facility. While facilities that generate hazardous waste are not required to obtain a Subtitle C permit governing their activities, they must still apply for an EPA Identification Number (EPA ID) and provide notification of their hazardous waste generation activities to the regulator. Note that some small hazardous waste generators are exempt from these requirements at the federal level, though state-specific requirements may still apply.

EPA employs a variety of data sources to track hazardous waste activities, including generation, transport, and management. EPA's RCRAInfoWeb application provides a detailed listing of all facilities generating, managing, shipping, and receiving hazardous waste through each hazardous waste biennial reporting cycle.[25]

- The latest available Biennial Report data (2015) indicate a total of **1,422 facilities managing and/or receiving hazardous waste.** This consists of 1,292 facilities reporting managing at least 0.1 tons of hazardous waste, 419 facilities reporting receiving at least 0.1 tons of hazardous

[21] See https://www.epa.gov/sites/production/files/2016-10/documents/underground_injection_control_inventory_fy_2015_0.pdf.
[22] To the extent that other well types, such as Class II non-disposal wells, may also be permitted on a geography-specific basis, this figure may be an underestimate.
[23] U.S. Code, Title 42, Chapter 82.
[24] The regulatory requirements for the waste management program under the Resource Conservation and Recovery Act are located in the Code of Federal Regulations, Title 40, Chapter I, Parts 239 through 282.
[25] See EPA's Biennial Report Summary application at https://rcrainfo.epa.gov/rcrainfoweb/action/modules/br/national/view.

ED_0011318_00006974-00013

waste, and 289 facilities receiving both managing and receiving at least 0.1 tons of hazardous waste.[26]

Like other statutes, under Subtitle C of RCRA, EPA may authorize states to implement certain key provisions of the hazardous waste program in lieu of the Federal government. Where a state program to do so does not exist, or where such authorization has not been granted, EPA directly implements the Subtitle C hazardous waste management program.

While hazardous waste is regulated under Subtitle C, RCRA also includes requirements for a non-hazardous waste program under **Subtitle D**, to be implemented by states. EPA established a number of provisions and regulatory requirements under Subtitle D for non-hazardous waste, including the banning of open dumping of waste, and the establishment of criteria for the operation of municipal waste and industrial waste landfills. States play a lead role in implementing Subtitle D regulations, and may set more stringent requirements than those established by EPA.

Congress amended RCRA in 1984 through the Hazardous and Solid Waste Amendments to the Solid Waste Disposal Act.[27] These Amendments added Subtitle I to RCRA, creating a federal program to regulate **underground storage tanks (USTs)**.[28] Subtitle I has been amended multiple times since, including through the Superfund Amendments Reauthorization Act in 1986, which authorized EPA to respond to petroleum leaks and spills and directed EPA to establish financial responsibility requirements for UST owners and operators. Faulty installation or inadequate operating and maintenance procedures can cause USTs, which mainly store petroleum, to release their hazardous contents into the environment. Accordingly, EPA regulations prevent health and environmental risks from soil and groundwater contamination through the establishment and maintenance of technical standards for operation and maintenance of USTs.

I.E. Toxic Substances Control Act

The Toxic Substances Control Act of 1976 (TSCA) provides EPA with the authority to require reporting, recordkeeping and testing requirements, and restrictions relating to chemical substances and/or mixtures.[29] Specifically, the Act addresses the production, important, use, and disposal of specific chemicals, including polychlorinated biphenyls (PCBs), asbestos, radon, and lead-based paint.

One EPA focus under the TSCA is the **regulation of PCBs**, which are no longer commercially produced in the United States. However, because previously-produced PCBs can still be released into the environment, EPA regulates activities involving these hazardous substances.[30] Companies or persons

---

[26] Estimated through use of the raw dataset underlying the 2015 Biennial Report, accessible at https://rcrainfo.epa.gov/rcrainfoweb/action/modules/br/national?__fp=TkHYkyKBockBCh7M23dwbKUMq0qZYlyJSf-hu--9ZdyLr0rVOo9IbfTa5cFs-3KhW9RpVFDJ-xvgM8nLOkGcHQ%3D%3D&d-4711493-e=2&searchCriteria.stateCode=ALL&search=Submit&searchCriteria.reportCycle=2015&6578706f7274=1&_sourcePage=bFHwrn6Vxz4UVqRHxxRfYn5dIoeSO33NCgWtginWANj_bzrB38Aiuw%3D%3D. Specifically, filtering on Column E, "Managed (Tons)" for non-zero values indicates 1,292 facilities; filtering on Column G, "Received (Tons") indicates 419 facilities. Combining Columns E and G and filtering for remaining non-zero values indicates 1,422 facilities.

[27] U.S. Statutes, Title 98, Chapter 3224; Public Law 98-616, November 8, 1984.

[28] EPA's regulatory requirements for USTs are codified in the Code of Federal Regulations, Title 40, Chapter I, Subchapter I, Parts 280 and 281.

[29] U.S. Code Title 15, Chapter 53, Subchapter I.

[30] EPA's PCB regulations can be found within the Code of Federal Regulations, Title 40, Chapter I, Subchapter R, Part 761.

transporting or disposing of PCBs must notify EPA and receive an EPA ID. These requirements also apply to entities conducting PCB research and development. In addition, EPA issues approvals for facilities to accept, store, and/or dispose of PCB waste on a facility-by-facility basis. EPA also issues approvals for certain types of PCB decontamination processes. EPA maintains lists of the facilities approved to accept, store, and dispose of PCB waste, as well as conduct other PCB activities.

- As of April 12, 2017, EPA data indicate that **58 facilities** have been issued disposal approvals by EPA under TSCA to accept and/or dispose of PCB waste. An additional **67 facilities** have been issued permits to store PCBs under proper disposal of these wastes can occur. **Seven facilities** have also been issued special EPA approvals for specific PCB decontamination processes.[31]

Under Section 5 of TSCA EPA has established an inventory of chemical substances. If a chemical is not already on the inventory, and has not been excluded by TSCA, a premanufacture notice (PMN) must be submitted to EPA prior to manufacture or import. The PMN must identify the chemical and provide available information on health and environmental effects. If available data are not sufficient to evaluate the chemical's effects, EPA can impose restrictions pending the development of information on its health and environmental effects. EPA can also restrict significant new uses of chemicals based upon factors such as the projected volume and use of the chemical.

I.F. Federal Insecticide, Fungicide, and Rodenticide Act

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of 1996 provides for federal regulation of pesticide distribution, sale, and use.[32] Under the Act, all pesticides distributed or sold in the United States must be registered (licensed) by EPA; only those pesticides whose use will not result in unreasonable risks to human health or the environment, or result in dietary risks, can be registered.

EPA's Office of Pesticide Programs holds primary responsibility for conducting the **Pesticide Registration Process** under the Act. In so doing, it evaluates scientific data and assesses the risks and benefits of a pesticide's use, designs label directions to control product use, requires training and certifications for applicators of restricted use pesticides and workers in pesticide-treated areas, and suspends or cancels pesticide registrations as necessary.[33]

---

[31] See EPA, "List of PCB Disposal Facilities and Approvals by Technology Type and EPA Region," at https://www.epa.gov/pcbs/list-polychlorinated-biphenyl-pcb-disposal-facilities-and-approvals-technology-type-and-epa for the list of EPA-issued PCB disposal approvals. See EPA, "List of Approved PCB Commercial Storage Facilities by EPA Region," at https://www.epa.gov/pcbs/list-approved-polychlorinated-biphenyl-pcb-commercial-storage-facilities-epa-region for the list of EPA-issued PCB storage permits. See EPA, "Facilities that Have Obtained Approval for Specific Decontamination Processes," at https://www.epa.gov/pcbs/disposal-and-storage-polychlorinated-biphenyl-pcb-waste#PCBactivities, for the list of facilities with special EPA approvals for specific PCB decontamination processes.

[32] U.S. Code, Title 7, Chapter 6, Subchapter II.

[33] EPA regulations implementing pesticide-related statutes, including the Federal Insecticide, Fungicide, and Rodenticide Act, but also other statutes relating to pesticides, are available in the Code of Federal Regulations, Title 40, Chapter I, Subchapter E, Parts 150 to 189.

ED_0011318_00006974-00015

Section 7 of FIFRA also requires that production of pesticides, including formulation, packaging, repackaging, labeling, and relabeling, be conducted in a registered establishment. EPA maintains the Section 7 Tracking System.

- As of April 12, 2017, ECHO indicates **11,884 domestically-owned and registered pesticide-producing establishments**. ECHO further indicates **2,509 foreign-owned, registered pesticide-producing establishments**. These establishments include pesticide manufacturers, pesticide sellers, and pesticide distributors.

Unlike other statutes, which require permits or registrations for individual pollutant sources or for facilities, EPA's responsibilities under the FIFRA also pertain to the registration of individual pesticide *products*. Many publicly accessible databases provide inventories of pesticide products.

- As of April 12, 2017, the National Pesticide Information Center lists **408,203 federally-registered pesticide products**.[34]

II. Opportunities to Simplify EPA's Regulatory Programs and Associated Permitting Processes

As evidenced from Section I, EPA employs complex regulatory and permitting programs. EPA is committed to engaging in robust streamlining of its permitting regimes and reducing regulatory burdens for domestic manufacturers. While the agency has already made some improvements to its permitting processes, there are significant opportunities for reforms. Identifying and implementing those reforms will require collaboration with EPA's state and tribal partners and consultation with affected entities. Each effort will require its own set of performance metrics and outcome measures (e.g., reduced time, paperwork, duplication) in order to reduce costs and improve programmatic efficiency. Through these streamlining efforts, EPA believes the agency can create greater environmental results in the long-term and achieve the following goals:

- Speed manufacturers' "time-to-market" for new and improved products/facilities;
- Reduce the burden on manufacturer resources responding to the permitting process;
- Reduce the frequency and severity of unintended permit violations; and
- Increase clarity surrounding permitting requirements.

EPA views the permitting process as an opportunity for continuous improvement. Its Headquarters Program Offices and its Regional Offices have begun engaging in recent years in a number of business process improvement efforts. The success of these limited efforts highlight a significant opportunity to intensify and scale up EPA's overall efforts to realize even greater benefits. A few of these efforts are described below.

[34] See the National Pesticide Information Center's "Product Research Online" database at http://npic.orst.edu/NPRO/.

ED_0011318_00006974-00016

II. A. Continuous Improvement Efforts to Streamline Permitting Processes and Minimize Regulatory Burden

A cornerstone of EPA's improvement efforts to streamline permitting processes includes the E-Enterprise for the Environment ePermitting and eReporting strategy. **E-Enterprise for the Environment** is a new model EPA is undertaking to bolster collaborative leadership among environmental co-regulators. Through this strategy, EPA is working with the states and tribes to simplify, streamline and modernize the implementation of the Agency's environmental permitting and reporting programs. The tools and technology available to co-regulators are enhanced by mobile applications, online portals, smart tools and other investments in information technology. Streamlining processes and using smarter tools produces improved efficiency making co-regulators more productive. In turn, these productivity benefits also help regulated entities, such as those in the manufacturing sector, by reducing the time it takes to report and manage compliance.

In addition to E-Enterprise, EPA has launched several specific continuous improvement efforts depicted in **Table 2** and further described below that are tailored by media, statute, and regulatory program.

Table 2

Ongoing and Proposed EPA Actions to Streamline Regulatory and Permitting Processes
AIR – CAA (Title V, NSR)
✓ **Triage State Implementation Plans (SIPs):** EPA is engaged with its regional offices to reduce process steps to cut the time required to review and approve SIPs. A SIP is a state-specific federally-enforceable plan that identifies how a state will attain and/or maintain NAAQS. EPA has a backlog of nearly 700 SIPs dating back to 2013. Through an EPA LEAN event, EPA Region 7 created a SIP review process that reduces the number of steps from 165 to 134 and the number of decisions from 14 to 8. In Region 10, the SIP review process is now split in three tracks (fast, normal and high involvement), which has reduced the average process time from 19 months to 12.
✓ **EPA plans to continue its process towards finalizing the Title V Petitions Rulemaking:** EPA issued a proposed rule on August 24, 2016 (81 FR 57822), revising its regulations to streamline and clarify processes related to the submission and review of Title V petitions that could be submitted by a petitioner to challenge a proposed Title V permit.
✓ **Guidance on Ozone & $PM_{2.5}$ Significant Impact Levels (SILs):** EPA is in the process of crafting guidance to facilitate air quality assessments involving SILs as a compliance demonstration tool. SILs that can be used as alternatives to, or in conjunction with air quality modeling, and this guidance can streamline the modeling required in the permitting process.
✓ **Technical Guidance on Model Emissions Rates for Precursors of Ozone and Secondary $PM_{2.5}$:** EPA issued draft guidance to assist state and local air agencies and manufacturing permit applicants in conducting streamlined screenings for PSD compliance with Ozone and Secondary $PM_{2.5}$ NAAQS that reduces the burden of PSD compliance demonstrations.

ED_0011318_00006974-00017

✓	**Data Management Tool for Permitted Emissions Limits & Controls:** EPA maintains a "clearinghouse" documenting permit decisions, specifically related to NSR. The tool also includes information on standards such as reasonably available control technology (RACT), best available control technology (BACT), and lowest achievable emission rates (LAER). This resource can assist permit applicants by diminishing uncertainty and increasing transparency, which can advance facility's ability to comply with permits.
	WATER – SDWA, CWA (SEC 402 [NPDES], SEC 404)
✓	**NPDES Applications and Program Updates Rule**: EPA is engaged in revisions to modernize NPDES regulatory requirements consistent with CWA amendments and recent case law. Specifically, EPA's proposed revisions would eliminate regulatory inconsistencies, improve permit documentation, enhance permit transparency, and eliminate outdated provisions.
✓	**Streamline NPDES Permit Application Forms**: EPA is considering streamlining the permit application process for all industrial sectors, including those required of new manufacturing facilities. Consistent with this effort, EPA is exploring options to modernize the application process, providing an online "fill-and-print" version of the forms.
✓	**NPDES Technical Assistance to Affected Manufacturing Facilities**: EPA is proposing to provide technical assistance to affected companies through a suite of information technology tools. The objective of these tools is to help the regulated universe quickly and efficiently identify which forms must be completed, and available resources to help in completing the forms.
✓	**Initiate a LEAN process for NPDES applications**: EPA is considering undertaking a LEAN initiative with the goal of eliminating inefficiencies in the permitting process, and minimizing duplication of effort. As part of this effort, EPA proposes to focus on developing training modules that focus on best practices for new permit applications to ensure that their NPDES application is complete and accurate, thereby avoiding unnecessary delays.
	LAND – RCRA SUBTITLE C, TSCA
✓	**RCRA Streamlined Permit Renewal Process:** RCRA permits must be renewed every 5-10 years. Reviewing applications and approving permits can be a lengthy process— and if the process is unclear or has too many steps it creates backlogs that can potentially slow facility operations and take too much industry and government staff time to address. EPA partnered with the State of Massachusetts to conduct a LEAN event to streamline the RCRA permit renewal process. The new process simplifies and accelerates approvals. The time to develop a draft permit for renewal was more than halved: reducing the burden on facility operators and allowing them to invest staff time in other critical tasks.
✓	**RCRA Facilities Investigation Remedy Selection Track (RCRA FIRST):** Investigating facilities' RCRA contamination and selecting an approach to cleanup can take, on average, 16 years. Working with States and other stakeholders through a LEAN process, EPA is looking to reduce this time significantly, in some cases by more than 50 percent. EPA has started to use the RCRA FIRST to accelerate cleanup of contaminated sites and getting these sites ready for community redevelopment. RCRA FIRST is designed to save taxpayer dollars, reduce risks to human health and the environment, and expedite economic development.
✓	**PCB Facility Approval Streamlining Toolbox (PCB FAST)**: By working with stakeholders, EPA has learned about key issues that results in undue delays in PCB site cleanups. This can "mothball" properties for years – leaving them vacant and unavailable to communities for

ED_0011318_00006974-00018

economic redevelopment. Through one regional office (in San Francisco), EPA engaged partners in LEAN business process improvement exercises to reduce the time to approve PCB cleanup applications by 20 percent through. The outcome of PCB FAST is a streamlined, standardized template for the application that is transferrable across EPA's ten regions.

II.A.1. AIR – Clean Air Act (NSR, NAAQS, PSD)

- ***State Implementation Plans (SIP)***– A SIP is a state-specific, federally-enforceable plan that identifies how a state will attain and/or maintain the primary and secondary National Ambient Air Quality Standards (NAAQS) under the Clean Air Act (CAA). The EPA is required to review and approve SIPs for each state and, as of 2013, had a backlog of nearly 700 SIPs waiting to be reviewed. As of September 30, 2016, EPA significantly reduced that backlog, but still had a backlog of 322 SIPs.

  Notably, EPA Regions 7 and 10 made significant improvements to the SIP review process that drastically cut the time required to review and approve SIPs. Through EPA's LEAN government methods for identifying and eliminating waste, since 2013, EPA has reduced the backlog of SIPs waiting to be reviewed and approved by roughly 80%. Specifically, Region 7 is reducing its SIP review process steps from 165 to 134 and the numbers of decisions from 14 to 8; Region 10 is splitting its old process into three tracks (i.e. fast, normal, and high involvement), with a 36% average reduction in process time from 19 to 12 months. Along with their state partners, they eliminated steps, created standard procedures, clarified roles and responsibilities, and made many other improvements. Going forward, these improvements will allow EPA to more quickly review and approve plans, which will provide more certainty to states and local industries and better environmental protection for communities.

  EPA is preparing to share these new strategies and tools Agency-wide and with states to use to eliminate steps and clarify expectations for SIP review process in the next month or so. The expedited review process provides early guidance to states on non-attainment area designations and boundaries, developing a road map for each geographic area that outlines how stakeholders can collaborate. These developed tools will: create a schedule for the SIP development and review process for all parties; triage SIPs based on difficulty of review; shift from sequential to concurrent steps at as many points as possible in the process; and engage regional planning organizations for technical work on multi-state issues.

- ***Title V Petitions Rulemaking*** – EPA issued a proposed rule on August 24, 2016, (see 81 FR 57822) to revise its regulations to streamline and clarify processes related to submission and review of Title V petitions. The petition process rulemaking will allow EPA to take advantage of new technology and improve transparency for our stakeholders, and to support E-enterprise, an EPA-state initiative to improve environmental performance and enhance services to the regulated community, environmental agencies, and the public.

  The proposal covered five key areas, each of which should increase stakeholder access to and understanding of the petition process and aid the EPA's review of petitions. First, EPA proposed regulatory provisions that provide direction as to how petitions should be

ED_0011318_00006974-00019

submitted to the Agency. Second, EPA proposed regulatory provisions that describe the expected format and minimum required content for Title V petitions. Third, the proposal clarified that permitting authorities are required to respond to significant comments received during the public comment period for draft Title V permits, and to provide that response with the proposed Title V permit to EPA for the Agency's 45-day review period. Fourth, the guidance was in the form of "recommended practices" for various stakeholders to help ensure Title V permits have complete administrative records and comport with the requirements of the CAA. Fifth, this notice presented information on the Agency's interpretation of certain Title V provisions of the CAA and its implementing regulations regarding the steps following an EPA objection in response to a Title V petition. The public comment period closed on October 24, 2016. EPA plans to continue the process towards finalizing this rule.

- ***Guidance on Ozone and $PM_{2.5}$ Significant Impact Levels (SILs)*** – The CAA requires that a proposed source subject to PSD permitting demonstrate that its impacts will not cause or contribute to a violation of NAAQS or PSD increments. Significant Impact Levels (SILs) are compliance demonstration tools that can be used in air quality assessments, either as alternatives to or in conjunction with air quality modeling. This draft guidance provides these tools for ozone and particulate matter ($PM_{2.5}$) and a comprehensive basis for using them in making the required PSD air quality impact demonstration. Use of SILs as compliance demonstration tools can protect air quality but also streamline the air quality modeling in the permitting process for PSD sources. The guidance preserves the discretion of permitting authorities to use or not use SILs in their programs. The draft guidance is being revised according to comments received during the informal public comment period and technical peer review. EPA plans to continue the process towards finalizing this guidance.

- ***Technical Guidance on Developing and Use of Model Emissions Rates for Precursors (MERPs) for Ozone and Secondary $PM_{2.5}$*** – EPA issued this draft guidance to assist state/local air agencies and manufacturing permit applicants in conducting screening level PSD compliance demonstrations for ozone and secondary $PM_{2.5}$. This guidance streamlines the permit process by providing a framework for a suitable screening approach for ozone and $PM_{2.5}$ along with EPA modeling data for use in conducting the assessment for PSD. The guidance streamlines and reduces burden of PSD compliance demonstrations for ozone and secondary $PM_{2.5}$ by providing a specific screening technique based on EPA modeling that is scientifically credible and flexible for use by permit applicants. EPA received positive public comments on this screening technique in both its proposed rulemaking to revise *Guideline on Air Quality Models* and the draft guidance document. EPA plans to continue the process towards finalizing this guidance.

- ***Database of Permitted Emission Limits and Controls*** – The EPA has maintained a "clearinghouse" documenting permit decisions, specifically focused on NSR permits, and certain standards such as reasonably available control technology (RACT), best available control technology (BACT), and lowest achievable emission (LAER) . Over the past several years, the EPA has improved the electronic platform and content contained within the RACT/BACT/LAER clearinghouse. Opportunities remain to improve both the platform and the content in a manner that would better serve as a permitting support tool for not only the

ED_0011318_00006974-00020

regulated community, but also state/local permitting authorities. The EPA could engage in outreach with key stakeholders and identify aspects of this database that could be improved to support more streamlined and expedited New Source Review permitting.

- ***Outreach and Communication on Flexible Air Permitting Options*** – We intend to highlight and encourage use of flexible air permitting options by developing a comprehensive website and providing communication, outreach, and training to industry and permitting authorities on this issue. This would apply to both operating and preconstruction permits. This project would educate the regulated community as well as permitting authorities about the existing streamlined, but possibly underused, permitting options. These options are particularly useful to dynamic manufacturing sectors such as the semiconductor industry and other "quick-to-market" businesses that may have changes in product lines and other changes that can impact emissions. This effort would also dovetail with other efforts seeking to improve the economic competitiveness of the U.S. manufacturing sector.

II.A.2. WATER – SDWA, CWA (SEC 402, SEC 404), NPDES

- ***NPDES Applications and Program Updates Rule*** – EPA is proposing revisions that would modernize the National Pollutant Discharge Elimination System regulations. The revisions would eliminate regulatory and application form inconsistencies; improve permit documentation, transparency and oversight; clarify existing regulations; and remove outdated provisions. The proposed revisions would provide NPDES permit writers with improved tools to write well-documented permits to protect human health and the environment. The revisions would also provide the public with enhanced opportunities for public participation in permitting actions. These revisions would further align NPDES regulations with statutory requirements from the 1987 CWA Amendments and more recent case law requirements. Potential benefits include reducing regulatory burdens, costs, and uncertainty and increasing transparency, which can advance facility's ability to comply with permits, advancing environmental improvements, increasing production, and enhancing license to operate.

II.A.3 LAND – RCRA Subtitle C, TSCA

- ***RCRA Streamlined Permit Renewal Process*** – EPA Region 1 and the Massachusetts Department of Environmental Protection conducted an EPA LEAN event to streamline the RCRA permit renewal process. The new process simplifies and accelerates approvals by front-loading and standardizing communications with each permittee to ensure all parties understand expectations prior to submitting the application. As a result, the number of process steps were reduced from 31 to 24, while the time required to develop a draft permit was reduced from 15 to 6.5 months. The new process includes the following key strategies and tools: meeting face to face with the permittee before initiating the renewal process; using standard communications to establish expectations and a timeline upfront; dividing sections of the permit among a team; developing a tracking sheet to keep a schedule to complete the permit in 6.5 months; and using or adapting tools from the RCRA Permitting Toolbox to improve outcomes. EPA is making these tools available Agency-wide to simplify and accelerate approvals of RCRA permits.

ED_0011318_00006974-00021

- ***RCRA Facilities Investigation Remedy Selection Track (RCRA FIRST)*** – Before contaminated industrial sites can be cleaned up and redeveloped, EPA must complete the feasibility investigation and remedy selection process, which the RCRA FIRST approach through business process improvement is making far more efficient to save taxpayer dollars, reduce risks sooner, and expedite economic development.[35] EPA held two LEAN business process improvement events in which regional, headquarters, state, and industry representatives mapped and analyzed existing process steps. The two key root causes of delays in the old processes included: 1) no common understanding by all stakeholders upfront on site cleanup objectives; and 2) lack of an effective means to elevate and resolve cleanup issues. EPA then developed a new approach to the entire process, which when implemented will: reduce the planning and investigation phase by an estimated 49%, (i.e. 10 years to 5.1 years), and reduce the remedy selection phase by an estimated 75% (i.e. 6 years to between 1-2 years).

- ***PCB Facility Approval Streamlining Toolbox (PCB FAST)*** – EPA Region 9 reduced the time to approve PCB cleanup applications by 20% through an EPA LEAN business process improvement event. The improvements establish a standard template for the applications that can be used by other regions. Other best practices identified include reaching agreement upfront on the project plan before the application is submitted; completing the site characterization before submitting an application; and incorporating routine communication early and often lead to reduced time for the review. These changes will result in improving the quality of the application, reducing delays, and strengthening relationships with state partners and the regulated industry. A description of the LEAN event and all of the tools and lessons learned is being made available Agency-wide for others to simplify and accelerate the PCB cleanup approvals.

II. B. Potential Improvement Efforts to Streamline Permitting Processes and Minimize Regulatory Burden for Domestic Manufacturers

While the improvements described above are significant, the EPA acknowledges there are numerous opportunities for further reforms. Consistent with the Trump Administration's presidential memoranda and executive orders, EPA is committed to identifying additional opportunities to improve and streamline its permit processes and regulatory programs that impact the manufacturing sector. Potential new initiatives tailored by media, by statute follow. EPA expects to continue to review public comments received through its regulatory reform efforts and assess appropriate next steps for additional opportunities that may reduce burdens on domestic manufacturers.

II.B.1. AIR – Clean Air Act

- **Support to State and Local Air Permitting Authorities on Flexible Air Permits** - In addition to the ongoing efforts described above, the EPA could more directly engage with state and local

[35] https://www.epa.gov/sites/production/files/2016-06/documents/a_toolbox_for_corrective_action_resource_conservation_and_recovery_act_facilities_investigation_remedy_selection_track_rcra_first.pdf

ED_0011318_00006974-00022

air permitting authorities to support issuance of flexible air permits. The EPA could do this by offering support in permit reviews, supporting conversations between applicants and permitting authorities, and working collaboratively with state and local air permitting authorities.

II.B.2. WATER – Clean Water Act

Under the NPDES Program, there are several streamlining opportunities that, assuming resources are available, could be undertaken to achieve efficiencies.

- EPA could streamline EPA's NPDES permit application forms for all industrial sectors, including forms required of new manufacturing facilities. This is separate from the Applications and Program Updates Rule mentioned above. EPA's Office of Water could work with stakeholders to revise its NPDES permit applications and provide modernized, online "fill-and-print" versions of the forms to streamline use by new and expanding industrial dischargers. This cleanup and streamlining effort potentially could be done without revisions to existing application regulations.

  For background, new or expanding industrial and manufacturing facilities that discharge to waters of the United States, and which seek coverage under an "individual" NPDES permit, generally must submit detailed permit application forms to their federal or state permitting authority. The minimum contents of these application forms are established in federal regulations at 40 CFR 122.21. To support permit applicants, EPA developed a series of individual application forms for the various categories of applicants. While authorized state programs may develop their own application forms, many states utilize some or all of EPA's application forms.

  The current EPA application forms were developed and revised at various times over the past 30 years, and EPA has noted that there are inconsistencies in the structure, appearance, and detail of instructions accompanying these forms. Both applicants and state agencies have suggested that EPA should comprehensively revise the forms to provide a consistent look and feel, as well as consistent and enhanced detail in the instructions that accompany the forms. Over the past several years, EPA has begun to address these concerns and has developed initial drafts of all of its application forms. Potential benefits include reducing paperwork burden, which can decrease time spent by facilities to complete applications, waste, uncertainty, and potential for late submittals, as well as increase the overall accuracy in data collection and aggregation that will also improve ability for facilities to benchmark their environmental performance to their peers.

- EPA's Office of Water is proposing to provide technical assistance in a variety of forms to new manufacturing facilities for NPDES training and information technology tools. First, EPA could provide enhanced web resources to guide new manufacturing facility applicants through the NPDES permit application process. EPA could do this by developing an internet-based "wizard" to help new manufacturing facilities determine which forms are required to be filled out and to steer them in the direction of available resources to help them complete their permit applications. Potential benefits include reducing time spent by facilities to identify

ED_0011318_00006974-00023

correct forms to be completed and by simplifying instructions for doing so, which can provide them with more time to advance environmental improvements (potentially improving compliance rates), enhance their license to operate, increase production, and respond to customer requests.

Second, EPA could provide dedicated training to new industrial facilities to reduce delays associated with incomplete or incorrectly filled out NPDES permit applications. Ensuring that the information coming is complete and accurate is a LEAN way to reduce rework. EPA could develop a dedicated training module focusing on suggested best practices for new permit applicants to ensure that their NPDES application is complete and accurate and to avoid unnecessary delays related to incorrect filings. Potential benefits include reducing time spent, waste, and cost incurred by facilities in completing permit applications, which can provide them more time to spend on value added efforts, including advancing environmental improvements, increasing production, and responding to customer requests.

II.C. EPA Actions Regarding Specific Regulatory Reform Targets

EPA is committed to fulfilling the President's memorandum on permit streamlining and regulatory burden reduction for domestic manufacturers. There are actions, which EPA can take under its existing authority (without regulatory or statutory change) to streamline permitting and permit reviews. Specifically, EPA is focused on replicating and expanding prior successful LEAN business process improvement efforts and taking new actions based on the outcomes of such efforts, subject to budgetary and administration priorities.

Providing regulatory reform targets for EPA's permitting programs or regulations is neither simple nor straightforward. As previously discussed, the EPA is bound by the provisions of multiple statutes and myriad promulgated regulations supporting these statutory provisions. EPA has already taken steps to respond to several recent Executive Orders issued by the Trump Administration, including:

Executive Order 13771 (82 FR 9339, February 3, 2017) on Reducing Regulation and Controlling Regulatory Costs directs federal agencies to modify or repeal two existing regulations for each new regulation proposed or finalized in fiscal year (FY) 2017 and thereafter. Subsequent Office of Management and Budget (OMB) guidance established that costs for final, significant rules in FY17 need to be fully offset by cost savings from modification or repeal of other regulations. For FY2018 and beyond, the director of OMB will provide agencies with a total amount of incremental costs that will be allowed.

Executive Order 13777 (82 FR 12285, March 1, 2017) on Enforcing the Regulatory Reform Agenda directs federal agencies to designate a Regulatory Reform Officer and to establish a Regulatory Reform Task Force (Task Force). One of the duties of the Task Force is to evaluate existing regulations and make recommendations to the agency head regarding regulations that may be appropriate for repeal, replacement, or modification. The Task Force is also required to submit a progress report in mid-May, 2017.

ED_0011318_00006974-00024

Executive Order 13778 (82 FR 12497, March 3, 2017) on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule directs EPA to review all orders, rules, regulations, guidelines, and policies implementing or enforcing the final "Waters of the United States" Rule. Formal rulemaking procedures will follow to rescind or revise any parts of the rule.

Executive Order 13783 (82 FR 16093, March 31, 2017) on Promoting Energy Independence and Economic Growth directs the EPA to review the Clean Power Plan, related rules, and New Source Performance Standards for Oil and Gas. The EO also directs agencies to review existing regulations, orders, guidance documents, and policies that potentially burden the development or use of domestically produced energy resources. Heads of agencies are required to submit a plan for the review of existing regulations to OMB by mid-May, 2017, followed by a draft report detailing actions taken under the EO by late July 2017 and a final report due in late September 2017.

EPA has taken several actions to respond to these directives. In response to EO 13777, Administrator Pruitt sent an agency-wide memorandum that announced EPA's Regulatory Task Force and designated Samantha Dravis, Senior Counsel to the Administrator and Associate Administrator for Policy, as EPA's Regulatory Reform Officer. The Administrator's memorandum also requested multiple EPA offices to solicit input from the public on regulations that could be considered for repeal, replacement, or modification. On April 13, 2017, EPA published a *Federal Register* notice that opened a public docket for a 30-day comment period to facilitate receipt of that input. In addition, EPA offices are holding multiple meetings and teleconferences over the next three weeks to hear ideas and suggestions for regulatory reform directly from the public. Information about those meetings is available on EPA's newly launched Regulatory Reform website (https://www.epa.gov/laws-regulations/regulatory-reform). The information gathered at the public meetings and teleconferences, as well as the public comments provided in response to EPA's solicitation and the Department of Commerce Request for Information (RFI) will inform the progress report required by EO 13777 that the Regulatory Reform Task Force will submit to the EPA Administrator by May 26, 2017.

In response to EOs 13778 and 13783, the EPA has already announced plans to review the Clean Water Rule, the Clean Power Plan, and related actions. In further response to EO 13783, the EPA Administrator has asked the Regulatory Reform Task Force to lead the Agency's efforts to review existing regulations that might burden the development or use of domestically produced energy resources. EPA program offices that are conducting public outreach in response to EO 13777 have been asked to look for input regarding such regulations and identify them to the Task Force. Under EO 13783, EPA has to submit a plan to the OMB Director by May 12, 2017, that proposes a plan to carry out the Agency's review of burdensome regulations on domestically produced energy. A draft report with specific recommendations is then due in late July.

EPA is taking regulatory reform very seriously, and has been proactive in soliciting input in a variety of venues that will inform multiple plans and reports that will be developed over the next few months by the Regulatory Reform Task Force in response to several Executive Orders. The regulatory

ED_0011318_00006974-00025

programs that affect domestic manufacturers also affect other industrial sectors, and the Task Force is looking to synthesize information from multiple sources, including the Department of Commerce RFI, comments in EPA's docket, input from public meetings, and recommendations from EPA programmatic offices to inform its work over the next few months. EPA believes through these efforts, the Agency can meaningfully improve its permitting and regulatory programs to reduce burdens on domestic manufacturers, consistent with the Administration's directives.

ED_0011318_00006974-00026

Appendices

Appendix A - includes background documents summarizing EPA's past efforts to quantify time taken for permit issuance

A.1 Timely Issuance of Permit Renewals and Significant Modifications under Title V, 2007. (chapter 3, pages 3-1 to 3-6)
A.2 NSR 90 Day Review, 2001. (Page 8)
A.3 Final Report to the Clean Air Act Advisory Committee, 2006. (executive summary and introduction)
A.4 RCRA Permit Modifications Report, 2016. (Page 15)
A.5 NPDES Permit Issuance Timeframes

Appendix B - includes process maps addressing relevant EPA statutes, associated regulatory programs, and related permitting processes.

B.1 Hazardous Waste, Treatment, Storage, and Disposal Facilities Regulations, 2011 (pages 3-10)
B.2 NPDES Permit Writers Manual, 2010. (Pages 3-1 to 3-6)
B.3 Clean Air Act – Title V Permit Issuance Timeline

A.1 Timely Issuance of Permit Renewals and Significant Modifications under Title V, 2007. (chapter 3, pages 3-1 to 3-6)

Link- timely issuance...

This evaluation examines the performance of state and local air permitting agencies ("agencies") with regard to the timely issuance of Title V permit renewals and significant permit modifications (SPMs). Our results indicate that over the past five years agencies have steadily improved their ability to issue renewal permits and SPMs on time, i.e., within the federal deadline of 18 months (540 days) from the receipt of a complete application.[1] In 2001, agencies issued approximately 68 percent of their permit renewals on time; by 2005, this percentage increased to approximately 94 percent. We noted a similar trend for the proportion of SPMs issued on time. In the same five-year span, agencies also significantly reduced their issuance timeframes for renewal permits and SPMs. Overall, the average time to issue renewal permits fell from 576 days in 2001 to 257 days in 2005, a reduction of approximately 55 percent. The average time to issue SPMs fell by 32 percent from 504 days in 2001 to 342 days in 2005.

Despite these trends, agencies continue to face challenges at various stages in the issuance process that can adversely affect their ability to draft, notice, and finalize renewal permits and SPMs on time. These challenges include internal factors such as competing priorities for agency staff, as well as external factors such as the tendency of applicants to submit incomplete applications and engage in negotiations with agencies over permit terms. A number of agencies have implemented policies or practices to address these various challenges and have identified ways for EPA to assist them in their efforts. This chapter discusses these challenges and specific actions taken by agencies to address them. The discussion is organized by the three overarching evaluation questions outlined in Chapter 1:

1) What are the performance characteristics, e.g., timeframes and procedures, in each step of state and local processes for issuing Title V permit renewals and significant permit modifications?

2) What are the root causes or factors that contribute to the performance characteristics associated with the issuance process for Title V permit renewals and significant permit modifications?

[1] 40 CFR Part 70.7(a)(2) directs air permitting agencies to "take final action on each permit application (including a request for permit modification or renewal) within 18 months, or such lesser time approved by the Administrator, after receiving a complete application." The Office of Management and Budget (OMB) adopted this regulatory deadline as a performance measure in its Performance Assessment Rating Tool (PART) review of EPA's Air Quality and Permit Program conducted in 2005 (available at http://www.whitehouse.gov/omb/expectmore/detail.10004377.2005.html). EPA has interpreted the PART measure as 18 months from the date on which an application is received to the date a final permit is issued.

ED_0011318_00006974-00029

3) What actions could federal, state, or local agencies take that would increase the efficiency and effectiveness of the issuance process for Title V permit renewals and significant permit modifications?

PERFORMANCE CHARACTERISTICS AND PROCESSES FOR PERMIT ISSUANCE

The evaluation's first objective is to better understand state and local agency procedures as part of the overall process for issuing renewals and SPMs, as well as the timeframes in which agencies complete permit issuances based on these procedures. This section presents issuance data that provide insights into agency procedures and context for the subsequent discussion of factors influencing timeliness in this report. We employed two approaches to ascertain agency processes and performance. In the first, we utilized agency responses to questions about issuance procedures to characterize the basic steps in the issuance process and estimate the range of timeframes for each step (see Tables 3-1 and 3-2). In the second, we used agency-supplied data on actual experiences related to rates of late issuance and issuance times for permit renewals and SPMs (see Appendix E and Figures 3-1 through 3-4).

Procedural Timeframes for Permit Issuance

With a few exceptions, the air permitting agencies follow the same basic protocol for the issuance of Title V permit renewals and SPMs outlined in the logic model in Chapter 1. (Details on each agency's procedures and timeframes are included in Appendix C.) These include the following steps:

1) The Title V source submits an application for a permit renewal or SPM (within six months of permit expiration for renewals). All 10 agencies reported receiving the majority of permit renewal applications on time, i.e., within six months of permit expiration. A number of agencies have taken additional steps to ensure that the applications they receive are complete as well as timely. MDE, MPCA, NJDEP, and OR DEQ send facilities the forms and/or instructions needed for completing their applications. Other agencies, such as BAAQMD, CT DEP, KDHE, TCEQ, and UT DEQ refer applicants to their websites where forms and instructions are provided.

2) The agency receives the application, conducts an administrative review, and makes a completeness determination. All 10 agencies have adopted the federal 60-day deadline for notifying facilities that their renewal applications are missing information before they are automatically deemed administratively complete.[2] A majority of agencies, including BAAQMD, KDHE, MDE, NJDEP, OR DEQ, and UT DEQ, perform their completeness determinations earlier. FL DEP and TCEQ do not perform an administrative completeness review (ACR) independently from their technical review. FL DEP conducts its administrative and technical review during the initial 60-day completeness period. At the TCEQ, applications are automatically deemed administratively complete within 60 days. The ACR conducted by MPCA is

[2] 40 CFR Part 70.7(a)(4).

ED_0011318_00006974-00030

limited to a cursory review of the components elements of the application forms, so most applications are deemed administratively complete.

3) If the application is incomplete, the agency notifies the applicant that additional information is needed to deem the application complete.

4) If the application is complete, the agency prepares a draft permit.

5) The agency notices the draft permit, responds to any comments received during this period, and holds public hearings, if requested.

6) The agency submits the draft permit to EPA for review. BAAQMD, CT DEP, KDHE, MDE, MPCA, TCEQ have implemented the practice of concurrent review whereby EPA begins its 45-day review of a draft permit simultaneously with the start of the public comment period. FL DEP has recently initiated concurrent review although it has not used it for any permit renewals or SPMs to date.

Tables 3-1 and 3-2 present the minimum and maximum timeframes we estimated for each step in the issuance process for permit renewals and SPMs (measured from application receipt to final permit issuance). We based these estimates on composite data obtained from permitting agency questionnaire responses, follow-up interviews, and supplemental materials provided by each agency. The minimum and maximum numbers reflect variation among agencies in the timing and procedural composition of each step, e.g., an abbreviated or integrated ACR. To construct these timeframes we assumed the following:

- All agencies make their completeness determinations within 60 days in accordance with the federal requirement, regardless of whether they conduct a detailed ACR or a combined administrative/technical review prior to permit drafting.

- All applications require applicants to supply additional information to enable permit drafting; the minimum and maximum number of days are based on agency deadlines for receipt of requested information and reported average applicant response times.

- Only a few draft permits receive public comments during the public comment period. Fewer require a public hearing. The minimum number of days in this period includes the time to notice the draft and respond to comments; the maximum number of days includes the above plus additional time to notice, conduct, and respond to comments made during a public hearing.

- The timeframe for the EPA Review includes the time to conduct a concurrent or sequential EPA review. For most agencies that use concurrent review, the minimum time is zero days, since the review is subsumed within the public comment period.

Using the minimum number of days for each procedural step, we estimated the issuance time for permit renewals to be less than 18 months, ranging from 8.6 to 17.6 months. For SPMs, it ranges from 6.2 to 12.6 months. This suggests that all agencies have the capacity to process

ED_0011318_00006974-00031

applications and issue permits within the federally mandated timeframe. We estimated the maximum renewal permit issuance timeframes to exceed 18 months for all but three agencies; the mean timeframe is 22.6 months. Conversely, even under the longest time estimates, all but two agencies have the capacity to issue SPMs within 18 months; the mean timeframe is 17.0 months.

A closer examination of the average minimum and maximum timeframes for permit renewals and SPMs suggests that the time needed to draft permits and conduct public hearings has a greater impact overall on timeliness than other steps in the issuance process. This finding is supported by agency rankings of the factors that contribute most to delay. As Tables 3-1 and 3-2 show, the difference in the number of days it takes agencies to begin and complete drafting permit renewals compared to SPMs also suggests that, all else being equal, the drafting step presents more challenges for renewals. The factors that contribute to delay during these steps in the process are discussed in greater detail in the following section.

ED_0011318_00006974-00032

Table 3-1 Estimated Agency Minimum and Maximum Time to Issue a Permit Renewal[a,b,c]

Agency	Days to Determine Initial Completeness		Days to Receipt of Additional Information		Days to Begin Drafting		Days to Complete Draft Permit		Days to Conduct Public Comment Period		Days to Complete EPA Review		Total Days from Application Receipt to Final Issuance		Total Months from Application Receipt to Issuance		Agency Permit Issuance Deadline	Conduct Detailed ACR	Use Concurrent Review
	Min	Max	Min	Max	Min	Max	Min	Max	Min	Max[1]	Min	Max	Min	Max	Min	Max			
MPCA	**60**	60	**30**	45	180	**180**	181	365	61	145	15	45	527	840	**17.6**	**28.0**	18 months[3]	No	Yes
UT DEQ	7	60	31	60	31	60	365	548	45	75	0	45	479	848	**16.0**	28.3		Yes	No[6]
CT DEP	60	60	31	45	91	180	181	365	90	150	0	45	453	845	15.1	28.2	12 months[2]	Yes	Yes
MDE	**12**	60	**30**	60	91	180	181	365	105	**195**	0	45	419	905	**14.0**	**30.2**	18 months[2]	Yes	Yes
BAAQMD	30	60	30	**60**	61	90	181	365	60	**120**	0	45	362	740	12.1	**24.7**	18 months[3]	No	Yes
FL DEP	**60**	60	**90**	150	**30**	30	**60**	60	67	**88**	55	55	362	443	**12.1**	**14.8**	90 days[4]	No[8]	No[5]
OR DEQ	30	60	15	30	61	90	181	240	51	**125**	5	45	343	590	11.4	**19.7**		Yes	No
TCEQ	60	60	30	45	**30**	30	90	90	90	**150**	0	45	300	420	**10.0**	**14.0**	330 days[2]	No	Yes
KDHE	7	60	15	30	91	180	91	180	55	120	0	45	259	615	8.6	20.5	180 days[2]	Yes	Yes
NJDEP	**1**	60	**15**	30	61	90	91	180	46	120	45	45	259	525	**8.6**	17.5		Yes	No
Averages[7]	33	60	32	56	73	111	160	276	67	126	12	46	376	677	12.5	22.6			

Notes:

[a]IEc based its estimates on responses to the questionnaire, follow-up interview questions, and data from supplemental materials.

[b]Agencies are sorted by the minimum total months from application receipt to issuance, from highest to lowest.

[c]Maximum totals in **bold** may be larger if the agency reported a range of days that equals or exceeds a given number. Minimum totals in **bold** may be lower if the agency reported a range of days that equals or is less than a given number.

[1]Includes timeframe for components under the minimum scenario (notice publication, public comment, response to comments) plus the time to notice and conduct a public hearing.

[2]From the date of receipt of application.

[3]From the date of receipt of complete application.

[4]Issuance of draft permit from completeness determination date.

[5]Although FL DEP is now using concurrent review for permit renewals and SPMs, the agency did not use it for permit renewals and SPMs included in the timeframe of this review.

[6]Although officially sequential, EPA conducts an early review during the public comment period, completing it within 2-3 weeks for some permits.

[7]Rounded to the nearest day.

[8]FL DEP does not conduct a discrete ACR but rather a combined administrative and technical review.

ED_0011318_00006974-00033

Table 3-2 Estimated Agency Minimum and Maximum Time to Issue a Significant Permit Modification[a,b,c]

Agency	Days to Determine Initial Completeness		Days to Receipt of Additional Information		Days to Begin Drafting		Days to Complete Draft Permit		Days to Conduct Public Comment Period		Days to Complete EPA Review		Total Days from Application Receipt to Final Issuance		Total Months from Application Receipt to Issuance		Agency Permit Issuance Deadline	Conduct Detailed ACR	Use Concurrent Review
	Min	Max	Min	Max	Min	Max	Min	Max	Min	Max[1]	Min	Max	Min	Max	Min	Max			
CT DEP	60	60	31	45	61	90	181	365	45	105	0	45	378	710	12.6	23.7	12 months[2]	Yes	Yes
BAAQMD	30	60	30	**60**	61	90	181	365	60	**120**	0	45	362	740	12.1	**24.7**	18 months[3]	No	Yes
FL DEP	**60**	60	**90**	150	**30**	30	**60**	60	67	**88**	55	55	362	443	**12.1**	**14.8**	90 days[4]	No[9]	No[5]
TCEQ	60	60	15	30	**30**	30	90	90	90	**150**	0	45	285	405	**9.5**	**13.5**	330 days[2]	No	Yes
MPCA	**60**	60	**15**	30	**30**	30	91	180	61	145	15	45	272	490	**9.1**	16.3	18 months[8]	No	Yes
KDHE	7	60	15	30	61	90	91	180	55	120	0	45	229	525	7.6	17.5		Yes	Yes
NJDEP	1	60	15	30	31	60	91	180	**45**	105	45	**45**	228	480	**7.6**	**16.0**		Yes	No
OR DEQ	30	60	**15**	15	**30**	30	91	180	51	**125**	5	45	222	455	**7.4**	**15.2**		Yes	No
UT DEQ	7	60	15	30	**30**	30	**90**	90	45	75	0	45	187	330	**6.2**	11.0		Yes	No[6]
Averages[7]	35	60	27	47	40	53	107	188	58	115	13	46	281	509	9.4	17.0			

Notes:

[a]IEc based its estimates on responses to the questionnaire, follow-up interview questions, and data from supplemental materials.

[b]Agencies are sorted by the minimum total months from application receipt to issuance, from highest to lowest.

[c]Maximum totals in **bold** may be larger if the agency reported a range of days that equals or exceeds a given number. Minimum totals in **bold** may be lower if the agency reported a range of days that equals or is less than a given number.

[1]Includes timeframe for components under the minimum scenario (notice publication, public comment, response to comments) plus the time to notice and conduct a public hearing.

[2]From the date of receipt of application.

[3]From the date of receipt of complete application.

[4]Issuance of draft permit from completeness determination date.

[5]Although FL DEP is now using concurrent review for permit renewals and SPMs, the agency did not use it for permit renewals and SPMs included in the timeframe of this review.

[6]Although officially sequential, EPA conducts an early review during the public comment period, completing it within 2-3 weeks for some permits.

[7]Rounded to the nearest day.

[8]If the SPM is determined to be "a major permit amendment to construct a modification," per state regulations, the agency must take final action on the permit within 14 months from the date an application is deemed complete if there are no public meeting/hearing and no significant adverse comments. Otherwise the deadline is 18 months for submittal of a complete permit application.

[9]FL DEP does not conduct a discrete ACR but rather a combined administrative and technical review.

ED_0011318_00006974-00034

A.2 NSR 90 Day Review, 2001. (Page 8)

Link- NSR 90 day review

Docket A-2001-19
Document II-A-01

NSR 90-Day Review Background Paper

June 22, 2001

current actual emissions to their post-change potential emissions. For the electric utility industry, its 1992 "WEPCO rule" calls for comparing current actual emissions to post-change projected actual emissions.

The Permit Application Process

Once a source determines that NSR applies, it must then prepare and file a permit application. The basic steps associated with the permit application and issuance process include: (1) preparation of the permit application and participation in any associated pre-permit application meetings; (2) issuance of permit application completeness determination by the State; (3) development and negotiation of draft permit; (4) opportunity for public notice and comment on the draft permit; (5) response of permitting authority to public comments, if any; (6) possible administrative and judicial appeals. In addition the source must address any state and local requirements associated with the project. The time and resources expended on preparing and negotiating the content of the application and addressing the NSR or PSD requirements can vary depending on the quality of the information contained in the permit application and the nature, extent and environmental impact of the proposed project. Additionally, the level of public participation can also impact the resources associated with the application process. Sometimes sources will participate in meetings with the state permitting authority and other affected parties such as EPA, local government representatives, Federal Land Managers and citizens groups prior to filing the permit application to discuss these requirements. The following discussion describes the NSR or PSD requirements that must be addressed in the permit application process.

Basic Nonattainment NSR Requirements

The Nonattainment NSR requirements apply to sources that construct or modify in an area that is designated nonattainment for one or more pollutants. These provisions apply to the pollutants for which the area is in nonattainment. If a source increases emissions of a nonattainment pollutant and increases emissions of an attainment pollutant the following provisions apply only to the nonattainment pollutant. For the attainment pollutant(s), the PSD provisions, discussed later, would apply.

New major sources and existing major sources undertaking major modifications subject to nonattainment NSR must apply state of the art emission controls that meet the lowest achievable emissions rate (LAER). LAER is based on the most stringent emission limitation in any State's SIP, or achieved in practice by the source category under review.

In order to get a nonattainment NSR permit, the applicant must also offset its emission increase by securing emission reductions from other sources in the area. The amount of the offset must be as great or greater than the new increase, and is based on the severity of the area's nonattainment classification. The more polluted the air is where the source is locating or expanding, the greater the emissions reductions required to offset the proposed increase. Offsets must be real reductions in emissions, not otherwise required by the Clean Air Act, must be enforceable by the EPA, result in a positive net air quality benefit and assure reasonable progress towards attaining the NAAQS. In general, offsets must be secured for the entire life of the source. However, under EPA's Economic Incentives Program, a source does not need to have the full amount of the offsets necessary to cover the entire life of the source at the time the source begins operation. Instead, the

ED_0011318_00006974-00037

source can purchase additional offsets periodically to meet the offset requirement.

.

Each applicant must also conduct an analysis of "alternative sites, sizes, production processes, and environmental control techniques...[that] demonstrates the benefits of the proposed source significantly outweigh the environmental and social costs of its location, construction, or modification." The applicant must also certify that all of its other sources operating within the state are in compliance with the Clean Air Act and SIP requirements. Finally, the public must be given adequate notice and opportunity to comment on each permit application.

In addition to the basic steps identified above, when preparing a permit application, the applicant must research and propose LAER for the source category at issue and secure valid offsets as a condition of the project's approval.

Basic PSD Requirements

New major sources and existing sources that undertake major modifications that are subject to PSD must apply best available control technology (BACT). When preparing a BACT analysis, the permit applicant must typically undertake the following steps: (1) identify available pollution control options; (2) eliminate the technically infeasible options; (3) rank the remaining control technologies by control effectiveness; (4) evaluate the most effective controls (considering energy, environmental, and economic impacts) and document the results; and (5) discuss the appropriate BACT selection with the permitting authority. The permitting authority then specifies an emission limit for the source that represents BACT.

Each PSD applicant must also perform an air quality analysis, which may include pre-application monitoring data, to demonstrate that the new emission increase will not cause or contribute to a violation of any applicable NAAQS or result in a significant deterioration of the air quality. Finally, each applicant must also conduct an analysis to ensure that the increase does not result in adverse impact on air quality related values, including visibility, that affect designated Class I areas, such as wilderness areas and national parks.

Changes that do not trigger NSR

There are a number of ways that sources can undertake new construction or modification without the need for a major NSR permit. First, as noted above, there are certain activities that are exempt from NSR because they are defined in the regulations as exclusions from the definition of a physical change or change in the method of operation. For example, a routine change is exempt from NSR. Certain pollution control projects are also exempt from NSR, even those that increase emissions, if they meet environmental safeguards established by EPA.

Even if a change does not qualify for one of these exemptions, a change at a major source does not trigger NSR if the emissions increase is below the level defined as significant. Many projects have emissions increases that are below these levels and never trigger NSR. Where a project's maximum capacity to emit would be above the significance levels, a source often uses a common NSR avoidance strategy -- a limit on potential to emit, or PTE limit. In a PTE limit, a source agrees to limit the size of the proposed project's emissions increase by taking a permit

ED_0011318_00006974-00038

limit to keep emissions below the significance level. Such limitations can be accomplished by installing modern pollution controls, or by limiting some unit's operation (e.g., limiting fuel burned or hours operated)[11].

Furthermore, even if the proposed change would result in a significant increase and cannot be limited as just described, the source may offer past or future emissions decreases at other units to offset the increase from the proposed change. Many more sources rely on netting or PTE limits to avoid NSR than actually obtain NSR permits. These transactions can result in significant emissions reductions, but a full review of these benefits is beyond the scope of this report.

General data on the NSR program's implementation

Preliminary estimates based on EPA's most recent data indicate that approximately 250 facilities apply for a PSD or nonattainment NSR permits annually. There are approximately 20,000 sources that would be classified as major under the Clean Air Act, and many more stationary sources that are not large enough to be called major. Specific permitting data for utilities and refineries are presented in the sector-specific portions of this paper; the data in this section pertain to all source categories.

Based on an EPA review of about 900 permits since 1997, the average time needed to obtain a major NSR or PSD permit, across all industries, is approximately 7 months from receipt of the complete permit application. Specific data for the electric generation and refining industries are reported in the sector-specific sections of this paper. In recent years, permitting times have been reduced for all source types.

Figure 1: Average Permitting Time for PSD permits*

Permitting Time 1997 - 1998	Permitting Time 1999 - early 2001	Overall Average Time 1997 - 2001
Average: 8 - 9 months Range: 1.5 – 35 months	Average: 6 - 7 months Range: 3 - 12 months	7.2 months

*These times are based on a total of 391 PSD sources for which sufficient data were available to calculate permitting time. Permitting time is defined to include the time period from the date on which the permit application is filed through the date on which the final permit is issued.

Improved permitting time can be explained in part by permit applicants having more pre-application meetings with the permitting agency and submitting applications with what is believed to be current BACT. Based on experience, the most common sources of delay in permit issuance are the submittal of an incomplete application, the selection of a BACT option that the permitting authority believes to be less stringent than required, and public opposition to the permitting authority's draft BACT determination. Over time, as permit engineers from the industrial sector, the permitting authority, and EPA become familiar with specific issues, permitting can be done faster, as has recently been the case with turbines. Finally, recent emphasis by EPA, state, and local permitting authorities on permitting for new electric generating capacity and refining capacity appears to be resulting in shorter permitting processes.

[11] In addition to limiting the PTE of a project to stay below the significance levels for a major modification, some sources limit their entire facility PTE to levels that keep the source from being classified as a major source.

ED_0011318_00006974-00039

General environmental impacts of NSR

Recent work by EPA indicates that over the period from 1997-1999, the BACT component of the PSD program has resulted in emissions reductions of over 4 million tons (or an annual average of about 1.4 million tons) compared to what emissions would have been if the controls otherwise required in the absence of PSD had been applied instead[12]. These data are based on a thorough review of approximately 900 PSD permits issued since 1997. Figure 2 summarizes these data by pollutant.

Figure 2: Estimated Emissions Avoided Due to PSD BACT Permitting (1997 – 1999) (short tons)

PM/PM10	180,000
SO2	1,260,000
NOx	2,540,000
CO	65,000
VOC	25,000
TOTAL	**4,100,000**
Annual average over time period	***1.4 million tons per year***

The review on which these numbers are based included only PSD permits. Therefore, these emissions reductions estimates do not include emissions reductions for control technology and offsets in nonattainment areas.

The emissions reductions that result from pollution control required under NSR are not the only way that the NSR program keeps pollution out of the air. Each year many companies make modifications to existing facilities, and even construct entirely new facilities, without obtaining and NSR permit by keeping emissions lower than the amounts for which permits are required. This process is sometimes referred to as "netting out" of NSR. [13] Because EPA is usually not involved when companies make changes that do not require NSR permits, we do not have data on the amount of pollution avoided as a result.

Benefits Associated with Electricity Generating Emissions Reductions Realized Under the NSR Program

[12] Typically, in the absence of BACT, the controls required would be a federal New Source Performance Standard (NSPS), and/or a limit from an applicable State Implementation Plan (SIP).

[13] For example, if a power plant located in an attainment area makes a change that would increase its emissions of NOx by 50 tons per year but at the same time installs pollution control technology that would reduce its NOx emissions by 35 tons per year, the plant would not have to obtain an NSR permit because its net emissions increase (15 tons per year) would be less than the 40 tons per year that makes a change a major modification.

ED_0011318_00006974-00040

A.3 Final Report to the Clean Air Act Advisory Committee, 2006. (executive summary and introduction)

link to full report

Title V Task Force

Final Report to the Clean Air Act Advisory Committee

Title V Implementation Experience
April 2006

FINAL REPORT
TO THE CLEAN AIR ACT ADVISORY COMMITTEE ON THE TITLE V IMPLEMENTATION EXPERIENCE

Prepared by:

The Title V Task Force

April 2006

TABLE OF CONTENTS

TRANSMITTAL LETTER

EXECUTIVE SUMMARY 1

1. INTRODUCTION 1

1.1 CHARGE TO THE CAAAC TASK FORCE ON TITLE V IMPLEMENTATION EXPERIENCE 1

1.2 TITLE V TASK FORCE MEMBERS 2

1.3 TASK FORCE METHODOLOGY 3

Selection of Task Force members 3
Public Testimony 3
Identification of Issue Areas 4
Process for Developing Each Issue Area 4

1.4 REPORT STRUCTURE 7

2. PURPOSE OF TITLE V OPERATING PERMIT PROGRAM 8

3. PROGRAM OVERVIEW ISSUE AREAS 10

3.1 TOPIC: TITLE V PROGRAM BENEFITS 10

Issue/Observation Description 10
Discussion Summary 11
Recommendations 12
Supporting Information 12

3.2 TOPIC: TITLE V PROGRAM COSTS 20

Issue/Observation Description 20
Discussion Summary 21
Recommendations 23
Supporting Information 23

ED_0011318_00006974-00044

Table of Contents
(Continued)

4. CONTENT ISSUES 34

4.1 TOPIC: INCORPORATION OF APPLICABLE REQUIREMENTS 34

Issue/Observation Description 34
Testimony and Comments Received 34
Discussion 36
Recommendations 37

4.2 TOPIC: INSIGNIFICANT ACTIVITIES AND EMISSION UNITS 41

Issue/Observation Description 41
Testimony and Comments Received 42
Task Force Discussion 43
Recommendations 44

4.3 TOPIC: MONITORING 47

Issue/Observation Description 47
Comments and Testimony Received 49
Task Force Discussion 50
Recommendations 57
Attachment: Additional Comments 59

4.4 TOPIC: TITLE I/TITLE V INTERFACE 64

Issue/Observation Description 64
Supporting Information 64
Recommendations 71

4.5 TOPIC: NEW SUBSTANTIVE REQUIREMENTS AND DEVELOPMENT OF OPERATIONAL RESTRICTIONS 76

Issue/Observation Description 76
Supporting Information 76
Discussion 79
Recommendations 81
Attachment: Relevant Excerpts Re: New Substantive Requirements 82

4.6 TOPIC: DEFINITIVENESS OF PERMIT 93

Issue/Observation Description 93
Legal Requirements 93
Comments Received 95
Other Information 95
Task Force Discussion 96
Recommendations 97
Attachment 98

Table of Contents
(Continued)

4.7 TOPIC: COMPLIANCE CERTIFICATION FORMS 108

Issue/Observation Description 108
Supporting Information: Comments Received 109
Discussion: How much Information Should be Required in a Compliance Certification? 114
Recommendations 118
Attachment: Exhibits A & B—Compliance Certification Forms 121

4.8 TOPIC: STARTUP, SHUTDOWN, AND MALFUNCTION 136

Issue Observation/Description 136
Statutes/Regulations/Guidance 136
Summary of Comments Received 141
Task Force Discussion 141
Recommendations 144
Attachment 145

4.9 TOPIC: COMPLIANCE SCHEDULES 150

Issue/Observation Description 150
Summary of Comments 152
Task Force Discussion 153
Attachment: Text of EPA Regulations 155
Attachment: Testimony and Comments Received 156

5. PROCESS ISSUES 162

5.1 TOPIC: EPA REVIEW OF PROPOSED PERMITS 162

Issue/Observation Description 162
Discussion Summary 162
Recommendations 166
Supporting Information 167

5.2 TOPIC: PUBLIC ACCESS TO DOCUMENTS 169

Issue Observation/Description 169
Supporting Information 170
Testimony and Comments Received 171
Discussion 172
Recommendations 178

5.3 TOPIC: PUBLIC HEARINGS 180

Issue Observation/Description: 180
Supporting Information: Comments Received 180
Task Force Discussion 183
Recommendations 188
Attachment: Relevant Testimony 190

Table of Contents
(Continued)

5.4 TOPIC: PUBLIC NOTICE THROUGHOUT PROCESS 200

Issue Observation/Description: 200
Summary of Comments Received 201
Discussion 203
Recommendations 210
Attachment: Relevant Testimony 214

5.5 TOPIC: STATEMENT OF BASIS 225

Issue/Observation Description 225
Supporting Information 225
Testimony and Comments Received 227
Task Force Discussion 229
Recommendations 231

5.6 TOPIC: RESPONSES TO PUBLIC COMMENTS ON DRAFT PERMITS 234

Issue Observation/Description 234
Discussion 234
Recommendations 238
Attachment: Relevant Comments 241

5.7 TOPIC: PERMIT RE-OPENING, REVISIONS AND OPERATIONAL FLEXIBILITY 243

Issue/Observation Description 243
Background 244
Supporting Information: Comments Received 247
Task Force Discussion 250
Recommendations 256

5.8 TOPIC: APPEALS AND PETITIONS 262

Issue/Observation Description 262
Supporting Information: Comments Received 262
Task Force Discussion 265
Recommendations 267

APPENDIX A: LIST OF SPEAKERS AT PUBLIC MEETINGS ON TITLE V IMPLEMENTATION EXPERIENCE

APPENDIX B: LIST OF ADDITIONAL WRITTEN COMMENTS RECEIVED ON TITLE V IMPLEMENTATION EXPERIENCE (SUBMITTED TO EPA DOCKET NO. OAR-2004-0075)

APPENDIX C: COPY OF SLIDES USED BY THE TITLE V TASK FORCE IN BRIEFING THE CLEAN AIR ACT ADVISORY COMMITTEE

ED_0011318_00006974-00047

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

MAR 29 2006

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

MEMORANDUM

SUBJECT: Task Force on Title V Implementation Experience

FROM: for William T. Harnett Michael A. Ling
Director, Air Quality Policy Division (C504-01)

TO: Clean Air Act Advisory Committee (CAAAC) Permitting, NSR and Toxics Subcommittee

Please find enclosed the Final Report of the Task Force on Title V Implementation Experience. You formed the Task Force in May 2004 to review the implementation and performance of the operating permit program under title V of the 1990 Clean Air Act Amendments. The Task Force has compiled a substantial body of public testimony and written comments concerning what is working or not working in the title V permit program. Collectively, the Task Force members and EPA spent thousands of hours over the past two years on this effort. Included in the report are a number of recommendations for consideration by CAAAC and EPA. These recommendations and the discussion accompanying them are the culmination of a great amount of thoughtful deliberation about how the program can be better implemented. Consistent with your charge, the report reflects the core issues of concern to all stakeholder groups and all of their perspectives of how best to address them. The Task Force hopes that this work product will be very useful to both the CAAAC and to EPA.

EPA would like to express its gratitude to all members of the Task Force for their dedication to this project and the large amounts of time they devoted to its completion. EPA and the public at large are deeply indebted to all members of the Task Force for the careful translation of the public testimony into recommendations for the improvement of many areas of the title V program.

The Task Force would like me to pass along their thanks to the EPA staff for their hard work in facilitating this process as well as to recognize the efforts of EC/R Incorporated representatives for arranging our meetings and for their valiant efforts to prepare notes on our activities.

We entrust this report to your deliberation and seek your direction on how EPA should proceed to implement the Task Force's recommendations.

EXECUTIVE SUMMARY

In 2004, the Clean Air Act Advisory Committee (CAAAC) established the Task Force on Title V Implementation Experience ("Task Force") to report on stakeholder experience with implementation of the Title V operating permit program. The 18-member Task Force, which consisted of representatives from industry, environmental groups, and State and local agencies, used public meetings, written comments, and individual experience as resources to identify and evaluate the Title V program and develop recommendations. This report represents a compilation of the issues identified and includes summaries of Task Force discussions, key supporting stakeholder experience, conclusions, and recommendations. Since the report represents the perspectives of the various stakeholders there are some issues and recommendations with Task Force consensus, and others where the report notes the differences.

As background, the Clean Air Act of 1990 provided for the development of a national operating permitting system for major sources of air pollution. Under this new section (Title V), State and local air pollution control agencies would issue permits that would contain all of the requirements that were needed for a source to maintain compliance with State and Federal air pollution control regulations. Furthermore, the Title V permit would be directly enforceable by the permitting authority issuing the permit and EPA. It is also subject to the citizen suit provisions of the Act. From the beginning, implementation of Title V has been difficult and controversial. After 15 years, there are still significant issues associated with the operation of the program.

The Task Force identified a number of program benefits that were generally recognized across the spectrum of stakeholders. These include:

- Recording of applicable requirements in one document clarifies regulatory requirements for permitting agencies, the public, and facilities.
- Improved public participation at various stages of the permitting process.
- Improved communication between regulatory agencies and facilities has resulted in better permits and mutual understanding of compliance requirements.
- Establishment of a funding mechanism to provide resources to administer State permit programs.
- Improved source compliance assurance systems, driven by Responsible Official obligations and reporting of deviations and a strengthened penalty/enforcement mechanism.

In evaluating the Title V program, the Task Force categorized key issues into 19 different areas. For each topic the Task Force characterized the issue, developed recommendations, summarized Task Force discussions, and included supporting comments from public hearings and written testimony. The topics included in this report are:

ED_0011318_00006974-00049

- Program Overview Papers
  - Benefits
  - Costs
- Content Issues
  - Incorporation of Applicable Requirements
  - Insignificant Activities and Emission Units
  - Monitoring
  - Title I/Title V Interface
  - New Substantive Requirements
  - Permit Definitiveness
  - Compliance Certification
  - Startup, Shutdown, and Malfunction
  - Compliance Schedules
- Process Issues
  - EPA Review of Proposed Permits
  - Public Access to Documents
  - Public Hearings
  - Public Notice Throughout Process
  - Statement of Basis
  - Responses to Public Comments
  - Permit Revisions and Operational Flexibility
  - Appeals and Petitions

The Task Force developed an extensive list of recommendations. Although there were no external constraints on the scope of the recommendations of the Task Force, the members recognized that recommendations which could be implemented under current legislative/regulatory authority would be easier, and more timely, to implement. The recommendations are included in each topic area. Given the diverse views of the Task Force there is no consensus list of recommendations or conclusions, although the votes shown on each recommendation indicate the degree of consensus.

The Task Force believes that an EPA assessment and implementation of many of the recommendations will provide for an improved Title V operating permit program. A program that achieves program objectives in a more efficient manner will benefit all stakeholders.

ED_0011318_00006974-00050

1. INTRODUCTION

1.1 CHARGE TO THE CAAAC TASK FORCE ON TITLE V IMPLEMENTATION EXPERIENCE

The Permitting Subcommittee of the Clean Air Act Advisory Committee establishes the Task Force on Title V Implementation Experience, and charges it with this objective:

The Task Force will report to the committee on the experiences of stakeholders who have been working in the Title V permitting arena (*i.e.,* a "State of the Title V program" report). The report should reflect the perspectives of all stakeholder groups, and should reflect an effort to answer two questions:

1. How well is the Title V program performing?

For example, has it:

- Resulted in permits that clearly compile all a source's applicable requirements into a single document?
- Enabled sources, States, EPA, and the public to better understand the requirements that apply to a source?
- Enabled sources, States, EPA and the public to better know whether a source is meeting these requirements?
- Triggered actions that result in better compliance with the CAA?
- Allowed for better enforcement of CAA requirements?
- Improved citizen participation in air quality decisions by involving the public in the issuance of permits?
- Improved EPA's ability to implement and oversee CAA programs, including toxics, acid rain, etc?
- Enhanced governments' ability to do air quality planning?
- Ensured self-funding adequate to run effective programs?
- Resulted in better air quality?

2. What elements of the program are working well/poorly?

The answers to these questions should, to the maximum extent possible, reflect consideration of stakeholders' real world experience with the Title V program, and should include examples – good and bad – that illustrate this experience. Where possible, emphasis should be placed on actual examples, but in some cases, hypothetical examples may provide the best illustration.

ED_0011318_00006974-00051

When the Task Force has gathered sufficient information to characterize the various perspectives on Title V implementation experience, as described above, it may also elect to offer recommendations for improving the Title V program.
The report and any recommendations made should reflect the full range of stakeholder perspectives discussed. The Task Force may characterize consensus statements and recommendations as such, but where there is not consensus, the report should detail the full range of issues discussed and views expressed during the process.

In order to ensure that the discussions reflect sufficient depth, but also ensure a broad collection of stakeholder perspectives, the Subcommittee recommends that the Task Force conduct at least three full-day meetings, and have at least one meeting outside of the Washington D.C. area. The EPA will explore options for supporting the Subcommittee's work, such as providing transcripts and summaries of these meetings.

1.2 TITLE V TASK FORCE MEMBERS

State/local Permitting Agencies	
Rob Sliwinski and John Higgins	New York Department of Environmental Conservation (NY DEC)
Shelley Kaderly	Nebraska Department of Environmental Quality (NE DEQ)
Don van der Vaart	North Carolina Dept of Environmental Management (NC DEM)
Adan Schwartz	Bay Area Air Quality Management District (AQMD)
Bob Hodanbosi	Ohio Environmental Protection Agency (OH EPA)
Steve Hagle	Texas Council on Environmental Quality (TCEQ)
Environmental Advocacy Groups	
Karla Raettig and Kelly Haragan	Environmental Integrity Project
Marcie Keever	Our Children's Earth
Bob Palzer	Sierra Club
Verena Owen	Lake Co. (IL) Conservation Alliance
Keri Powell	New York Public Interest Research Group (NYPIRG)
Richard Van Frank	Improving Kids' Environment
Industry	
Shannon Broome	Air Permitting Forum
Lauren Freeman	Utility Air Regulatory Group (UARG)
Bernie Paul	Eli Lilly and Company
Bob Morehouse	ExxonMobil
Mike Wood	Weyerhaeuser Company
David Golden	Eastman Chemical

ED_0011318_00006974-00052

Support and Facilitation

EPA	
Bill Harnett, Michael Ling and Ray Vogel	Office of Air Quality Planning and Standards
Steve Hitte	Region IV
Callie Videtich	Region VIII
Padmini Singh	Office of General Counsel
Carol Holmes	Office of Enforcement and Compliance Assistance
EC/R Incorporated	
Graham Fitzsimons	
Shannon Cox	
Lesley Stobert	
Steve Edgerton	
Kathy Boyer	

1.3 TASK FORCE METHODOLOGY

Selection of Task Force members

The formation of the Task Force and a public solicitation of candidates was announced in a May 17, 2004 Federal Register (69 FR 27921). With a goal of creating a reasonably small and diverse group, the EPA selected an 18-member Task Force comprised of experienced representatives from industry, environmental advocates and State and local agency officials.

Public Testimony

The charge from the CAAAC Permitting Subcommittee instructed the Title V Task Force to issue a report that "should reflect the perspectives of all stakeholder groups." The subcommittee recommended that the Task Force conduct at least three full-day meetings, at least one of which should be outside the Washington, D.C. area.

Consistent with its charge, the Task Force held three public meetings at these locations:

June 25, 2004	Washington D.C.
September 14, 2004	Chicago, IL
February 7, 2005	San Francisco, CA

In addition, a public conference call on November 15, 2004 was held with environmental advocates, to obtain testimony from those who might be unable to afford travel to one of the public meetings. Also a public conference call on February 8, 2005 was held with State and local agencies, because the Task Force believed that the public meetings up to that point had underrepresented the views of State and local permitting agencies. Industry stakeholders presented their views by appearing in person at the public meetings or filing written comments; however, they were not provided a separate conference call. From the meetings and conference calls, testimony was received from 74 speakers, of

ED_0011318_00006974-00053

which 18 represented industry, 18 represented State and local agencies and 38 represented environmental advocacy groups.

Also, written comments were received until March 31, 2005. A total of 44 comment letters were received: 18 from industry, 13 from State and local agencies and 7 from environmental advocates. In addition, 34 studies and supporting documents were submitted to the docket.

Full text of the public testimony is available on www.epa.gov/caaac/titleV. The written comments are also available on www.epa.gov/caaac/titleV and on www.regulations.gov at docket (enter docket number OAR-2004-0075 into "advanced search"). In addition, sections of public testimony and written comments are liberally quoted or summarized in this report in many issue areas.

Identification of Issue Areas

In evaluating the input received, the Task Force divided the various comments into Issue Areas. (See Table 1.3-1). These Issue Areas are the ones of most interest to stakeholders and Task Force members. Therefore they don't necessarily reflect some of the original charge questions posed by the CAAAC. For example, there was very little input on items like air quality planning (one of the example CAAAC questions) so the Task Force did not focus on areas not highlighted by stakeholders. The goal of the Task Force was to cover a broad range of issues while giving meaningful treatment to each. This necessarily means that not every issue raised by stakeholders is reflected in the body of the report. The Task Force wishes to emphasize that its decision not to address in the body of the report a particular issue on which testimony was provided should not be interpreted as a decision that the issue is unimportant. Given our limited time, we attempted to prioritize the issues based on the degree of input received and the likelihood of having productive discussions within the Task Force.

Process for Developing Each Issue Area

Each Issue Area was taken on by small groups of Task Force members to frame the issues and sub-issues, to summarize the supporting information presented in the oral and written public comments and to suggest recommendations for consideration by the entire Task Force. Once issue papers were developed, face-to-face meetings were held to hear the viewpoints of each member of the Task Force, modify the framing of the issues or sub-issues within the topic if necessary, and discussing and voting on potential recommendations. Five face-to-face meetings were held from February 2005 to January 2006. In addition, the Task Force added days either before or after some public meetings to move its work forward. Finally, a large number of conference calls between the face-to-face meetings were held to discuss issue papers, to suggest and vote on recommendations and to discuss development of the report.

To ensure that all issues and potential recommendations were considered, we allowed anyone on the Task Force to suggest a recommendation and held discussions on all offered recommendations. In some cases, recommendations were modified to garner addi-

ED_0011318_00006974-00054

tional support and thus may represent a compromise position by some or all persons voting in favor of a recommendation. Even if a proposed recommendation did not receive a majority of votes from members of the Task Force, we have included it in the issue paper to provide a complete picture of the issues we discussed and people's viewpoints. Thus, the term "recommendation" is used for all proposed recommendations whether or not a recommendation received a majority of votes from the group. It was our desire not to eliminate viewpoints simply because they were not held by a majority of members. At the same time, the nomenclature of "recommendation" should not be read to indicate that every recommendation is endorsed by all of the Task Force. To draw conclusions on how strongly a recommendation has the support of all Task Force members, the reader is directed to review the voting for each recommendation and the Discussion section in the paper.

Where possible, we also included in the Discussion section of a paper an explanation of the deliberations so that the reader can understand why someone may have supported, opposed, or abstained from voting for a particular recommendation. For example, a vote against a recommendation may have been based on a particular phrase of concern in the recommendation, or it may have been against the recommendation as a whole. While we cannot recreate the entire discussion (and we doubt anyone would want to read it if we could), to the extent possible, the summary of the Task Force discussions in each paper is intended to help the reader understand what concerns and policies motivated particular votes. We also included an option to abstain from a particular vote as well as to offer clarifications of a vote. The clarification option allowed members of the Task Force to explain their votes, *e.g.*, how they interpreted a particular word or phrase in the recommendation, or why they abstained from voting for the recommendation. Finally, although Task Force members participated in discussions and voted with the intent of representing the viewpoint of the organization they were representing to the best of their ability, the votes themselves are to some degree personal votes in that the Task Force did not open its process to allow the organizations themselves to vote on recommendations.

ED_0011318_00006974-00055

The following areas were identified by the Task Force for the purpose of developing issue papers for further discussion. The order of this list is alphabetical and does not reflect any particular priority.

Table 1.3-1 Issue Areas identified by the Task Force

Topic	
1.	Compliance Certifications
2.	Compliance Schedules
3.	Definitiveness of Permit
4.	Deviation Reporting*
5.	EPA Review of Proposed Permits
6.	Incorporation of Applicable Requirements
7.	Insignificant Activities/ Emission Units
8.	Monitoring
9.	New Substantive Requirements
10.	Permit Reopening, Revisions, Current and Operational Flexibility
11.	Petitions and Appeals
12.	Program Benefits
13.	Program Costs
14.	Public Access to Documents
15.	Public Hearings
16.	Public Notice throughout Process
17.	Responses to Public Comments on Draft Permits
18.	Startup, Shutdown, and Malfunction
19.	Statement of Basis
20.	Title I/Title V (SIP gap; *e.g.*, old NSR)

* No paper was ultimately developed on this issue.

ED_0011318_00006974-00056

1.4 REPORT STRUCTURE

As described in the Task Force Methodology section, this report represents a work product based on input received from four public meetings, two public conference calls to receive input, numerous written comments submitted, and extensive discussions at Task Force meetings from 2004-2006.

The report has been structured to achieve the following:

- To capture and summarize key input from multiple stakeholders on the Title V program as received in public hearing and written submittals.
- To capitalize on the experience of Task Force members to identify, characterize, and prioritize Title V issues.
- To develop recommendations to improve the Title V program. The recommendations go beyond the original charge to the Task Force (which focused on how the program is performing and elements of the program that are working well/poorly).

The main body of this report is organized by Issue Areas. The Task Force agreed to write an issue paper for each issue area in a standard format. Thus, each paper contains the topic, a brief Issue/Observation Description, Supporting Information, a Task Force Discussion Summary (based on meeting or conference call discussions), and, where possible, Recommendations. The issue papers were used by the Task Force to facilitate discussions but also evolved as a result of those discussions. The Supporting Information referenced above represents either a summary of public hearing input/written comments or direct quotes from the public meetings and written comments. Some papers include attachments with additional supporting information as well.

The report also includes a summary of the purpose of the Title V Operating Permit program. It is important in evaluating the Title V program to provide a frame of reference for the analysis. This section provides a brief overview of the legislative and regulatory history of the Title V program.

The final report includes all of the recommendations that were considered by the Task Force. So as to better represent the spectrum of viewpoints, the Task Force allowed its members broad latitude to offer recommendations. Members used the voting system to support, disagree with, or abstain from each recommendation, and could also offer alternate recommendations. As noted above, though time was devoted to discussion of each recommendation with the goal of moving towards consensus, each recommendation offered by a Task Force member was included in the report regardless of the degree of consensus behind it.

ED_0011318_00006974-00057

A.4 RCRA Permit Modifications Report, 2016. (Page 15)

Link - RCRA Permit Modifications Report

RCRA

HAZARDOUS WASTE PERMITTING PROGRAM

Permit Modifications Report:

Safeguarding the Environment in the Face of Changing Business Needs

January 2016

United States Environmental Protection Agency

EPA530-R-15-001

ED_0011318_00006974-00059

ACKNOWLEDGMENT
This report was developed by hazardous waste permitting experts in state environmental programs and in the Environmental Protection Agency (EPA)'s Office of Resource Conservation and Recovery and regional offices.

EPA wishes to acknowledge and thank the following contributors of this report: Paula Bansch (Indiana, IDEM), Bob Bullock (Idaho, DEQ), Jamie Burroughs (Tennessee, TDEC), Tricia Buzzell (EPA), Lilybeth Colón (EPA), Gail Hansen (EPA), Becky Holmes (Montana, DEQ), Denise Housley (EPA), Julia King-Collins (Virginia, DEQ), Matthew Loesel (EPA), Bud McCarty (North Carolina, DENR), Richard Nussbaum (Missouri, MDNR), Christine Roob (North Dakota, Dept. of Health), Tab Sommer (EPA), Will Steele (Louisiana, DEQ), and Farshad Vakili (California, DTSC).

For questions about the report, please contact Tab Sommer, 703-605-0636, sommer.tab@epa.gov.

ED_0011318_00006974-00060

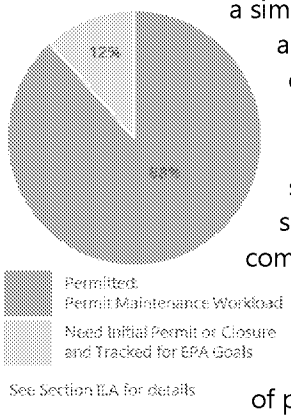
EXECUTIVE SUMMARY

The majority of facilities that are treating, storing, or disposing of hazardous waste have been issued permits under the Resource Conservation and Recovery Act (RCRA). The bulk of permitting activity has now shifted to responding to business needs and changes in facility operations while ensuring that the permitted conditions continue to be protective and prevent release. This report demonstrates the value of maintaining healthy RCRA permitting programs in order to efficiently respond to changes needed at facilities.

WHY HAZARDOUS WASTE PERMIT MODIFICATIONS ARE NECESSARY

Under RCRA, facilities managing hazardous waste must obtain a permit from their regulatory authority (i.e., the state or EPA). The purpose of the permit is to detail how a facility must comply with the RCRA regulations to ensure that hazardous waste management activities are conducted so as to prevent and address releases that could threaten public health and the environment and lead to potential cleanup obligations. These permits are site-specific and establish the technical and administrative standards to which a facility must adhere to legally and protectively manage hazardous waste. Thus, it is critical that modifications to the permit are made as necessary to enable the facility to effectively continue to operate treatment, storage, and disposal units.

Changes to permit conditions are often required to keep pace with evolving business practices, technology, cleanup decisions, and regulations. For example, permit modifications allow facilities to update technological systems, comply with new environmental standards, respond to changing waste streams, address financial assurance requirements, or simply improve their hazardous waste management practices. These changes in turn can support enhanced operational efficiency, economic development, conservation of resources, improved prevention of environmental releases, and cleanup progress.



Most facilities may need to modify their permit more often than the permit needs to be renewed to accommodate time-critical business decisions, such as construction of a new waste management unit. Timely permit modifications enable facilities to efficiently expand and update their operations, adopt advanced greener technologies, remediate contamination, and address other vital business needs, while remaining protective of human health and the environment.

MOST PERMIT-RELATED WORK OCCURS AFTER INITIAL PERMIT ISSUANCE

The issuance of an initial permit reflects just the beginning of the permit-related work conducted by the regulatory authority. Over the life of a typical permitted hazardous waste management facility, significantly more time is devoted to permit maintenance than to permit issuance.

To better understand the workload associated with permit modifications, a group of state and EPA representatives reviewed data on permit modifications approved in 2011 through 2013. On average, 826 permit modifications were approved each year over the three-year period.

Permit modifications vary greatly in terms of complexity – a simple modification (Class 1 or Minor changes, such as a change in contact information) can be completed in as little as two or three hours. Class 1 modifications represent 83% of permit modifications reviewed during the period. More substantial modifications (Class 2, 3, and Major, such as adding a new waste management unit) combined represent 17% of permit modifications. The more substantial modifications can take up to 1,850 staff hours to address. Modifications that are technically complicated or have a high degree of public interest can take over a year to finalize (in addition to the 105 days of public review for Class 3's). See Section III for the process and timeframes for different classes of modifications.

Facilities that need permit maintenance are a large percentage (88%) of the RCRA permitting program's priority workload. However, the work has not been fully communicated or understood since modifications are not currently recognized under EPA performance goals and are not addressed in most state-EPA planning and budget negotiations. In that regard, this report presents a first look at the story of permit modifications, including the workload expended by states and EPA and the outcomes achieved for the environment and regulated community.

ED_0011318_00006974-00061

Contents

INTRODUCTION

PART 1

I. WHAT HAPPENS TO A FACILITY AFTER IT IS PERMITTED? 7
- A. Continual Work for Protection of Human Health and the Environment .. 8
- B. Permit Modification Requests: Objectives and Outcomes 9
- C. Permit Maintenance Activities 10

II. THE UNTOLD STORY 12
- A. Why Modifications are an Untold Story 12
- B. Why an Efficient Permit Modification Process is Necessary 14

III. PERMIT MODIFICATIONS: STATUS AND STATISTICS 15
- A. Permit Modification Process and Timeframes 15
- B. Permit Modification Statistics 19
- C. Location of Permitted Facilities with Potential for Modifications 22

IV. CONCLUDING POINTS 23

PART 2

PERMIT MODIFICATION CASE STUDIES 24
- A. Responding to Changing Business Practices or Operations 25
- B. Improving Hazardous Waste Management 32
- C. Ensuring Long-Term Protection 36
- D. Keeping Permits Up to Date 41
- E. Modifications over the "Life of a Permit" 45

APPENDIX

1. Modifications Types Based on Regulatory Descriptions
2. Permit Modification Data: Background and Details

ED_0011318_00006974-00062

INTRODUCTION

A. Purpose of this Report

The purpose of this report is to describe the changing nature of RCRA hazardous waste permitting work and demonstrate how an adequate and effective permit program is vital, not only for initial permits, but also throughout the permit term to enable necessary permit maintenance activities. Permit conditions that are developed when permits are initially issued frequently need to be revised during the permit term to address evolving facility conditions, for example, in response to business changes, as well as changes in applicable regulatory requirements. Permit maintenance, including permit modification, assures that permits remain effective, and allows owners and operators to adjust facility operations to meet changing conditions and demands.

This report highlights the workload associated with maintaining permits and describes why permit modifications are critical in order to enable improved business operations while maintaining protection of human health and the environment.

B. Background

The EPA established comprehensive protective national standards for managing solid and hazardous waste. These regulations for treatment, storage, and disposal facilities ensure that facilities that manage these wastes have the necessary controls to safeguard communities and the environment, while facilitating commerce by supporting an effective waste management structure. These controls are imposed primarily through permits and these permits are predominantly issued by authorized states.[1]

Permits are essential to making the RCRA Subtitle C regulatory program work, since it is through the permitting process that the EPA or the states apply standards to hazardous waste treatment, storage, and disposal facilities (TSDFs). With permits and other enforceable waste management controls, RCRA actively protects the health of communities near hazardous waste management facilities, including the estimated 20 million people living within a mile of these facilities.[2] For example, RCRA requirements for landfills to install liners and leachate collection systems prevent hazardous contaminants from migrating into soil and potentially into surface water and groundwater, which are sources of drinking water. Furthermore, by containing leaks and spills, RCRA permit controls safeguard families and their homes from possible exposure. Permits also protect the public from hazardous air emissions by regulating hazardous waste combustors, including incinerators as well as boilers and commercial and industrial furnaces that combust hazardous waste, and by ensuring that volatile waste is properly contained and managed.

The public plays an important role in the permitting process for hazardous waste facilities. They and other interested parties can contribute valuable information and ideas that improve the quality of both agency decisions and permit applications. EPA has written regulations that create opportunities for the public to

---

[1] EPA Regions implement the RCRA program in Alaska, Iowa, and some territories. EPA regions also implement certain parts of the program for which some states have not yet been authorized (e.g., corrective action and some HSWA combustion regulations).

[2] Estimate drawn from an analysis that merged facility size and location information from RCRAInfo with population data, at the block and block group levels, from the U.S. Census Bureau's 2000 Census. The demographics were captured around the total number of facilities that have approved controls in place (e.g., permits and other approved controls) that result in the protection of this population (20 million people).

ED_0011318_00006974-00063

learn about RCRA activities and give input during the process for permit issuance and for modifications. There are meetings, comment periods, and hearings specifically for the public to engage companies and regulators in a dialogue. Furthermore, EPA encourages permitting agencies, permit holders or applicants, and other interested parties to provide additional public participation activities where it will be helpful.

Since the program has been implemented, permits and other enforceable controls have been put in place to prevent dangerous releases at over 20,000 units.[3] Almost half of those units continue to require some level of oversight.[4] The states (and EPA) regularly issue, modify, and update RCRA permits for hazardous waste units (such as incinerators and landfills) at facilities that treat, store, or dispose of hazardous waste. These RCRA permits establish the waste management activities a facility can conduct as well as the conditions under which it can conduct them.

Over the life of a typical permitted hazardous waste management facility, significantly more time is devoted to permit maintenance than to permit issuance. Permit maintenance involves a number of activities among which permit modifications are the most significant. The work involved after permit issuance/reissuance and the results of those efforts have been largely unrecognized mainly because RCRA permit modifications have not been included under EPA performance goals. This paper tells the story of permit modifications and the important role they play in keeping permits current. It also describes common challenges and complexities inherent in the permit modification process and highlights case studies that offer a glimpse of the content, process, and workload.

With facilities constantly changing, it is critical that states and EPA maintain sufficient expertise and resources to process permits in a timely manner and allow businesses, especially those in the manufacturing sector, the opportunity to adjust to variable markets. Although the vast majority of hazardous waste management facilities have permits in place, there is a continuing challenge to keep pace with technology in a way that encourages safe and innovative waste management.

C. Organization of this Report

This report is divided into two primary components:

- **Part 1** provides information on the permit modification process. It describes what happens to a facility after it has received a permit, discusses why permit modifications have been largely an "untold story" in light of the focus on issuing and renewing permits, and provides facts and figures to set context for the workload associated with responding to modification requests.

- **Part 2** presents a series of case studies that show permit modifications "in action." The case studies describe real-world situations where the state permitting programs and businesses have worked together at facility improvements – where changes to permits continue to ensure proper safeguards remain in place and allow companies to respond to changing business needs or pursue innovative approaches to responsible hazardous waste management.

---

[3] These units have met the criteria for "approved controls in place to prevent release," per the unit information entered into RCRAInfo. This includes historical records. See the GPRA "approved controls" description in Appendix 2.

[4] The oversight total (9,000 units) is from RCRAInfo in the "Full Oversight Workload for Permitting (Operating and Post-closure) and Closure Report" as of 3-12-14.

ED_0011318_00006974-00064

PART 1

I. WHAT HAPPENS TO A FACILITY AFTER IT IS PERMITTED?

Permit Issued/ Reissued

Under RCRA, facilities must have a hazardous waste permit for units that treat, store, or dispose of hazardous waste. RCRA permits provide facility owners and operators with the legal authority to treat, store, or dispose of hazardous waste and detail how the facility must operate in order to comply with the regulations. The final permit also takes public input into consideration.

Permits are issued for a maximum of ten years (although permits can be administratively continued). This permit term limit ensures that facilities are periodically reviewed and requirements are updated as necessary.

Examples of Changes over the Life of a Permit

- Operating -

1. Change waste streams managed
2. Add capacity in existing units
3. Incorporate new units in the permit
4. Comply with new regulations (e.g., for incinerator units)
5. Improve waste management in order to save costs and conserve natural resources
6. Upgrade to more efficient/green technologies
7. New ownership triggering financial assurance reviews

- Closure, Post-Closure, Facility-Wide Cleanup -

1. Close storage tanks/remove conditions for unit
2. Improve cleanup process for historic contamination
3. Institute and assess new monthly groundwater monitoring
4. Select final remedy for facility-wide cleanup
5. Extend post-closure care period for landfills

- Recurring Changes -

1. Change in the general permit provisions (e.g., schedule of compliance, corrections, adjustment of unit conditions)
2. Change in the general facility standards (e.g., emergency response/coordination, sampling, and analysis)

EPA views permits as living documents that can be modified to address changing circumstances. Neither the permitting agency nor the facility owner or operator can anticipate all of the administrative, technical, or operational changes required over the permit term for a facility; therefore, permit modifications are inevitable.

Permitted facilities must request and receive approval for proposed procedural, mechanical, physical, and process changes that deviate from their approved permits. Such permit modifications can involve a significant level of effort on the part of the regulating authority including: discussions with the facility representatives to understand the change, class determination, technical review, regulatory analysis, comment, discussion, data entry, public notice, comment response, site visit to visually inspect the area being modified and document updates. Refer to Exhibit 5 for the main regulatory process steps and see Section I.C for a more comprehensive list of permit maintenance activities.

Permit Modifications Issued for each Change

Permit modifications and maintenance are critical for continued safe waste management. The prevention of dangerous releases also circumvents the need for new costly cleanups.

ED_0011318_00006974-00065

A. Continual Work for Protection of Human Health and the Environment

Permit writers continually work with facilities to ensure that sound operating procedures and proper waste management practices are being conducted in a way that is protective of human health and the environment. When changes to facility design and operations are proposed, permit writers assess the impacts, including the potential for releases of hazardous waste or hazardous constituents. Permit writers also make sure that permits reflect decisions that enable facility cleanup to effectively move forward. (See the case studies in Part 2 for specific examples.)

The permit establishes the administrative and technical conditions under which a facility must operate. The permitting authority's ongoing oversight of facility operations and interactions with the facility contacts are essential to ensuring the continual protectiveness of permit conditions. These activities are an important element of permit maintenance and can help both parties identify potential modifications that might be needed to support evolving waste management methods or other changing needs at the facility.

Permit maintenance prevents hazardous waste releases as operations change:

Initial permit conditions are established in order to ensure hazardous waste is safely managed and to prevent releases to the environment. As facility operations or other factors change through time, permitting authorities need to work with the facility to ensure that conditions outlined in the permit *continue* to prevent releases and require best waste management practices.

There are valid environmental reasons for formal approval of the facility changes in order to prevent release. For example, secondary containment not adjusted to allow for increases in quantity of hazardous waste managed could pose an increased risk of release, which in turn may result in human exposure and a lengthy and costly cleanup. The regulator must assess changes in order to ensure that they are appropriate and protective.

The RCRA Hazardous Waste Permitting Program

The Resource Conservation and Recovery Act (RCRA) provides the general requirements for EPA's waste management program. The RCRA hazardous waste permitting program, established under RCRA Subtitle C, ensures the safe treatment, storage, and disposal of hazardous waste by establishing administrative and technical requirements under which a hazardous waste management facility must operate.

Permits typically include conditions governing facility design and operation; safety standards; emergency plans; corrective action programs designed to respond to releases; financial assurance for unit closure and post-closure maintenance; and other required activities, such as employee training, monitoring, and reporting. The permitting process includes the issuance of initial permits, modifications, renewals, and termination.

Facilities that are required to obtain RCRA permits must request and receive approval for procedural, mechanical, physical, and process changes that deviate from their approved permits.

For more information about hazardous waste permitting, see http://www2.epa.gov/hwpermitting

ED_0011318_00006974-00066

B. Permit Modification Requests: Objectives and Outcomes

Permit modifications respond to various business needs by revising the permit to ensure that the changes are protective of human health and the environment. Changes to the facility operations and related permit modifications can have the effect of improving a facility's operational efficiency, economic development, as well as allowing for creative problem solving and other aspects such as facility management. Some modifications are initiated due to changing environmental requirements. (See the case studies in Part 2 for specific examples.)

Reasons for Permit Modification Requests

- **Operational efficiency:** Permit modifications allow for development and implementation of new technologies and systems while ensuring protective standards. These changes can improve the efficiency of facility operations, which lead to ancillary effects such as operational cost savings or environmental improvement. For example, by expanding its waste management capacity, a facility can reduce transportation costs and corresponding environmental impacts associated with off-site treatment or disposal. Other changes, such as the addition of new treatment technologies or redesign of storage areas, may lead to operational efficiencies at the facility.

- **Economic development:** Companies may request permit modifications in order to incorporate changes needed to grow and expand their business and waste management infrastructure. For example, permit modifications allow companies to install new units for treating or disposing of hazardous waste or to incorporate new waste management processes that allow companies to treat new waste streams. Timely permit modifications ensure that these changes maintain protection of human health and the environment while allowing companies to keep pace with changes in the marketplace and assure their competitiveness.

- **Environmental improvement:** Permit modifications can lead to environmental improvements in multiple ways. Many modifications facilitate cleanup of contaminated soil or groundwater, which reduces risks to human health and the environment. Other modifications allow facilities to increase the recycling or reuse of materials, thus reducing corresponding waste streams. Some changes are undertaken to improve technological or operational efficiency; these can have ancillary environmental benefits, such as reductions in fossil fuel use and greenhouse gas emissions. Permit modifications may also be triggered by changes to environmental regulations (e.g., new air quality standards may require removal of hazardous pollutants from stack emissions, creating a new waste stream that must be managed).

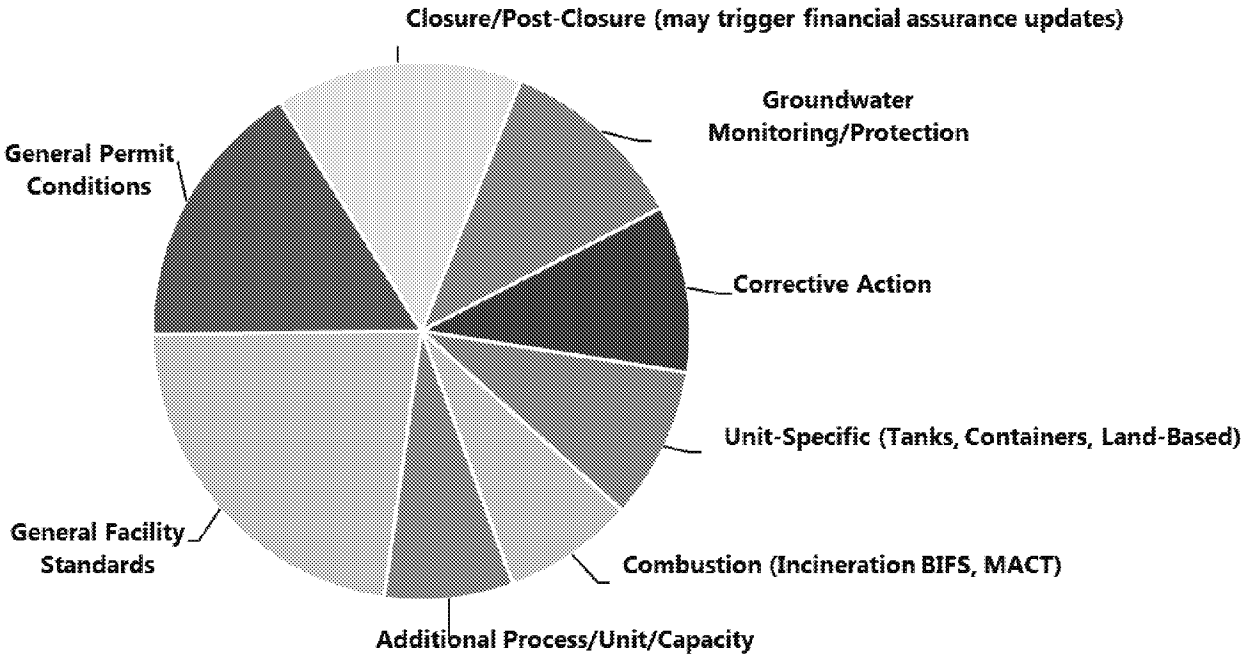
- **Other:** Permit modifications can also be made in response to general improvements in waste management. Common modifications that can improve waste management practices are updates to waste analysis plans or contingency plans for emergency response actions. Administrative changes, such as revisions to facility contact information, or changes to facility ownership are addressed through modifications.

The issues addressed by permit modifications range from minor administrative changes to significant physical changes at a facility.

ED_0011318_00006974-00067

Exhibit 1 summarizes the distribution of permit modification approvals for 2011 through 2013. As shown in the graphic, changes to general facility standards, general permit conditions, closure/post-closure (which may trigger financial assurance updates[5]), groundwater monitoring/protection, and corrective action represented a large percentage of all permit modification approvals.[6] The modifications cover operating and post-closure permits. A growing number of modifications are for permits that have been continued in order to address facility-wide corrective action after the TSD units are clean closed. The case studies presented in Part 2 of this report describe the kinds of permit modifications in more detail.

Exhibit 1. General Distribution of Permit Modification Approvals by Type (2011-2013)



Note: EPA calculated this distribution using data from the RCRAInfo database where the modification type was identified in the code or the notes for "other modifications." This does not reflect data from all states. Modifications were not required to be tracked in RCRAInfo in this timeframe. (Sample size: 788 permit modifications out of 2479). See details about RCRAInfo Data in Appendix 2.

C. Permit Maintenance Activities

With the vast majority of the hazardous waste management facilities already permitted, permit maintenance, including modifications, account for most of the permitting workload. The maintenance of permits involves processing and approval of modifications, as well as other oversight activities, such as compliance inspections, responding to the public's calls and questions, and review of routine facility reports. Below are examples of permit maintenance activities that occur throughout the life of the permit.

---

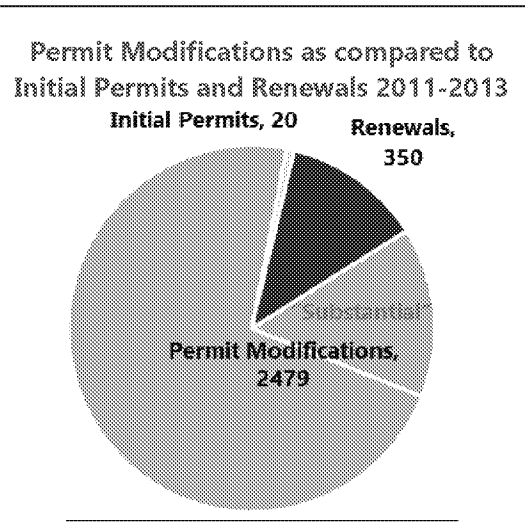
[5] Although changes to the closure and post-closure plan typically require updates to a facility's financial assurance, regular maintenance of a facility's financial assurance alone does not generally trigger a permit modification. Maintenance of financial assurance includes annual verification of the financial documents submitted by facilities to ensure the amount is adjusted for inflation and the mechanism is still valid and, when necessary, additional steps to ensure coverage remains in place (e.g., response to instrument provider cancellation requests).

[6] This pie chart is intended to show the *general ratio* of activities involved in the various permit modification approvals, not specific amounts or percentages. The state data that could be relied on for this assessment is only 32% of the national total. It does not include data for all states, nor does it include approvals entered where the activity was not specified in the code type or in the notes. See Appendix 2 for additional details. State ratios vary considerably, for example, Texas has a larger percentage of combustion modifications.

Examples of Permit Maintenance:

- **Modification Activities**
  - Initial discussion with facility representative regarding details of planned facility changes and determination of modification class
  - Review/approval of modification requests and associated deliverables required under the regulations or schedules of compliance in the permit and conduct site visits
  - Conduct public participation activities, such as solicitation of public comment and public meetings or hearings (may be adjudicated)
  - Conduct environmental assessments
  - Compile environmental impact statements
  - Perform other required procedural activities, see the process outlined in Exhibit 5

- **Other Permit Oversight and Maintenance Activities**
  - Review/approval of documents and routine reports required under the regulations or schedules of compliance in the permit (e.g., semi-annual/annual groundwater monitoring reports)
  - Conduct compliance inspections
  - Review of facility demonstrations of financial assurance
  - Respond to citizen/media calls
  - Facility management planning
  - Data management
  - Respond to internal inquiries and file review requests
  - Permit billing (cost recovery) activities
  - Participate in meetings, phone calls, and site visits



As the majority of facilities on the permitting track now have permits in place, the permitting workload is now shifting to modifications.

Relative Workload in 2011 thru 2013:

- There are about seven times more permit modifications than renewals.
- Permit modifications and renewals outnumber new issuances at a rate of 141 - 1.
- 1,429 facilities are permitted and appear to be in the workload for modifications and renewals.
- Generally, 17% of the modifications require "substantial" changes to the permit and these can be comparable to initial permit issuance or renewal with regard to complexity, workload, and public participation requirements.

See Section III.B for details on the data.

The modifications can trigger a great deal of unanticipated work. For example, the transfer of facility ownership is a Class 1 modification, usually the simplest modification to process, but it also involves changes in the financial assurance mechanisms (e.g., trust fund, insurance policy, or letter of credit), granting a release for previous owner, and other responsibilities in addition to the actual modifications to the permit. Other activities can require special technical expertise. Activities, such as environmental assessments and impact statements, could be done in concert with efforts to "green" the permit (see Part 2 Section B). In summary, permit maintenance work is more than just making specific edits to permit criteria; the permit review must assess the overall waste management practices of the facility in order to make sure the change in the permitted activity is in compliance with the regulations.

II. THE UNTOLD STORY

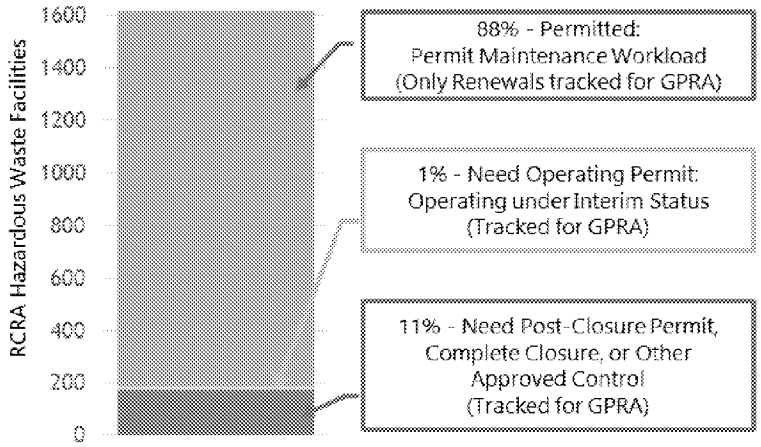
A. Why Modifications are an Untold Story

The first RCRA permit deadlines came with the 1984 Hazardous and Solid Waste Amendment (to RCRA) and issuing permits became a major goal for RCRA programs. For many years, EPA and authorized state agencies have continued to focus on the issuance of new and updated regulatory controls (primarily initial permits and permit renewals) as a core program performance measure. This national performance measure was largely an outgrowth of the Government Performance and Results Act (GPRA) of 1993, which mandated that federal agencies establish performance measures to gauge the success of their programs.

Today, RCRA permits have been issued to the vast majority of facilities in the GPRA workload, and many of those permits have been reissued. Exhibit 2 shows the current related permitting program workloads. EPA's RCRA program continues to establish national goals for initial controls (permit issuance, clean closure, or other controls in place) and renewals.

A primary purpose of RCRA permitting requirements is to ensure that ongoing hazardous waste management activities are protective and do not result in cleanup obligations; however, the preventive nature of the permitting program is difficult to track as a performance measure. Permitting and permit maintenance are nonetheless ongoing and effective tools in ensuring that hazardous wastes are not mismanaged. Whereas the Agency has been able to successfully track permit issuance and renewal since they are "predictable" tasks, permit modifications have not been included in core program performance measures or national goals for very practical reasons. The frequency, timing, and complexity of permit

Exhibit 2. RCRA Permitting Workloads in 2015



Permitting Workloads in 2015

Permitted (88%)

1429 - The "Permit Maintenance Workload" contains the facilities that are permitted and are expected to need permit modifications and other maintenance. The facilities that would also eventually need permit renewals are included in this set. At the current rate of renewals, about 300 facilities (~21%) are administratively continued past their permit expiration date and need renewals. Renewals are tracked for GPRA.

Never Permitted; Tracked for GPRA and Need Initial Controls (12%)

16 – Need Operating Permit: Facilities have at least one unit that is "operating, actively managing RCRA hazardous waste" and is under interim status standards.

172 – Not Operating: Need post-closure permit, completion of closure obligations, or other approved controls in place. The majority of these facilities are on track for clean closure (and/or a corrective action order), but some will be issued post-closure permits.

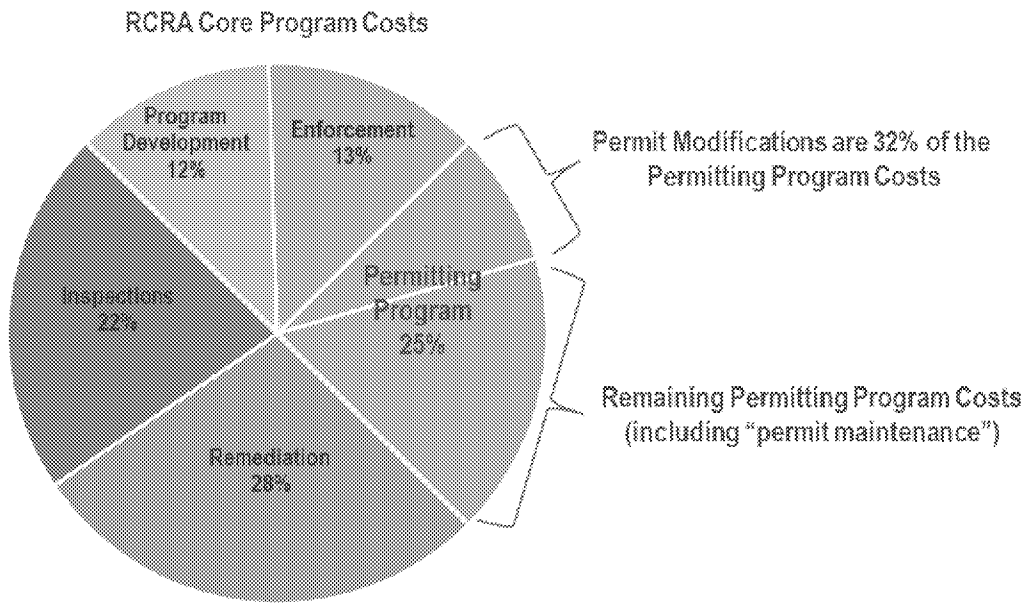
Note: There are additional facilities that are not shown in the graph totals above and are less of a priority (not tracked for GPRA), but are still under the oversight of the permitting programs.

See Section III.C for the permit maintenance workload criteria and a comparison to other regulated facilities. See Appendix 2 for additional details on this information.

modification requests in any given year is unpredictable, primarily because the majority of these requests are initiated by facilities.

The workload uncertainty keeps the program from projecting the number of modification approvals to be accomplished, but resources nonetheless have to be prioritized and in place in order to address them. Modifications represent a substantial workload for EPA and the authorized states and they should be considered along with the accomplishments tracked in the RCRA core programs. The Association of State and Territorial Solid Waste Management Official's (ASTSWMO's) *State RCRA Subtitle C Core Hazardous Waste Program Implementation Costs Final Report*, published in January 2007, discussed this in detail, emphasizing that an estimated 32 percent of costs to the state authorized hazardous waste permitting program can be attributed to permit modifications (see Exhibit 3). This does not include all permit maintenance activities. The ASTSWMO's report also states: *"In terms of overall State RCRA Core C program costs, permit modifications represent the single most costly activity that States perform."*[7]

Exhibit 3. Relative RCRA Program Costs to States in 2007



Since the 2007 report, more facilities have been issued an initial permit and the permit renewal backlog is diminishing, thus shifting *more of the work towards maintenance* (including modifications).

The proportion of State Core RCRA Subtitle C program workloads and associated costs devoted to permit modifications are now understood but, to date, there has been little discussion of the economic, environmental, and regulatory benefits of permit modifications and these are often not fully considered during annual planning and funding negotiations.

[7] ASTSWMO's full report is available at: http://www.astswmo.org/Files/Policies_and_Publications/Hazardous_Waste/Final%20Report%20-%20RCRA%20Subtitle%20C%20Core%20Project.pdf

ED_0011318_00006974-00071

B. Why an Efficient Permit Modification Process is Necessary

Speed of business has accelerated. The hazardous waste landscape has evolved considerably since the regulations were established in the early 1980s. Since then, personal computer use and electronic communications are ubiquitous, innovations in information technology have exploded, and the pace of globalization and trade has quickened. As business needs accelerate, EPA and the states have sought more efficient ways to review permit modifications in order to ensure permits remain protective of human health and the environment without encumbering business needs. Tools such as model permits, templates, regulatory guidance, and training allow regulatory authorities to issue hazardous waste modifications that are protective of the environment and responsive to business.

Urgent Changes. To stay competitive, owners and operators must respond faster to changes in their marketplace. They must be at the ready to implement changes that will reduce costs, expand infrastructure, and develop new markets. Timely permit modifications are critical for responding to these needs in a manner that is protective of human health and the environment while avoiding delays in time-critical decisions.

Permit modifications that enable businesses to implement changes to improve protectiveness, such as changes to increase recycling, minimize waste, and improve cleanup of sites are paramount to meeting the intent of RCRA. For example, the RCRA corrective action program has focused on increasing progress toward constructing cleanup remedies. Timely modification of a permit to incorporate a cleanup remedy decision contributes to more prompt reduction of current and future risks from contamination. It is vital that permit modifications are processed efficiently and effectively to avoid costs to the environment as well as to industry.

Federal and state regulators must carefully review permit modifications to ensure the action is in compliance with regulatory requirements and is protective of human health and the environment. Regulators must also provide adequate opportunity for the public to have a voice regarding decisions that potentially affect their community (i.e., a change in treatment may trigger a need for storage that the facility did not anticipate). When the regulatory agency is able to quickly shift priorities and resources, these activities can be implemented expeditiously, and thus better align with the facility's business-related schedules and deadlines, as well as bring environmental protections into place in a timely manner.

Permitting Resources Needed to Respond to the Shift: In the past, RCRA permitting programs have primarily focused on issuing permits, but with the majority of the hazardous waste management facilities already permitted, permit maintenance and modifications account for most of the permitting workload. In addition, businesses have come to expect timely attention and service to their permit-related applications, especially in light of the permitting fees they pay in many states, yet at the same time federal and state hazardous waste resources devoted to providing such service have diminished.

The first step in addressing these issues is bringing attention to the issue. This issue was first highlighted in ASTSWMO's 2007 RCRA Core Report. This 2007 Report provided an accounting of workloads in broad programmatic areas within the hazardous waste realm and clearly identified the resources devoted to new permit issuance/reissuance versus other permit related activities including permit modifications. One conclusion of this analysis was that there was (and continues to be) a major shift in program emphasis since the early 1980s to permit modifications/maintenance in permit-related areas. As a result of the shift, significant federal and state program resources have been diverted to work in these areas, which is supported by the statistics contained in the ASTSWMO report and this paper.

III. Permit Modifications: Status and Statistics

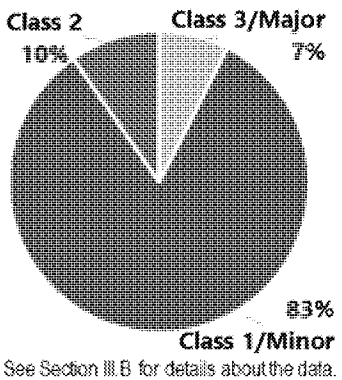
A. Permit Modification Process and Timeframes

The procedures for making changes to a permit will vary depending on whether the permitting authority or the permittee is initiating the change.

There are three basic situations that involve changes to a permit after issuance/reissuance:

- Permit modification at the request of the permittee (see 40 CFR 270.42, the most common)
  - Class 1, Class 2, and Class 3 described below
- Permit modification at the request of the State/EPA (see 40 CFR 270.41, this is very rare)
  - Modification of the permit
  - Revocation and reissuance of the permit
- Termination of the permit (see 40 CFR 270.43, not a "modification")

RCRA permit modifications are organized into three classes.[8, 9]



Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operations. These changes do not substantially alter the conditions in the initial permit or reduce the facility's ability to protect human health and the environment. Some Class 1 modifications (such as a change in the emergency contacts) do not require prior approval by EPA or the authorized state-permitting agency. However, most changes require prior approval. Class 1's are typically the easiest to process. Most are simple changes to the permit, although some can be rather difficult to address, such as a change in ownership, which triggers financial assurance changes.

- **Expected Staff Time to Address: 2-25 hours** (100 hours or more for ownership changes especially with complex facilities that have multiple owners under one permit.)

Class 2 modifications address changes needed to maintain safety or regulatory compliance at the facility. In particular, Class 2 modifications apply when facility owners and operators need to respond to common variations in the types and quantities of waste managed by the facility, technological advancements, and new regulatory requirements, where those changes can be made without substantially changing the design specifications or management practices in the permit.

- **Expected Staff Time to Address: 41-119 hours** (up to 340 hours in rare cases)

Class 3 modifications are major changes that substantially alter the facility or its operations. For example, changes to waste management practices to accommodate new types of waste, substantial increases in storage capacity, or changes to the facility's groundwater monitoring program would require a Class 3 modification. Modifications in this classification have a wide range of complexity and typically include the more complicated permit changes.

- **Expected Staff Time to Address: 59-640 hours** (up to 1850 hours in rare cases)

---

[8] Several states (AL, FL, ME, MN, NY, OH, and SC) use the original "major or minor" permit modification categories in lieu of the three class system introduced in a 1988 rule (53 FR 37912).

[9] The "Expected Staff Time" ranges come from the 2007 ASTSWMO Core report. See also background in Appendix 2.

Exhibit 4 provides examples of the types of changes covered by each modification classification.

Exhibit 4. Examples of Permit Modification Classifications

Class 1	Class 2	Class 3
Administrative and informational changes	Changes in frequency or content of inspection schedules	Creation of a new landfill as part of closure
Correction of typographical errors	Minor changes to corrective action	Addition of corrective action remedy
Changes in names, addresses, and phone numbers of emergency coordinators	Changes to facility training plan that affect the type or amount of employee training	Addition of compliance monitoring to groundwater monitoring program
Changes to comply with new regulations for analytical quality control plans, or waste sampling and analysis methods	Changes in number, location, depth, or design of groundwater monitoring wells	Addition of temporary incinerator for closure activities
Note: Permit modifications are classified in more detail in 40 CFR 270.42, Appendix I, which is described in "Modification Types Based on Regulatory Descriptions" in Appendix 1 of this report.		

The process for modifying a permit differs depending on the classification of the modification. For Class 2 and Class 3 modifications, the modification process follows a series of defined steps similar to the initial permit application process. In contrast, the administrative requirements for Class 1 modifications are comparatively minor. Class 2 and Class 3 modifications require the facility to follow several steps to encourage public participation. These steps include publishing a notice of the request for permit modification in a public newspaper; holding a public meeting; and allowing a 60-day public comment period on the requested modification. Exhibit 4 illustrates the modification process for all three Classes.

Typical timeframes for completion of modifications are based on the time needed for public comment, complexity of the modification request, class type, and availability of agency staff resources. The permitting agency may need additional information from the facility in order to make a decision and these interactions can be lengthy. Denials are relatively rare since provisions allow for revisions and extensions. The permitting agency may also determine that the class should be higher or lower (or deciding if a Class 1 needs prior approval) based on the change being made.

Agency-initiated modifications generally require a similar process to issuing a full permit (these are not as common as facility initiated modifications).

Temporary authorizations, as described in 40 CFR 270.42(e), can be requested for the following objectives:

- Facilitate timely implementation of closure or corrective action
- Prevent disruption of ongoing waste management activities
- Respond to sudden changes in the types or quantities of waste managed
- Allow specific treatment or storage in order to comply with land disposal restrictions
- Facilitate other changes to protect human health and the environment

Temporary authorizations allow the changes to a permitted activity to take affect sooner than the regular modification process allows. If the changed activity must continue after expiration of the temporary authorization, a regular modification process would still be required. Temporary authorizations are allowed for modifications that would normally be included in a Class 2 or 3 modification request. A creation of a temporary storage unit to store hazardous waste prior to treatment or disposal would be an example of a situation where the use of a temporary authorization would be appropriate.

Public input can also help permittees or prospective applicants make better decisions during the process. Public interest tends to be high for facilities receiving their initial permit and may decline over the lifespan of a permit, particularly at facilities that have modified their permit many times (sometimes over 100 changes). Effective and meaningful public participation remains critical for informing decisions made by the facility managers as well as the regulating agency.

See Exhibit 5 for the regulatory public participation requirements based on the permit modification class. The main required components of public participation for permit modifications are:

- Notification of the facility's modification request sent to mailing list;
- Publication in local paper and modification request made available to public (Class 2 and 3);
- 60-day public comment period for the facility's modification request (Class 2 and Class 3);
- Public meeting hosted by the facility (Class 2 and Class 3);
- Notification of the decision;
- 45-day public comment on the draft permit conditions (Class 3); and
- Public hearing (if requested for Class 3).

In many cases, expanded public participation efforts (such as use of modern technology) are recommended.[10] For example, greater outreach may be needed for modifications that involve potential off-site impacts, such as air emissions or cleanup of releases that have migrated off-site. Additionally, greater outreach may be warranted to more effectively support communities when the facility is located near disadvantaged areas or when facilities are clustered and thus may add to cumulative potential impacts at adjacent communities.

Staff time needed to address permit modifications can vary greatly. A simple modification can take as little as several hours to administer and approve, while more complex modifications may take up to 1,850 staff hours to assess and approve.[11] Exhibit 5 demonstrates the steps involved in reviewing and approving each class of modification request.

EPA regulations specify that Class 2 modifications generally are to be concluded within 3-4 months. By contrast, EPA regulations do not specify a deadline for completion of Class 3 modifications. Class 3's tend to take more time due to the complexity of the issues in addition to the 105 days total of public review.

Case-Specific Issues

In addition to the process steps involved in reviewing permit modifications, other factors can greatly add to the processing time:

- Unanticipated communication between the state and the facility due to incomplete applications.
- Additional activities needed in order to follow the prescribed regulatory steps such as a monthly follow-up with required monitoring reports.
- Complexities, such as those resulting from change of ownership and parceling of property.
- Assessment as to which class of permit modification is appropriate.
- Multiple modifications in different phases of the process for the same facility.

Please see the case studies in Part 2, which help illustrate these issues.

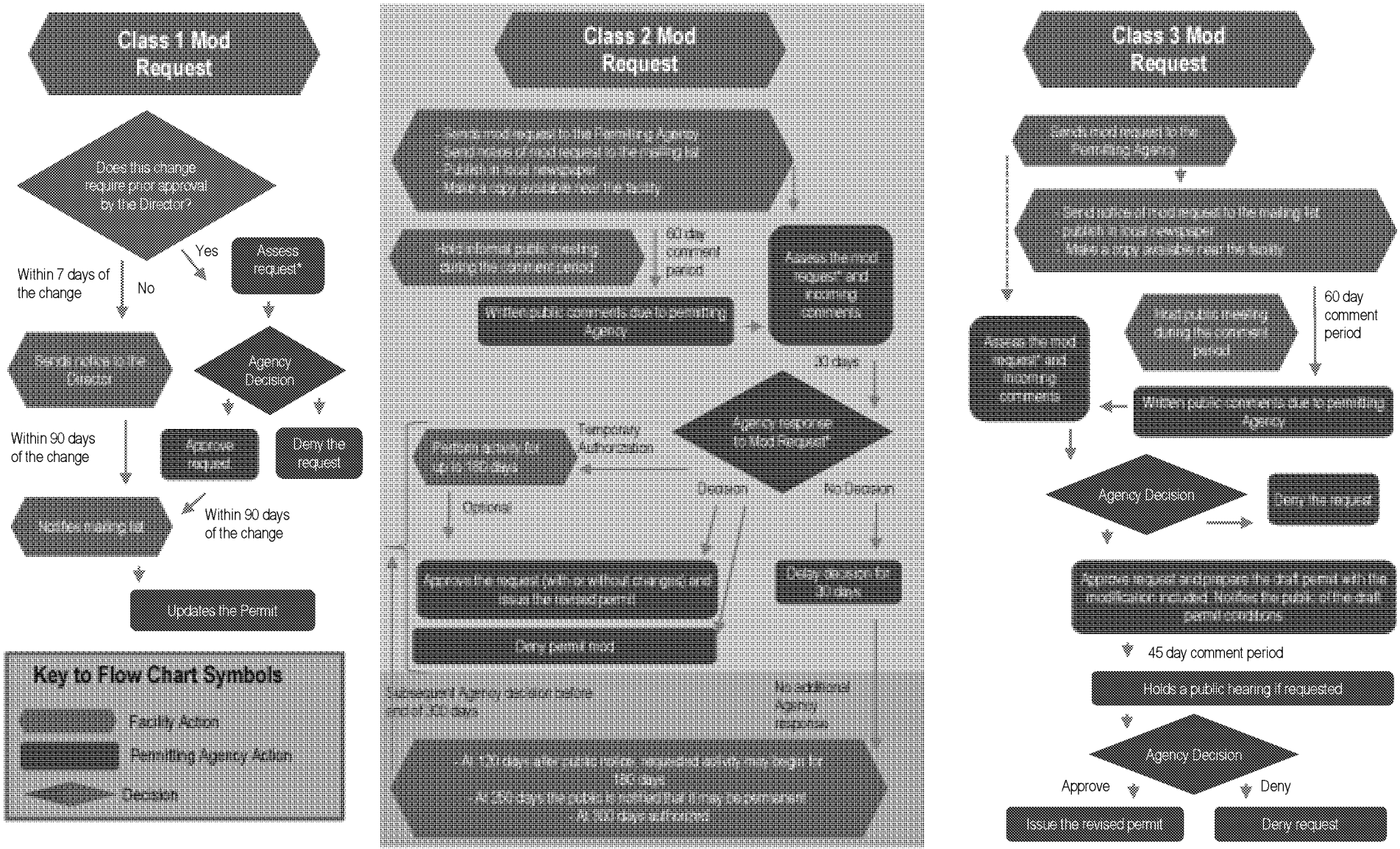
---

[10] EPA is currently updating the 1996 RCRA Public Participation Manual, which will provide further guidance regarding expanded public participation. See the website (http://www2.epa.gov/hwpermitting) for the current manual and the one to be revised.

[11] The high end of the staff time it can take to address permit modifications (1,850 hours) is from Appendix I of the 2007 ASTSWMO Core report (under "Estimation of Work Hours" page 39).

ED_0011318_00006974-00075

Exhibit 5. Permit Modification (Mod) Process for each Class

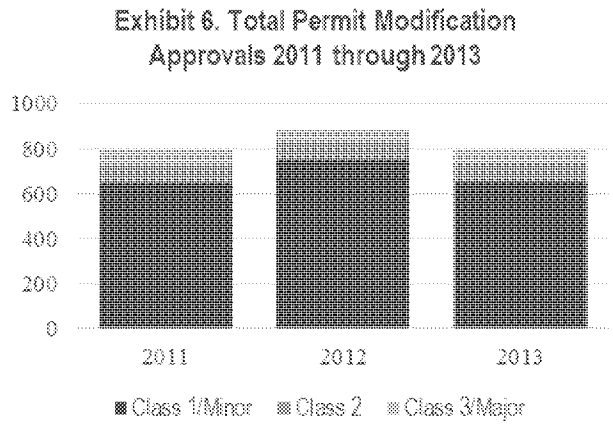


See 40 CFR 270.42 for the full federal regulations for permittee mod requests. State regulations may vary. Several states have not adopted the regulations for the three class structure, and use the preexisting Major and Minor Mod structure.

* The permitting Agency may need additional information from the facility in order to make a decision and these interactions can be lengthy. The Permitting Agency may also determine that the class should be higher or lower (or decide if a Class 1 needs prior approval) based on the change being made. The separate temporary authorization process can be used for Class 2 or 3 as appropriate (although not referenced in the Class 3 process above).

B. Permit Modification Statistics

This section describes the quantity of permit modification approvals granted during 2011 through 2013 and relates it to additional permitting information.



From 2011 through 2013, regulatory officials approved 2,479 permit modifications. On average, 826 permit modifications were approved each year over the three-year period. Annual breakdown: 794 permit modifications were approved in 2011; 888 in 2012; and 797 in 2013. This data set does not count permit modifications that were still being assessed at the end of the year and does not count those that were denied or withdrawn. Exhibit 6 shows the relative number by type of these approvals by class and year.

According to a review of a smaller subset of the states that regularly track approvals in EPA's national database, the 2011 through 2013 tallies appear to be a little lower than the average rate. The decrease in number of modification approvals during the 2011-2013 period may coincide with nationwide economic factors, which influenced the need for changes and permit reissuances at permitted facilities.

Data used in the analysis. The permitting programs for each state record the permit modifications that are approved annually.[12] EPA collected these permit modification data for years 2011 through 2013 from state and regional sources for 39 states, the District of Columbia, and three U.S. territories. EPA obtained data for an additional eight states[13] and Puerto Rico from the Agency's national database when it was identified as the best and most accurate resource. Data for the remaining states (Maryland, New Jersey, and Pennsylvania) were statistically extrapolated based on permitting data.[14] Although there may be gaps in the data due to differences in tracking practices, and underreporting of Class 1 permit modifications, EPA considers these data to be the best available nationally.

Class 1 (or Minor) permit modifications were the most common, representing 83 percent of all approved permit modifications. Class 1 modifications are generally the least substantial type of modification. However, as previously described, in some cases they can be complex and lengthy to process.

Class 2 modifications accounted for approximately 10 percent of total permit modification approvals.

Class 3 modifications impose the greatest burden on regulators and permittees, but account for a significantly smaller percentage (7 percent) of total permit modification approvals. See Exhibit 7 for the

[12] Per 40 CFR 270.42(i), each environmental program Director must maintain a list of all approved modifications and must publish a notice once a year in a state-wide newspaper that the updated list is available for review.

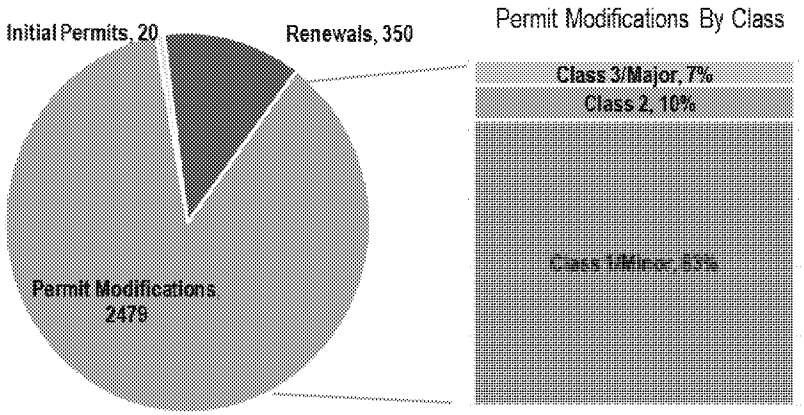
[13] EPA used RCRAInfo data for the following states: Alabama, Colorado, Georgia, Illinois, Indiana, Nebraska, New York, and South Carolina. Additional states use RCRAInfo to track modifications, but they provided tallies.

[14] Estimates of permit modifications in Maryland, New Jersey, and Pennsylvania were extrapolated based on the national average of permit modifications per permitted facilities. See Appendix 2 for additional details.

distribution of permit modifications by class and for the relationship to permit issuance.[15] Note that this does not include all permit maintenance activities.

Several states (Alabama, Florida, Maine, Minnesota, New York, Ohio, and South Carolina) use the original "major or minor" permit modification categories in lieu of the three class system introduced in a 1988 rule (53 FR 37912). Minor modifications were counted as Class 1's and major modification were counted as Class 3's for the national tally.

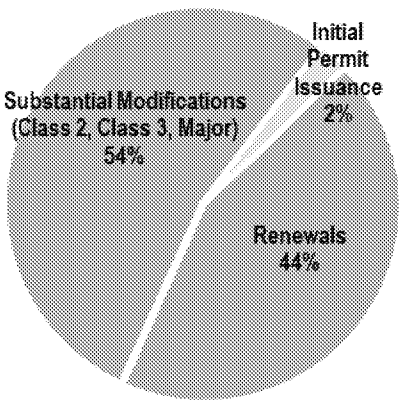
Exhibit 7. Permitting Actions 2011 Through 2013



Permits have different conditions for facilities that are operating or are in post-closure. Permit modifications can make changes for operating or post-closure standards, but there are typically fewer changes needed for facilities that are in post-closure.

The data also show that the number of permit modifications varies by state. On average, 17 permit modifications were approved per state/territory per year between 2011 and 2013.[16] However, the distribution around this average is wide.

Exhibit 8. Substantial Permit Actions



Permit modifications impose a substantial burden on regulators and permittees relative to permit issuance. The initial permits and reissuances/renewals in 2011 through 2013 were calculated from RCRAInfo data. The data shows that there are far more modifications than permit issuances during this timeframe.

Class 3 modifications (7%) are comparable to initial permit issuance or renewal with regard to public participation requirements. Similarly, some of the substantial (Class 2, 3, Major) permit modifications (17%) can be comparable to permit issuance with regard to the complexity and workload. See Exhibit 8 for the percent of substantial modification approvals (Class 2, 3, Major), initial permits issuance, and permit renewals.

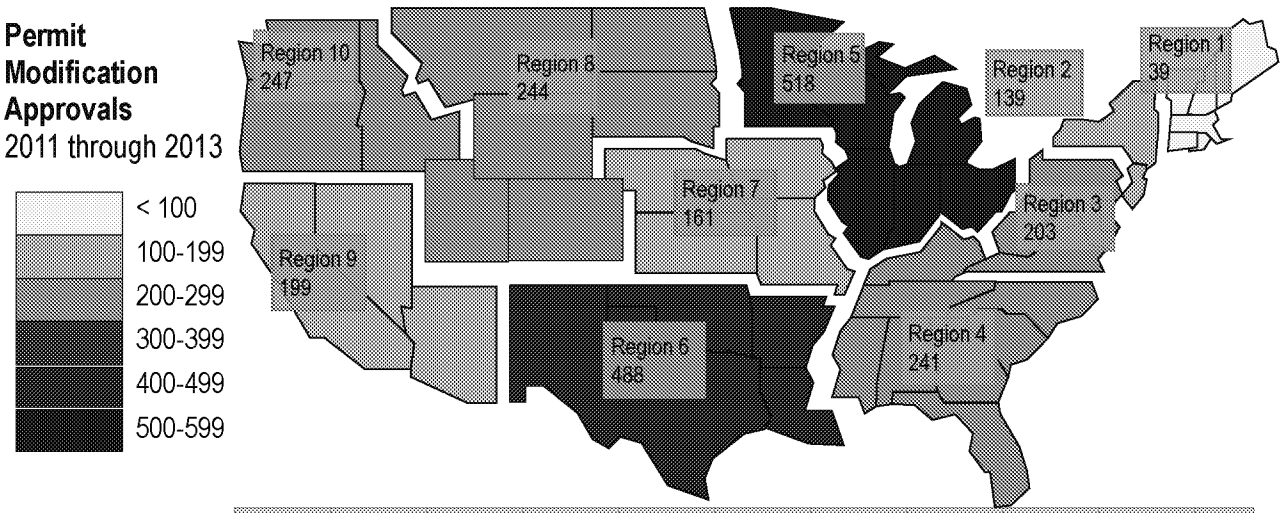
See Appendix 2 for additional details and background information about RCRAInfo and the data.

[15] EPA identified initial permits from RCRAInfo data for the permit determinations that occurred during 2011 through 2013 at a facility with no prior permit determination. The renewals are calculated from the permit issuances 2011 through 2013 that followed an initial permit issuance (prior to 2011).

[16] The calculation of this number does not include data from the District of Columbia, U.S. territories, or any state with no modifications recorded during that timeframe.

Many factors contribute to the differences in modification numbers among states. For example, some states have five-year permit terms versus ten-year permit terms. There is a greater likelihood that the major changes will be incorporated in the permit reissuance if a permit is reissued at shorter intervals (as compared to ten-year intervals). Permit fees on modifications can also sway business decisions regarding permit modifications (for example, the facility operators may delay changes that trigger permit modifications until the permit is renewed). States with more permitted facilities would be expected to have more modifications, but not all permitted facilities modify their permits at the same rate (for example, permitted facilities in post-closure care typically have fewer modifications on average). Exhibit 9 shows the number of permit modifications by EPA region.[17]

Exhibit 9. Permit Modification Approvals by Region (2011-2013)



	Region 1	Region 2	Region 3	Region 4	Region 5	Region 6	Region 7	Region 8	Region 9	Region 10	Total
Number of Modifications 2011-2013	39	139	203	241	518	488	161	244	199	247	2479
Permitted Facilities	54	97	134	365	195	262	86	58	134	44	1429
Modifications per Permitted Facilities 2011-2013	0.7	1.4	1.5	0.7	2.7	1.9	1.9	4.2	1.5	5.6	1.7
Annual Modifications Per Permitted Facilities	0.2	0.5	0.5	0.2	0.9	0.6	0.6	1.4	0.5	1.9	0.6

1,429 facilities were permitted as of February 6, 2014. Either the included facilities had an operating permit or post-closure permit (or units with both) based on their specified legal status codes. Facilities were omitted if their operating status codes indicated they would not be eligible for a permit modification. See the criteria in Section III.C

There is a large range of annual permit modifications at individual facilities. Many states had average numbers of modifications per facility well above or below the national averages. In some cases, a facility may require multiple modifications in a single year; conversely some facilities may tend to save their changes and integrate when the permit is renewed.

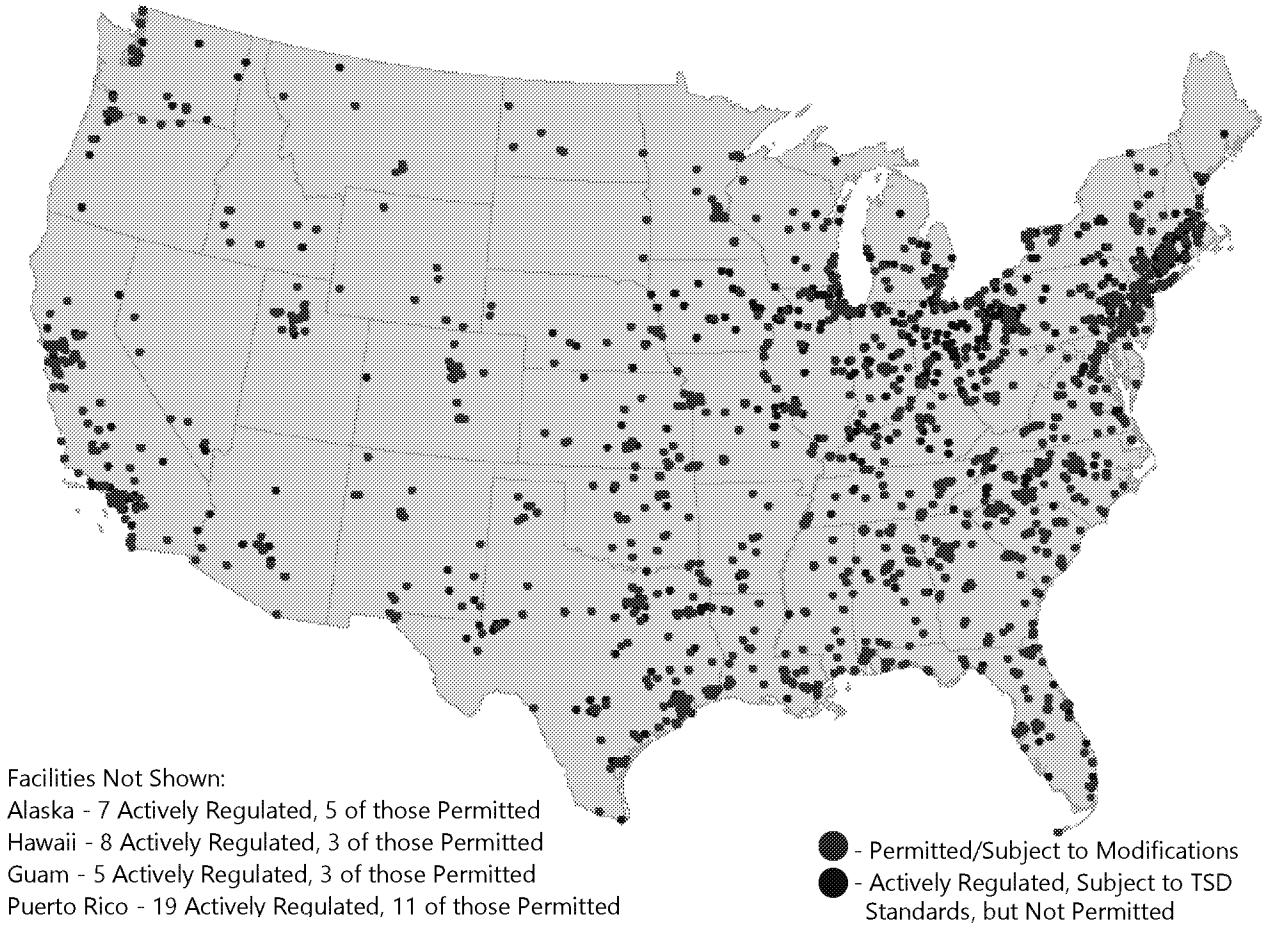
[17] States with fewer permitted facilities may experience more variation in the number of permit modification approvals per year. This represents an additional limitation of the three-year sample of data collected from RCRAInfo.

C. Location of Permitted Facilities with Potential for Modifications

The majority of the "actively regulated" hazardous waste treatment, storage and disposal (TSD) facilities have been permitted.

Exhibit 10 maps the universe of actively regulated TSD facilities. All of the facilities identified below (red and black dots) are subject to the regulations for standards for owners and operators of hazardous waste treatment storage, and disposal facilities and are described in more detail in Appendix 2. The red dots identify facilities that are permitted. Thus, the map shows 1,429 permitted facilities that are expected to eventually need permit maintenance/modifications (this number is calculated for the purposes of this report).[18] The black dots identify actively regulated facilities that are not permitted, such as facilities that are going through closure, but are not yet clean closed.

Exhibit 10. Facilities Permitted and Subject to Modifications, Versus Other Regulated Facilities



[18] According to RCRAInfo, 1,429 facilities (6,245 units) have at least one unit that is permitted (according to the legal status code and not terminated) and does not include facilities where all units are also coded as clean-closed, referred to CERCLA, completed post-closure care, or are coded as conducting activities that do not require a permit (according to operating status codes). If the facilities with those operating statuses were not removed from the count, this would add 400 additional permitted facilities (although generally not active, these permits may require some permit maintenance). Legal and operating status code data as of 10-30-14.

ED_0011318_00006974-00080

IV. Concluding Points

As the majority of facilities that are treating, storing, or disposing of hazardous waste have been issued initial permits under RCRA, the bulk of permitting activity has now *shifted towards maintenance* of those permits. Permitting activity is now geared towards responding to business needs and changes in facility operations while ensuring that the permitted conditions continue to be protective and prevent release. It is critical to keep up with the permit modification workload in order to enable improved business operations, technological upgrades, and expansions while maintaining protection of the environment.

Because RCRA permit modifications are not tracked as part of the Agency's Strategic Plan, this substantial and vital work has gone largely unrecognized. This report thus depicts for the first time the national perspective of permit modification work conducted throughout the country. The unpredictable nature of permit modification complexity, frequency, and timing makes workload balancing and resource allocation difficult to manage. While the workload for the number of modification requests cannot be projected accurately for set goals, the workload is now being recognized in other ways. EPA believes that improved characterization and quantification of permit modifications will enable greater understanding of the importance of effective RCRA programs for EPA, the state agencies, the regulated community, and the public.

In addition, better data and understanding of the permit modification work may uncover barriers, issues, and opportunities for improvement in the permit modification process. EPA remains open to learning how the RCRA permit modification process could be made more efficient and protective.

ED_0011318_00006974-00081

PART 2
PERMIT MODIFICATION CASE STUDIES

While ensuring protection of human health and the environment is the underlying objective for the permitting standards, there are often business reasons – as well as environmental reasons – that compel companies to request changes to their permits. The following case studies describe real-world examples for the types of changes at facilities that require permit modifications across the country. They also offer a glimpse of the content and process for different permit modifications, while illustrating how changes to permits continue to ensure that proper safeguards remain in place and allow companies to respond to changing business needs or pursue innovative approaches to responsible hazardous waste management.

Permit modifications vary greatly in terms of purpose and complexity. The permit modification case studies are sorted into four broad categories of changes based on their primary outcome: A. Responding to Changing Business Practices or Operations Responding to Business Needs; B. Improving Hazardous Waste Management; C. Ensuring Long-Term Protection; and D. Keeping Permits Up to Date. The table below shows an index for the case studies and their main outcomes. The following sections describe each case study category in more detail.

The examples show a broad range of permit modifications, from very significant actions to reoccurring administrative updates.

Overview of the Permit Modification Case Studies in these Sections

INDEX: Case Study Categories
A. Responding to Changing Business Practices or Operations
1. Improvements in Technological Efficiency
2. Economic Development and New Waste Handling Capacity
3. Ownership Changes
B. Improving Hazardous Waste Management
1. Resource Conservation
2. Reduced Risk of Release and Improved Safety
3. Replacement of Damaged or Aging Equipment
C. Ensuring Long-Term Protection
Closure, Post-Closure Care and Corrective Action
D. Keeping Permits Up to Date
1. Emergency Response
2. Updates to Permit Standards and Conditions
3. Administrative Updates
E. Modifications over the "Life of a Permit"

ED_0011318_00006974-00082

A. Responding to Changing Business Practices or Operations

INDEX A. Responding to Changing Business Practices or Operations
Case Study Categories
1. Improvements in Technological Efficiency
2. Economic Development and New Waste Handling Capacity
3. Ownership Changes

One common impetus for permit modifications is in response to facilities that want to make changes in their operations due to shifts in the market or other business-related factors. They may plan to adopt more efficient or less costly waste handling procedures, install new technologies, construct new units, change the manufacturing process that results in different wastes managed, use alternate fuel sources, or sell the facility.

As with any permit modifications, *it is the role of the permitting authority to assure that such changes will be protective* of human health and the environment.

Facilities often request these modifications to increase operational efficiency and compliance with permit requirements by adapting to changing conditions and needs. For instance, a permitted remedial system may become less effective over time necessitating a modification of the permit to allow for an improved remedial system. In some cases, remedial systems may be implemented in the midst of a busy production facility and have to allow for compatibility with production operations while maintaining remedial effectiveness.

Replacement of a Monitoring/Withdrawal System with a Barrier Wall

The Axiall Corporation in Lake Charles, Louisiana requested a Class 2 permit modification for the construction of a barrier wall to control horizontal migration of constituents of concern in groundwater into Bayou Verdine, Barge Slip, and the Coon Island Reach to below levels that would cause sediment or surface water to pose an unacceptable risk. This replaces a monitoring and shallow withdrawal system while Axiall continues to operate a Lower Aquitard Containment System. The system will control laterally migrating groundwater until the flow reaches a depth at which it is fully captured by the wells of the Lower Aquitard Containment System. Many technical concerns were raised by the public and were addressed during the modification process. The Louisiana Department of Environmental Quality concluded that the barrier would more effectively control the groundwater flow from the facility to the adjoining water body than the groundwater withdrawal system that was dropping in efficiency.

Outcomes: After the replacement, the overall systems will more efficiently contain the constituents and remove contaminated groundwater at the Lake Charles Chemical Complex in Louisiana. The barrier wall will require less maintenance and operational effort resulting in increased reliability. Fewer resources will be needed to implement this remedy and it will provide greater environmental protection of the surrounding waterbody for long-term care. The public comment process resulted in resolution of certain technical concerns with the approach prior to implementation.

Associated Workload:

- Review/approval of the change request, design plans, construction report, operating and maintenance plan, and annual corrective action reports
- Official public review and comment, and response to comments

A.1. Improvements in Technological Efficiency

After facilities are permitted, they often need to make changes to their waste handling practices in order to stay competitive and to adjust to market demands. In order to make these changes, facilities often need to modify their permits.

Most permitted facilities originally identified their types of equipment and units used to manage hazardous waste in their permit applications in the 1980s. Some of the equipment and processes may now be outdated. Multitudes of technological advances have occurred since the 1980s that can produce environmental benefits (as well as cost savings to the facility).

A number of advances have also been made in the methods to address contamination. See the highlighted Axiall Corp case study for an example of the use of a new barrier wall to control lateral migration. This case study, like many others, also applies to other categories. The changes at Axiall Corp also ensure long-term environmental protection after operations cease (covered in Section C).

New equipment for more efficient waste management

A Clean Harbors facility in North Carolina received temporary authorization (while pursuing a Class 3 permit modification) from the North Carolina Department of Environment and Natural Resources for the installation of a shredder to help separate containers and liquid waste more efficiently, which would in turn offer improved environmental protections. Initially, Clean Harbors requested guidance on installing a new shredder for processing small containers to speed up separation of the liquids and containers in order to improve their waste management practices. The permit writer looked for guidance, consulted counterparts, and found previous EPA determinations that using a shredder was considered treatment in a "miscellaneous unit." The permit writer discussed this with the facility and advised them to submit a permit modification request and to consider the temporary authorization (TA) option for Class 3 modifications. Under 40 CFR 270.42(e)(3)(ii)(E), an allowable objective for issuing a TA is to facilitate changes to protect human health and the environment. The TA request was received, reviewed, and approved. The facility also submitted a permit modification request to add the shredder unit to its hazardous waste management permit.

The shredder unit was installed under the TA. The permit writer and Resident Inspector coordinated a site visit to view the process area and testing of the shredder unit with non-hazardous materials. The permit writer reviewed the requested changes in the permit modification application and requested some clarifications and corrections. Final revisions were submitted by the facility and the permit writer drafted revisions to the permit. The draft permit modification was issued for public comment and a public hearing was held during the 45-day comment period. No comments were received and the final permit modification was issued.

Although the TA process was streamlined relative to the typical Class 3 permit modification process, TA's still require substantial time and effort on the part of the facility and the regulatory agency responsible for review and approval.

Outcomes:

- The facility reduced operating costs with a more efficient process of separating waste from the containers.
- The TA process allowed for quicker implementation of the proposed modification.
- Coordination and technical expertise from the state permitting authority helped the facility

understand how the TA and modification processes could support the facility's desire to improve its waste management practices in a timely manner while ensuring that the new technique would continue to be protective of human health and the environment.

Associated Workload:
- Review/approval of the TA and the modification request. (No comments received).
- Repeated discussions with the facility about the appropriate calculations and appropriate type of modification.
- Public notice and preparation for/participation in public hearing.

Alternative fuel for a cement kiln calciner

Lone Star Industries, Inc. in Cape Girardeau, Missouri, manufactures Portland cement, the active ingredient in concrete. The facility requested a Class 3 permit modification from the Missouri Department of Natural Resources for a new technological solution that would allow it to replace a fossil fuel (coal) with an alternate (hazardous waste) fuel in the facility's calciner, aka indirect kiln. As part of the permit modification process, Lone Star first had to demonstrate the ability of the hazardous waste fuel to meet air emissions standards. The modification request also included updates to the facility's waste codes and a proposal to add two additional railcars and associated storage tanks. This modification enhances Lone Star's ability to meet changing market demands.

The changes at Lone Star also result in resource conservation, which is covered in Section "B. Improving Hazardous Waste Management."

Outcomes:
The use of alternate (hazardous waste) fuel in the calciner:
- Reduced long-term facility operating costs with better technological solutions.
- Reduced the amount of hazardous waste that might otherwise be disposed of in favor of beneficial reuse for energy recovery.
- Conserved and reduced the use of fossil fuels (coal).
- Reduced air emissions as the hazardous waste fuels burn "cleaner" than fossil fuels.

Associated Workload:
- Planning and oversight of demonstration test(s) to prove ability to meet emission standards.
- Review/approval of the modification request.
- Assess any comments from the 60 day public comment period on the request, and the 45-day comment on the draft revised permit and public hearing.

A.2. Economic Development and New Waste Handling Capacity

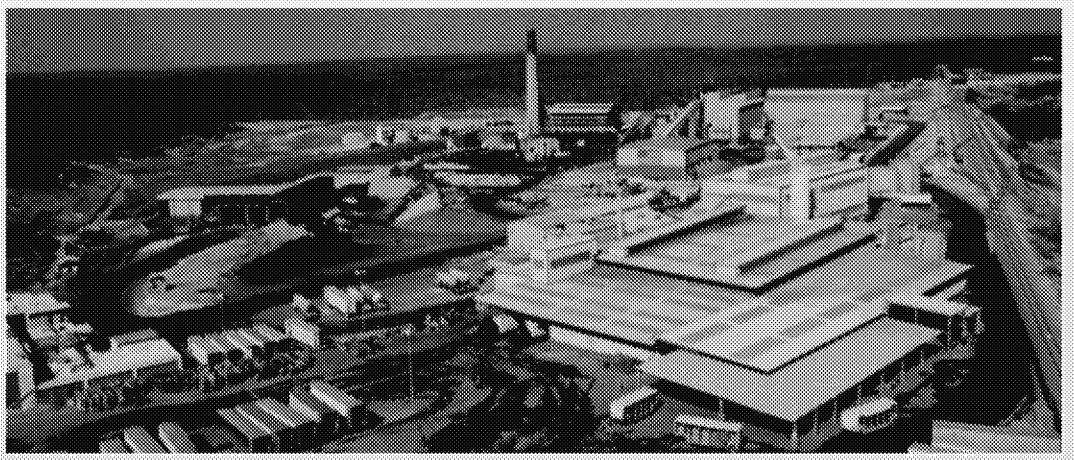
Modification requests by facilities are often in reaction to market changes (i.e., increase/decrease in generation of hazardous wastes or new state/federal hazardous waste). For example, facilities may need additional waste handling capacity, need to treat additional wastes types, need additional units to treat, store, or dispose of wastes, or have other needs in order to meet changing market demands.

Addition of Three New Hazardous Waste Units

The Buick Resource Recycling facility requested a permit modification from the Missouri Department of Natural Resources (DNR) to allow for the construction, operation, closure, and post-closure of a new onsite Subtitle C landfill and two additional hazardous waste containment buildings. This modification was amongst 22 permit modifications that were processed from 2007-2013 as listed on the DNR website: http://dnr.mo.gov/env/hwp/permits/activepa.htm.

The Buick Resource Recycling Facility receives lead-acid batteries and other lead-bearing wastes. The wastes are recycled to recover lead and other trace metals. In addition, the facility recycles sulfuric acid from the batteries and the plastic from the battery cases. Prior to the modification, the facility was comprised of two container storage areas, six miscellaneous treatment units, and five containment buildings. Slag generated from the secondary smelting process was previously treated at the facility to meet land disposal restrictions treatment standards and then hauled off-site to a RCRA Subtitle D (solid waste) landfill for disposal. The contiguous facility property is subject to corrective action. The facility's rotary smelter and blast furnace are currently certified for Missouri resource recovery.

Following approval of the Class 3 Permit modification, the new on-site landfill cells were constructed to RCRA Subtitle C (hazardous waste) standards and put into operation to manage secondary smelting slag and gypsum wastes generated at the facility. These standards included a double liner system, leachate detection/collection systems, a groundwater detection monitoring program, and financial assurance for closure and post-closure care of the landfill.



Outcomes:

- Improved long-term economics and reduced operating costs from the new on-site waste storage/disposal capacity (metals recycling process contained on-site; possible future slag reclamation; cost saving for on-site disposal).
- Reduced potential for off-site contamination by eliminating about 98% of waste leaving the site thus reducing spill risks associated with off-site transportation.
- Improved traffic safety and reduced fossil fuel use/air emissions (about 130,000 gallon reduction in diesel fuel use annually) by having 2,500 fewer trucks leaving the facility on an annual basis.
- On-site management of wastes in compliance with RCRA Subtitle C (hazardous waste) requirements as opposed to previous on-site treatment and transportation on public roads to off-site disposal at RCRA Subtitle D (solid waste) landfill resulting in enhanced environmental protection and future liability protection for the Permittee.

Expansion of facility operations without using new green space

The CHS Inc. Laurel Refinery in Laurel, Montana, submitted a request for a Class 2 permit modification to the Montana Department of Environmental Quality (DEQ) to allow closure of a land treatment unit using risk-based closure standards for soil and groundwater. The facility was able to close the unit and reuse the eight-acre area for structures associated with new Coker and Coker Flare units. Restrictions preventing residential use of the area were placed on the property deed.

The facility worked closely with DEQ to expedite the assessment and construction of the new units. Communication between DEQ and CHS was essential to ensure refinery planning needs and all regulatory requirements were met. Timely reviews of documents submitted in support of the modification request, issuance of an environmental assessment, and DEQ's final decision on the request were critical for planning and final implementation of the refinery expansion.

Outcomes:

- CHS expanded its refinery operations using the footprint of the land treatment unit by demonstrating concentrations of hazardous constituents in soil and groundwater met risk-based standards.
- Use of conservative risk-based closure standards and restrictive land use controls can allow for appropriate reuse that is protective of human health and the environment.

Associated Workload:

- Technical review and approval of documents supporting the modification request, closure plan, and closure report and certification for the land treatment unit.
- Development and issuance of environmental assessment for public comment.
- Issuance of final modification determination after consideration of all public comment.

New refinery process unit

Phillips 66 Company had a need for a new refinery process unit. They submitted a Class 3 permit modification request to the Montana Department of Environmental Quality (DEQ) for removal of an asphalt cap on a closed surface impoundment at the Phillips 66 Billings Refinery in Billings, Montana, in order to install a new refinery process unit at that location. Removal of the cap was necessary for remediation and removal of contaminated soil and hazardous waste. All wastes and contaminated vadose zone soils were removed, allowing use of the space for a new refinery process unit. Removal of the contaminated soil and waste reduced the risk of future contaminant exposure to industrial workers and potential leaching of hazardous constituents to groundwater.

Outcomes:

- The subject area was remediated and was able to be reused.
- Environmental protection was enhanced.

Expansion of treatment capacity for mixed waste

The Perma-Fix Northwest facility in Richland, Washington, requested a Class 3 permit modification from the Washington State Department of Ecology to expand treatment capacity for mixed waste (a waste that contains a hazardous waste component and a radioactive material component) and to install a new evaporation system. The permit modification was to allow for the following: the installation of two new evaporator units, increased tank storage capacity, and storage of mixed waste in tanker trucks. It also clarified language to align the permit with current practices. Further processes would stabilize residue. An older gasification/vitrification system was also to be replaced via the permit modification.

Outcomes:

- The installation of new units and changes in waste handling procedures would have allowed the facility, which provides industrial and nuclear-waste management services, to expand its ability to treat and manage mixed wastes, but this specific upgrade was no longer pursued after the facility was informed of additional assessments needed. The upgrades need to be able to show that they continue to be protective (i.e., demonstrate the effectiveness for treating the wastewater streams).

Associated Workload:

- A great deal of assessment goes into modifications that are not eventually approved. Technical review of documents supporting the modification request led to a determination that the request was incomplete and a notice of incompleteness was issued to Perma-Fix Northwest. The modification was missing a thermal risk assessment work plan, demonstration test, and information on the proposed wastewater streams proposed to be treated in the evaporation systems.
- Perma-Fix requested that the permit modification be rescinded after the letter of incompleteness was issued.

A.3. Ownership Changes

Permitted facilities are often purchased by or merged with other companies. This tends to lead to requests for "urgent" permit modifications for changes of ownership and/or operational control of the facility. In order to ensure that the environment continues to be protected after an ownership or operational control transfer, the permitting agency must ensure that the new owner or operator provides financial assurance in a timely manner and that the amount of financial assurance is sufficient to cover future closure or post-closure at the facility. *This is essential for long-term environmental protection.*

As mentioned in the accompanying case study below, many facilities have difficulty in following the regulatory requirements and time frames to notify the permitting authorities regarding the planned ownership transfers and to have financial assurance. This makes it difficult for permitting authorities to process the information and ensure that the new facility owner or operator is compliant with the applicable regulatory requirements including those related to financial assurance. Permit modifications for changes of ownership or operational control can be relatively straightforward; however, this type of modification can become complicated and lengthy, particularly as compared to other Class 1 type of modifications. Substantial agency resources are often needed to review and approve these types of modifications since, in large part, they typically require submission of information that facilities did not anticipate. Agency enforcement actions may be initiated due to a facility's failure to follow the regulations and/or permit requirements related to changes of ownership or operational control. This further extends the timeline.

In some situations, only parcels of land are sold, not the whole facility. For example, facilities may request permit modifications in order to transfer ownership of portions of property that are part of a RCRA regulated facility but have been fully remediated (or were never contaminated). When land is removed from the jurisdiction of a permit (parceled) via a permit modification, close coordination of permit writers and corrective action (remedial) project managers is needed to ensure that it is appropriate to remove any land from the permit jurisdiction. The preparation to assess the parcel also involves coordination with the facility regarding any additional analyses or actions (e.g., property legal surveys) that need to be conducted relative to the property proposed for parceling.

ED_0011318_00006974-00088

One state has found in their experience that Class 1 modifications that involve changes in ownership and/or operational control usually take much longer than 100 hours (the high end of ASTSWMO's calculated range previously mentioned), especially with complex facilities that only transfer/sell the active portions but retain portions that require corrective action and post-closure care (all under one permit).[19]

This situation at times requires a new permit for owners/operators that do not already have a permit.

The need for prior financial assurance approval is frequently overlooked in new ownership cases and results in application processing complications and increased timeframes. The workload includes technical review of the financial assurance mechanism and determination that the new operator has provided documentation to show sufficient financial resources to operate and to eventually close the facility in compliance with the permit.

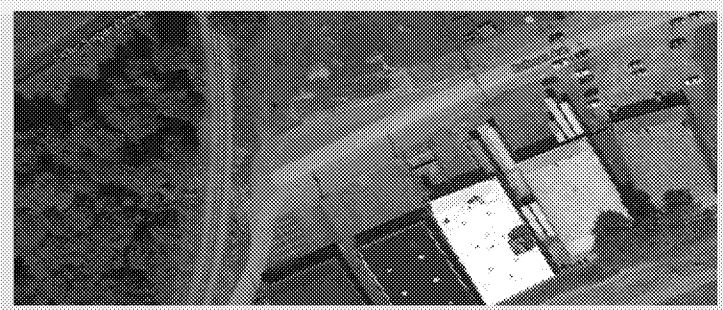
Modifications are further complicated if they involve more than one company that own different parts of the property the property is under one permit.

Complexities in Ownership Change and Financial Assurance

The Detrex Corporation in Charlotte North Carolina transferred facility ownership and environmental liabilities to Trex Properties, LLC. This case study shows how a seemingly simple Class 1 can be complex and require substantial agency resources to review and approve.

When the Detrex Corporation announced its intent to transfer facility ownership and environmental liabilities to Trex Properties LLC, the North Carolina Department of Environment and Natural Resources (NCDENR) reminded Detrex of the requirement to submit a Class 1 permit modification request at least 90 days prior to the transfer. Regardless, the modification request was not received by NCDENR until nearly a month after the property transfer. When the modification request was submitted, it was substantially incomplete; most notably the facility had yet to submit financial assurance for Corrective Action. NCDENR issued a Notice of Deficiency for the modification request, requiring the companies to submit all information required for the transfer and to meet all outstanding compliance obligations before the agency would process the modification.

The modification process in this case spanned five months, in part due to disagreement about the amount of financial assurance required. Because Detrex had not supplied an estimate of corrective action costs as required by NCDENR, the state agency set the financial assurance amount at $1.2 million. Trex requested to supply an engineering affidavit in place of the required corrective action strategic remedy, but NCDENR and the state Attorney General's Office determined that an affidavit would not be sufficient. Ultimately, Trex funded the required $1.2 million, and the permit modification was approved. This Class 1 modification encountered additional complexity, but is too detailed to include.



Outcomes: Although the permit modification process in this case was lengthy and required substantial agency resources, critical compliance issues were addressed before the modification was approved. Ultimately, the permit modification supported long-term environmental protection (by ensuring funding for closure and any needed cleanup of contamination) while also facilitating administrative updates.

Associated Workload:

- Assessment of the liability coverage, legal boundaries, basic facility information, compliance information.
- Development of a full remedial strategy,
- Cost estimation for remediation, and related financial assurance.

[19] Communication with the Waste Permits Division of the Texas Commission on Environmental Quality 10-23-15.

B. Improving Hazardous Waste Management

As hazardous waste management evolves, facilities often need to make changes to better protect the environment while treating, storing, and disposing of hazardous waste. The changes addressed in these permit modifications included the adoption of new methods of environmental protection, waste reduction, resource conservation, construction of onsite units to avoid offsite impacts, reducing risk of release, compliance with environmental standards, and other benefits for environmental protection that reduce risks to human health and the environment. In general, "green" permit modifications not only improve the environment, they may also improve operational efficiencies and economic development in the long run.

INDEX B. Improving Hazardous Waste Management
Case Study Categories
1. Resource Conservation
2. Reduced Risk of Release and Improved Safety
3. Replacement of Damaged or Aging Equipment

B.1. Resource Conservation

One of RCRA's primary objectives is to conserve valuable material and energy resources. There have been many improvements to waste management activities over time that improve efficiency of processes and thus contribute to this goal. In addition, facilities also often find cost savings when employing these types of improvements to their operations.

Operational change to treat hazardous waste-contaminated metal

A hazardous waste burning cement kiln located at a facility in Missouri has a scrap metal waste stream from crushed and shredded drums. Prior to its permit being modified, this was the only waste stream that continued to be sent off-site for disposal as a hazardous waste since there was simply too much hazardous waste residue on the metal for it to be recycled as scrap. The facility initially explored several methods for cleaning the metal to remove enough of the hazardous waste residue so that it could be recycled.

After initial exploration of various metal cleaning methods, the facility requested (and the Missouri Department of Natural Resources approved) a Class 3 Modification to build a gasifier unit in order to clean the metal (gasify the residuals on the metal). This would create gas that the facility could use as supplemental fuel to fire their hazardous waste burning cement kiln and render the metal, after post-gasification rinsing, clean enough that it could be recycled as a non-hazardous material as opposed to being disposed of off-site as a hazardous waste.

The facility adapted the gasifier technology from another industry for this modification and set about constructing and pilot testing the operation. Several technical issues had to be assessed and overcome during the pilot-testing phase. Ultimately, while the process was successful in cleaning the metal to the degree necessary for recycling, the gas production rates and volume of metals that could be processed were not consistent with the original design projections. As a result, this process has not yet been put into full operation and it is unknown if the limitations identified during pilot testing can be overcome to the

ED_0011318_00006974-00090

extent necessary to support full operation. Nevertheless, this permit modification allowed for research, development, and demonstration of a novel approach to metal decontamination that resulted in an end product that could be recycled and that created supplemental fuel to fire the cement kiln.

Outcomes:

- Encouraged innovation and research, development and demonstrations of a novel approach to cleaning metal so that it could be recycled as metal scrap instead of being sent for off-site disposal as a hazardous waste.
- If technical issues can be overcome, the hazardous waste generation at this facility can be eliminated and large volumes of clean scrap metal can be recycled/put back into productive use.

Associated Workload:

- Technical review and approval of documents supporting the modification request, closure plan.
- Assess any comments from the 60 day public comment period on the request, and the 45 day comment on the draft revised permit and public hearing.

B.2. Reduced Risk of Release and Improved Safety

Hazardous waste management standards are designed to prevent the release of hazardous wastes. Changes are often made via permit modifications to improve waste handling practices and further reduce the risk of releases to the environment. Other changes are made to specifically address safety concerns.

Improvements to hazardous waste handling can also be triggered by other environmental requirements. In particular, recent air pollution control regulations have driven environmental improvements to the management of certain hazardous wastes. See the highlighted case study.

Material and waste management requirements not governed by RCRA can sometimes trigger RCRA permit modifications. A case study in another section (Section D.2.) shows how the addition of non-RCRA tanks triggered the need for a RCRA permit modification (since it could influence the secondary containment needed for RCRA waste).

Fire detection and prevention

A fire occurred at the Stericycle Tacoma facility in Washington that caused the re-examination of current permitted procedures. The permit was modified by the Washington State Department of Ecology to include new requirements to reduce the likelihood of a future fire at Stericycle Tacoma during flammable liquid pump-up operations, including the installation of new lower explosive limit monitors. In addition, new pump-up procedures were instituted at this facility.

Outcome:

- Reduced risk of fires and better detection of potentially dangerous conditions.

Supported Compliance with Ambient Air Quality Standards for Lead

The Quemetco facility in Industry, California recycles batteries. The Battery Wrecker Process Area at this facility includes several permitted units, including the facility's battery wrecker, multiple tanks, and a clarifier. In March 2010, Quemetco submitted a request for a Class 1 permit modification to construct an enclosure around the Battery Wrecker Process Area to California's Department of Toxic Substance Control (DTSC).

The enclosure was necessary for Quemetco to comply with a new EPA standard for lead in ambient air and with local air quality regulations for Large Lead-Acid Battery Recyclers. Construction of the enclosure would capture fugitive lead dust emissions from the battery wrecker process. The permit modification would not affect the type or quantity of lead-acid or batteries recycled at the facility.

As part of the permit modification process, Quemetco was required to submit a copy of its financial assurance for closure of the Battery Wrecker Process Area Enclosure within 60 days of the modification approval. The process also required Quemetco to send a notice of the modification to all contacts on the facility's mailing list and the appropriate state and local government contacts. The modification was approved in November 2010.

Outcome: Reduction in the amount of lead in the ambient air and compliance with new air regulations.

Relocation of hazardous waste handling from dense urban area to an industrial area

A commercial waste treatment facility commenced operation in 1980 in what was, at that time, a rural area in the state of Washington. Over time, residential and other commercial land uses in the immediate vicinity of the facility have greatly increased. A permit modification by the Washington State Department of Ecology at the Stericycle Kent facility transferred a significant portion of the waste handling (free liquid pump-up operations and shredding of RCRA wastes) to another facility located in an industrial area away from more populated areas.

Outcomes:

- Reduced risk to the populated urban area.
- Responded to local community concerns and urban encroachment issues.

Enclosed lead smelting structures due to changes in the air regulations

Recent air regulations were applied to the secondary lead smelters that required that the storage of lead containing materials/wastes be totally enclosed. The air regulations required that materials/wastes being stored prior to re-smelting be managed in enclosed containment structures under negative air pressure. Containment structures/buildings necessary to meet the air requirements had to be constructed in accordance with the RCRA containment building regulations. This necessitated issuance of temporary authorizations and permit modifications by the Missouri Department of Natural Resources to facilitate construction completion by deadlines associated with the air regulations. The new structures better prevent releases to the environment and, in many cases, replaced outdoor storage of lead-bearing materials.

Outcomes:

- Improved environmental conditions for ambient air quality by reducing the amount of lead in the ambient air.
- Diminished the potential for airborne lead to be deposited and accumulated on the land and in nearby water bodies, which in turn, protected nearby populations and diminished the potential need for corrective action investigation and remediation.

B.3. Replacement of Damaged or Aging Equipment

As equipment to manage hazardous waste ages, it needs to be periodically replaced. The equipment can eventually show signs of corrosion from the natural elements and from "wear and tear." This equipment must be routinely inspected, maintained, and replaced as necessary to minimize the potential for releases of hazardous waste to the environment.

Replacement of New Equipment

A Class 2 permit modification was requested for the replacement of old sink/float tanks with new washers at the Quemetco facility in Industry, California. This was approved by California's Department of Toxic Substance Control (DTSC). The replacement of aging sink/float tanks normally requires a permit modification and is necessary to minimize the potential for ensuring the appropriate washing separation of hazardous waste from the other materials to protect the quality of the finished recyclable products. The plastic from the battery casings crushing operation are later recycled into paint cans.

Outcomes:

- Prevention of leaks or other releases by replacing old tanks with new tanks.
- Improvement of air quality by ensuring that less lead is attached to the plastic components of batteries prior to smelting
- Increase of the quality of finished recyclable products by reducing the lead components of the recyclable products.

C. Ensuring Long-Term Protection

Hazardous waste permits (and other regulatory instruments) have requirements for facilities to: (1) update closure or post-closure plans and financial assurance instruments/amounts to address future long-term environmental obligations; (2) conduct corrective action to address historical releases to the environment; and (3) provide notification of and address, as appropriate, any new releases and/or discovery of previously unidentified releases. This section discusses the different modifications used to address those issues.

INDEX C. Ensuring Long-Term Protection
Case Study Categories
Closure, Post-Closure Care and Corrective Action

Closure, Post-Closure Care, and Corrective Action

This category includes updates to closure and post-closure plans and selection of final remedies for corrective action.

Compliance with the closure and post-closure plans ensure that the environment will be protected long after the facility closes its permitted hazardous waste management units. If facilities do not clean close their unit(s), they will need to comply with standards for units closed with waste in place, including providing post-closure care. Additionally, RCRA permits must include requirements for facility-wide corrective action to address releases of hazardous waste and constituents. Certain key stages of the corrective action process (e.g., final remedy selection and implementation) often require modification of the permit to incorporate requirements into the permit, because they are frequently not identified at the time of permit issuance. The modification procedures involve public review and comment on proposed final remedy actions.

Cleanup and final remedy selection

The U.S. Army Redstone Arsenal (the Arsenal) located in Huntsville, Alabama, requested a permit modification for numerous changes that included: (1) the addition of a new permittee; (2) removal of seven solid waste management units (SWMUs) from a list of units needing investigation; (3) addition of two SWMUs that require investigation; and, (4) the removal of three SWMUs from a table specifying that corrective measures are needed. The new operator of the permitted open burn/open detonation areas of the Arsenal needed to be included as an additional permittee in order to better define the responsibilities of the onsite entities. This permit modification by the Alabama Department of Environmental Management also included the incorporation of the selected remedies to reduce contamination at six SWMUs within the Arsenal.

ED_0011318_00006974-00094

The permit modification requests with the completed investigation reports were included in the corrective measures implementation (CMI) plans for the respective SWMUs. The associated investigations were completed in about a year and area specific conditions of these units, from the CMI work plans, were added to the permit. These area specific conditions included summaries of the remedy, any land use restrictions for the site, and any long-term monitoring and maintenance activities required.

This addition to the permit of two new SWMUs that require investigation required the submittal of a SWMU assessment report. These modifications were needed for the areas to be properly investigated.

Final Remedy Selection for Corrective Action\EPA Joint Permit

A final remedy selection for corrective action was approved as a Class 3 permit modification for Lafarge in Fredonia, Kansas. EPA Region 7 processed the modification in 2013 under the EPA portion of the permit (because Kansas was not authorized for corrective action in 2013).

Three solid waste management units were used for on-site cement kiln dust repositories and they contain elevated levels of heavy metals and volatile organic compounds. The investigation of the units identified a threat to the following if left unaddressed: direct contact, groundwater, and ecological receptors.

The selected remedy for each unit is capping with soil and vegetative cover, perpetual cap maintenance, groundwater monitoring, and institutional controls restricting cap disturbance and residential land use in the future.

Outcomes: Improved long-term environmental and human health protection. Reduced risk of release of the heavy metals and volatile organic compounds.

Outcomes:

- By adding a new permittee, the responsibilities were better defined, including a requirement to comply with submittal dates and schedules of compliance.
- Final remedy selection for 6 units was approved that resulted in the excavation and removal of contaminated soil and reduction/elimination of groundwater contamination sources.
- The selected remedies included the excavation and offsite disposal of about 2,870 cubic yards of perchlorate-contaminated soil, 45 cubic yards of TCE-contaminated soil and about 42 cubic yards of soil contaminated with benzo(a)pyrene and dibenz(a,h)anthracene.

Associated Workload:

- To complete this modification, several documents had to be reviewed: correspondence letters, RCRA Facility Investigation Reports, CMI work plans and SWMU assessment reports.
- Comment letters and notice of deficiencies were prepared to highlight missing information and to request clarity regarding the Army's submissions. Revised documents were submitted to the Alabama

Department of Environmental Management for review.

- After the Department concurred with the Army's various documents, the permit was opened for modification. While incorporating the information and modifications described above, all references to those particular sections throughout the permit were checked for accuracy and modified where necessary to ensure proper reference.
- The draft permit was placed on public notice and no comments were received.

Addition of a risk management plan

The Occidental Chemical Company requested a Class 3 permit modification for its Geismar, Louisiana, facility to incorporate a Risk Management Plan as part of the final remedy being implemented under their post-closure permit. Financial assurance was put in place as part of this permit modification to ensure that there is funding to address contamination through corrective action.

The RMP includes beneficial reuse provisions for on-site soils that meet Risk Evaluation/Corrective Action Program (RECAP) soil standards. This is a common beneficial reuse practice that allows the facility to save money by not having to purchase additional soil for on-site use, or having to pay for disposal of certain soils as long as they meet the RECAP standards. The Louisiana Department of Environmental Quality approved this request.

Outcomes:

- The Risk Management Plan specified the corrective action final remedy and ensured the continuation of standards for protection of environmental quality after unit closure.
- Financial assurance was put in place for future corrective action activities to ensure funds will be available to conduct those activities even if the facility should experience financial difficulty or insolvency.
- The Risk Management Plan provides for beneficial reuse of soils on-site and cost savings for the facility.

Associated Workload:

- Public participation for this Class 3 modification included review and response to comments from the following: the required a pre-application public meeting with the, 60-day public comment period for the application, then a 45-day public comment period for the actual draft permit modification decision to be made.
- This modification required technical review by both a permit writer and geologist in order to make the final permit revisions.

Comprehensive risk reassessment, NPL-listing avoidance, and further investigation in support of an updated final remedy and facility property reuse/redevelopment

The National Nuclear Security Administration at the Bannister Federal Complex in Kansas City, Missouri, requested a Class 3 permit modification to add adjacent, previously unpermitted U.S. General Services Administration (GSA) property to their existing Hazardous Waste Management Facility Part I and EPA Hazardous and Solid Waste Amendments Part II Permits. This was intended to facilitate performance of a holistic environmental reassessment of the combined property in light of the pending move of the National Nuclear Security Administration and GSA personnel to new work locations. The modification was also needed to implement further remediation and potential near-term transfer of a portion of the permitted property to a private entity for subsequent reuse/redevelopment. This modification also served to keep the facility from being proposed for listing on the Superfund National Priorities List (NPL).

This modification to the permit by Missouri Department of Natural Resources was inherently complex since there were/are multiple owners/operators (including a new owner/operator being added), many prior uses of the land by many past owners that led to contaminant releases (primarily chlorinated solvents, polychlorinated biphenyls and petroleum hydrocarbons). A "Formerly Used Defense Site" located on the "annexed" GSA property is being handled by the U.S. Army Corps of Engineers and there is a great deal of public and political interest in the cleanup, disposition, and redevelopment of this aging (over 70 year old) federal complex.

Outcomes:

- Permit modification elements related to groundwater and the updated plan have been implemented. The other elements are in various stages of the review and approval process.
- There are weekly coordination calls on this project between the Department and EPA and monthly coordination meetings among all project stakeholders including the preferred private developer.
- In addition to the activities required of the current permittees by the permit modification, the preferred developer is in the process of:
    - Performing confirmatory due diligence investigations to independently assess environmental conditions.
    - Assessing updated final remedies in light of anticipated future reuse/redevelopment of the property.
    - Assessing the associated future costs as the basis for financial assurance needed to facilitate the early dirty (negative equity) transfer of this federal property to the private developer and thereafter ensure adequate financial assurance is provided for post-closure care and corrective action after the permit is transferred.

Associated Workload:

The primary permit modification elements included the following:

- Implementation of a groundwater remedy optimization plan and revised groundwater sampling and analysis plan to incorporate new wells on the "annexed" property,
- Implementation of updated groundwater analysis and reporting requirements,
- Revision and implementation of an updated Community Involvement Plan (CIP),
- Update the conceptual site model and identify any data gaps that required further investigation given the land area added to the permitted facility (Missouri DNR submitted a facility-wide report: "Description of Current Conditions Report and Screening Level Risk Assessment"), and
- Assessed a facility-wide polychlorinated biphenyl (PCB) fate and transport study in order to inform the permit modification decision.

Soil and groundwater sampling requirements in closure plan

The Aerojet facility, in Rancho Cordova California, requested a Class 2 permit modification in order to update the soil and groundwater sampling requirements in the closure plan. The closure plan revisions included additional sampling and analysis in order to further investigate the underlying soils. The closure plan also included changes in the closure cost estimate. California's Department of Toxic Substance Control assessed the permit modification request.

Outcomes:

- The vertical and lateral extent of perchlorate contamination in soils and the impact of perchlorate to the water table were identified.
- The results were used to determine if the unit could be clean closed or would need to be addressed through post-closure requirements.

Associated Workload:

- Public notice and preparation for/participation in public meetings.
- Assess groundwater reports and follow up on them.
- Financial assurance assessment.

Remediated Area for the Construction of New Warehouse

Loveland Products, Inc. (LPI), in Billings, Montana, requested a permit modification to change post-closure care and corrective action requirements for a closed surface impoundment. The existing permit requirements limited use of the space occupied by the surface impoundment and presented geotechnical problems for construction of a new warehouse. A permit modification was necessary to allow removal of the asphalt cap and excavation and shipment of the enclosed waste to an off-site permitted hazardous waste landfill. LPI requested a temporary authorization to allow excavation work to begin while permit modification procedures were being conducted. DEQ granted the authorization following public notice to all persons on the facility mailing list and to appropriate units of state and local governments. The temporary authorization allowed excavation and shipment of the waste to be accomplished during Montana's short construction season, avoiding environmental and human health exposure issues associated with excavations left open through the winter months.

Approximately 12,000 tons of hazardous waste and contaminated vadose zone soil was removed from the surface impoundment and disposed in a permitted hazardous waste landfill. The hardcover cap, originally installed to protect industrial workers and groundwater, is no longer required. LPI was able to construct a warehouse in the area, reusing space within the footprint of its facility.

Outcome: The modification demonstrates that regulated hazardous waste units can be remediated and the area reused. All wastes and contaminated vadose zone soil were removed from the surface impoundment area to make the area safe for construction and reuse.

Coordination, timing, and complexity: This permit modification was multi-faceted, requiring coordination between the Montana Department of Environmental Quality, the facility, EPA, and the state environmental contact for the facility receiving the excavated waste. Meetings to discuss the project were held several years prior to implementation. Timely review and approval of the modification request was necessary and important to accommodate the planned construction schedule.

The permit modification was complex; it involved a shortening of the post-closure care period, a change in the approved remedy, a determination of Corrective Action Management Unit eligibility, temporary authorization, and final modification approval. The modified remedy required extensive understanding of the requirements needed to address waste disposal.

D. Keeping Permits Up to Date

Permit modifications are often required for straightforward updates to align the permit with current conditions and operations at facilities. It is important for the permit to reflect the current facility information, provisions, and standards in the event that emergency situations arise. This also facilitates appropriate facility inspections by state and federal regulators.

One common type of permit modification relates to changes to the "General Permit Provisions" and "General Facility Standards" as outlined in 40 CFR 270.42 Appendix I. These updates are generally Class 1 modifications (some of these Class 1 modifications need prior Director's approval).

Many of these changes are administrative updates. Some of these are needed for emergency response (including changes to facility contacts), waste sampling changes, and other changes needed to keep the permit current and compliant.

INDEX D. Keeping Permits Up to Date
1. Emergency Response
2. Updates to Permit Standards and Conditions
3. Administrative Updates

D.1. Emergency Response

It is important to have current safety and emergency response information available and related equipment ready in the event there is a fire, spill, or other emergency at a permitted facility. There are permit modifications that owners and operators of permitted facilities must propose when certain changes are made at the facility. These changes include things such as updated emergency/contingency plans, emergency contacts, and emergency equipment. In addition, EPA has continued to emphasize the "Preparedness and Prevention Requirements for RCRA TSDFs" including ongoing communication and coordination with State Emergency Response Commissions, Local Emergency Planning Committees, local fire departments, and other state and local emergency response authorities, as appropriate.[20]

Coordination of emergency services, emergency contacts, and other updates

Rho-Chem LLC implemented a Class 1 permit modification to update facility information in the contingency plan. This included the following updates: the coordination of emergency services, spill control equipment, artificial night lighting, compliance history, and emergency coordinator (including alternates). This facility in Inglewood, California worked with California's Department of Toxic Substance Control on the permit modification. Public notices were sent as required by the regulations to state and local agencies and the mailing list within seven days of implementing the changes.

[20] A March 5, 2010 EPA memo was sent from Matt Hale to the EPA RCRA Directors on "Preparedness and Prevention Requirements for RCRA TSDFs (Response to Chemical Safety Board Recommendation 2007-01-I-NC)." The memo states that "this guidance recommends that the TSDF permit explicitly require that the owners and operators provide up-to-date written information about the facility and hazardous waste located there to State Emergency Response Commissions (SERCs), Local Emergency Planning Committees (LEPCs), local fire departments, and other state and local emergency response authorities, as appropriate." This guidance was also communicated to state programs through ASTSWMO.

Outcomes:

- Changes were made to update important safety/emergency response information at the facility.
- The regulators and public were notified of those changes to help facilitate timely coordination of emergency services and deployment of emergency equipment in the event of an emergency response.

D.2. Updates to Permit Standards and Conditions

The conditions governing management of hazardous waste in treatment, storage, and disposal units are specified in facility permits. Minor changes at any unit (or general facility standards) may trigger permit modifications. Seemingly simple Class 1 modifications can, after review by regulators, require substantial time and effort on the part of both regulators and permittees to complete. Sometimes proposed permit modifications are initially misclassified (i.e., a Class 1 modification request comes in from the facility but is determined by the regulatory agency to actually be a Class 2 or 3 modification). A great deal of the coordination with facilities often takes place before a complete permit modification request is even submitted. In addition, some permit modifications are actually precipitated by changes to requirements of other non-RCRA regulatory programs. A case study is described below how a non-hazardous unit addition could trigger a RCRA permit modification for secondary containment.

Addition of a Non-RCRA regulated tank to the secondary containment area for a RCRA regulated tank

A facility submitted a modification on October 30, 2013, to increase the capacity of their secondary containment for their tank farm. The increase was requested because they were replacing one non-RCRA regulated tank with two non-RCRA regulated tanks and the RCRA secondary containment volume requirements could be affected. The facility proposed raising the secondary containment wall with four-inch angle iron.

In order for North Carolina Department of Environment and Natural Resources (NCDENR) to assess the proposed modification, the facility needed to submit the following additional information: new permit-related drawings; inspection procedures; updates to the secondary containment volume calculations; angle iron installation specifications; and information regarding use of secondary containment sealants and inspection details for the altered secondary containment.

NCDENR and the facility had multiple discussions on the proposed changes to resolve issues so that the agency could begin processing the request. These discussions included helping the facility with the secondary containment calculations and requests for additional information. Because of the technical assistance provided by NCDENR, the facility ultimately determined that the angle iron extension was not needed as the secondary containment calculations contained an incorrect assumption regarding the shape of the bottoms of the new tanks. The existing secondary containment volume was sufficient since the new tanks had spherical bottoms and NCDENR agreed that a Class 2 modification was not needed to increase the secondary containment capacity, though a Class 1 modification was still needed for the changes. A revised permit modification request was submitted in December 2013 and the Class 1 modification was approved by NCDENR in May 2014.

Outcomes:

- NCDENR provided significant technical assistance to the facility to address issues associated with their proposed Class 2 permit modification to add new tanks.

- NCDENR determined that the facility's secondary containment calculations showed that the existing secondary containment volume was sufficient and thus the proposed changes would require a Class 1 permit modification with prior Director's approval in lieu of the proposed Class 2 modification.

Keeping the facility information updated in the permit

The HGST, Inc., facility in San Jose, California, requested several Class 1 permit modifications over a short period of time and all necessitated individual notices to the mailing list. The modifications included the following: (1) revised closure plan for three tanks including clarification of decontamination procedures and connecting piping system; (2) revised closure plan for seven tanks including clarification of the decontamination procedures for new equipment used to manage waste; (3) installation of tie in valves to improve the support and transfer function of a heavy metal waste pipeline; (4) owner's, operator's and facility name change from Hitachi Global Storage Technologies Inc. to HGST Inc.; and (5) administrative changes to update the inspection checklist for units and update training plan job titles. The permitting agency, California's Department of Toxic Substance Control, processed the permit modifications.

Outcomes:

- Closure decontamination procedures were clarified and improvements were implemented to the support and transfer of a portion of the waste handled.
- The permit and related documents was updated to reflect current information, including current facility owner/operator information.

Replace hazardous waste storage unit containers with ones of a different type and size

This Class 2 permit modification request from Rho-Chem LLC resulted in replacement of certain hazardous waste storage unit containers with others of a different type and size but did not increase the storage capacity at the facility. California's Department of Toxic Substance Control modified the permit.

Outcome:

- Replacement of hazardous waste storage container units with different types that were better suited for the ongoing operations at the facility.

D.3. Administrative Updates

Permit modifications are often requested for administrative or informational purposes that are not related to physical improvements that need to occur at the facility. Although informational changes are typically simple and straightforward, they can require a surprising level of administrative effort from permittees and regulatory officials. For example, facility name changes are common and often trigger substantial additional review effort on the part of regulatory officials to confirm that the name change does not stem from a change in facility ownership or operational control, which would require updates to financial assurance or other compliance mechanisms.

Facility Name Change

In 2014, Evoqua Water Technologies LLC requested a Class 1 permit modification for its hazardous waste management facility in Vernon, California, to change the name of the owner and operator from "Siemens Water Technologies LLC" to "Evoqua Water Technologies, LLC." This is a common modification and seemingly easy, but as part of the modification process, Evoqua was required to notify all contacts on the facility's mailing list and the appropriate state and local agencies of the name change. California's Department of Toxic Substance Control permitting staff also had to review the request to ensure that it was not an ownership change and that the current financial assurance was adequate.

Outcomes:

- The permit and related documents were updated to reflect the new owner.
- Financial assurance was reviewed and confirmed as still viable/applicable.

Extend closure period due to funding delays

The National Aeronautics and Space Administration (NASA) in New Orleans, Louisiana, requested a Class 1 permit modification to extend the closure period for three tanks by 180 days. This modification was necessary to accommodate funding delays resulting from the Federal government sequestration.

Outcome:

- Delays in the enforceable closure schedule were approved by the Louisiana Department of Environmental Quality.

E. Modifications over the "Life of a Permit"

A case study of permit modifications over the life of a permit shows the volume of permit modification work as compared to the individual case studies listed above.

ENVIROSAFE SERVICES OF OHIO INC, (OHD045243706)

This facility is located in Oregon, Ohio and has been permitted since 1988. It has more modifications per year than most facilities, but they are largely Class 1's. Although the table below shows the permit modifications that were entered in the national database, it does not show all the permit maintenance involved (for example, compiling environmental impact statements).

This facility has eleven hazardous waste management units that are permitted. It also has expansive facility-wide corrective action that is being addressed under the authority of the permit. This facility has permitted storage and treatment units in addition to a landfill that will continue to need post-closure care under the permit when closure obligations have been satisfied.

Note that the permits below were issued by both EPA Region 5 and Ohio EPA. As states have become authorized for all of the RCRA programs, joint permits between the State and EPA have become less common. The information about the individual permit modification approvals often references a specific section of the permit and the unit or well referenced in the change to the permit. The vast majority of these modifications are requested by the permittee, but the permit modification workload has included Agency-initiated modifications as well. Ohio EPA has historically used Director-initiated modifications for selection of corrective measures for RCRA Corrective Action. For this facility, a Director-initiated modification selecting a containment strategy for historic waste management units on a portion of the facility was approved September 12, 2006. These rare Director-initiated modifications generally require a similar process to issuing a full permit and are typically as complex as Class 3 modifications.

Dates	Type of Permit Modification (Mod)
11/8/88	**Federal portion of the permit issued by EPA Region 5**
5/8/91	**State portion of the permit issued by Ohio EPA**
Mods under the First set of Permit Issuances by EPA and the State	
	1 Mod Approval for Additional Capacity.
	2 Class 3 mod approval for vertical expansion.
	6 Mod Approvals for Groundwater Monitoring.
	58 Mod approvals for unspecified ("Other") mods.
	Note: No mods were documented for the first 10 years; there may have been some mods, but not captured in the early ears of tracking RCRA data.
12/29/05	**Joint Permit issued by the state program, Ohio EPA (Renewal)**
	Joint Permit Issued by the EPA, Region 5. (Renewal)
2/21/06	(Federal portion of joint RCRA permit covering 40 CFR Subparts BB, CC, and DD)
Mods under the Second set of Permit Issuances by EPA and the State	
2006 Mods	
2/3/06	Update facility annual closure/post closure cost estimate.
2/21/06	Mod Approval (Other Mod)
3/16/06	Class 1A Mod approval to install a portable high capacity vacuum system.
4/3/06	Class 1A approval for (PQL's), addition of statistical comparison standards, revised well construction logs for monitoring, and addition of method 420.1
5/3/06	Mod regarding analytical methods.

5/18/06	Approval to remove ground water monitoring wells SW-3D and MR-4S and add ground water monitoring well F-2D to affected well list for Total Phenols.
6/9/06	Approval to add previously approved and/or acknowledged mod to ESOI's December 29, 2005 permit.
8/17/06	Class 1A mod approval to replace outdated HDPE liner specifications on Table 1 of Appendix D.7.4 of permit application with standard HDPE specifications.
9/12/06	This permit mod was initiated by Ohio EPA to incorporate permit specific corrective action measures that collectively represent a containment strategy for old waste management units in the northern portion of the facility.
10/20/06	Class 1 mod approval to update City of Toledo Raw Waterline Security Agreement Weekly Inspection form.
10/20/06	Class 1 mod approval to remove the form of precipitation from permit condition J.7(b)(iii).
11/10/06	Class 1 mod to allow facility to utilize analysis of wells which are sampled in accordance with the permit and in the calendar month preceding an April and/or October semi-annual sampling event.
11/10/06	Class 1A mod approval to add and remove monitoring wells, remove benzene and selenium & fluoride
2007 Mods	
2/6/07	Class 1 mod approval to make changes to the inspection forms MF-02b (Containment Building) & MF-13 (Groundwater Monitoring Wells).
3/13/07	Class 1 mod approval for complete clean copy of the permit application.
3/16/07	Class 1A mod approval to add leachate collection and removal system performance objectives for WMSs 5, 6, & 7.
3/21/07	Class 1A mod for change in the methodology for determining hydraulic gradients and travel distances used in the ACL model.
3/29/07	Class 1A mod approval to replace the June 30, 2006 permit application with the former permit application dated August 15, 1983.
4/13/07	Class 1A mod approval to update affected and adjacent well listing at Appendix E.9 to add R-23, G-1DA, and G-1S as wells nested or adjacent to affected wells.
4/20/07	Class 1 mod approval for information on two newly installed monitoring wells.
5/8/07	Class 1A mod approval for data validation definitions in Appendix E.12 of Part B.
5/17/07	Class 1 mod approval for the Contingency Plan emergency contact information.
5/17/07	Class 1 mod approval for changes to Table of Contents to update reference to inspection forms MF-02b & MF-13.
5/17/07	Class 1 mod approval for changes to the closure/post closure cost estimate.
6/6/07	Class 1 mod approval to replace Part A RCRA Subtitle C Site I.D. form with EPA Form 8700-23.
6/20/07	Class 1 mod approval to correct revision numbers for detail drawings.
8/10/07	Class 1A mod approval to establish a target leachate head level for the west area of SWMU 5.
10/5/07	Class 1A mod approval to update dioxin/furan analysis.
11/9/07	Class 1A mod approval for update to add procedures to prevent inadvertent introduction of petroleum constituents to groundwater samples when using fueled field equipment.
11/9/07	Class 1A mod approval to include total metal prediction limits.
11/9/07	Class 1A mod approval to clarify that the ACL for areas subject to corrective action will not need to be reevaluated unless conditions change
12/5/07	Class 1 mod for informational changes (revise Permit Condition F.5 on page 91 of 165).
12/5/07	Class 1A mod approval for correction of conflicting information in the permit application regarding how earthen dikes will be constructed and managed on Hazardous Waste Landfill Cell M.
12/11/07	Class 1 mod to revise cover page for Appendix F.8 "Rail Line Inspection Forms" and revise forms MF-16(a).
2008 Mods	
1/7/08	Class 1A mod approval to update the statistical prediction limit at monitoring well
1/31/08	Class 1A mod to change the timing requirements for 3rd party data validation of semi-annual groundwater monitoring reports.
2/1/08	Class 1 mod approval to update Section G, Contingency Plan.
2/5/08	Class 1 mod approval to revise cyanide & sulfide testing methods and concentration limits.
2/8/08	Class 1A mod approval to include a Master Boring Log & Well Summary Table, Master Boring & Well log Location Drawings and well construction logs.
3/6/08	Class 1 mod approval for historical log submittal to ensure facility permit contains all boring, well construction, and well abandonment information.
3/6/08	Class 1A mod approval for Sampling and Analysis Plan updates.
4/10/08	Class 1 mod approval to add 1,4 dioxane to the affected constituent list for Monitoring Well SW-3D and to add Monitoring Well SW-3S to the affected well list for 1,4 dioxane.
5/8/08	Class 1A mod approval to add geologic cross section drawings 1 thru 10 covering the Integrated Ground Water Monitoring Program.
5/8/08	Class 1A mod approval.
5/28/08	Class 1 mod to update emergency coordinator info & revise fire brigade response personnel.
5/29/08	Class 1 mod to update closure/cost-closure cost estimates.
6/26/08	Class 1A mod approval total metals prediction limits for monitoring well R24 added to Integrated Ground Water Monitoring Program.

6/26/08	Class 1 mod to update list of boring and monitoring well information on page E.13-24.
8/20/08	Class 2 mod approval to discontinue the semi-annual analysis of the naturally occurring constituents: sodium, chloride, and fluoride as early warning indicators of a potential release from regulated units.
9/22/08	Class 1A mod approval to add 1,4-Dioxanne , add MR-3S, add nickel to the affected constituent list, and remove MR-4D and SW-2D.
9/22/08	Class 1A mod approval to update the dissolved barium comparison standards for all IGWMP wells excluding M-18S, R-23, and R-24.
9/25/08	Class 1A mod approval to update the Master Boring and Well log, update the cover page, and add well abandonment logs.
10/17/08	Class 1 mod approval for revisions to Section E for typo corrections.
2009 Mods	
3/6/09	Class1A mod approval to remove existing cover page for appendix D.2, add pages D.2-1 and D.2-2, and replace Section D cover page and Table of Contents pages D-viii thru D-xi.
4/16/09	Class 1A mod approval benzene, chloroethane, and vinyl chloride from the COSs from affected well F-2S.
4/23/09	Class 1A mod approval to add total metals predictions limits for monitoring wells G-1DA, M-18S, and M-17D.
5/21/09	Class 1 mod to update the closure & post-closure cost estimate.
6/1/09	Class 1 mod for replacement and relocation of CSF safety showers with equivalent units.
6/2/09	Class 1A mod for implementation of schedule and final design plans for SWMI I (Cell F).
6/8/09	Class 1 mod for recalculating of secondary containment for Caustic Building and Tanks 70, 73 and 74.
7/17/09	Class 1 mod to clarify notification requirements of the Response Action Plan for Containment building.
7/17/09	Class 1 mod to replace existing appendix F.10, F.10-1, and F-1(p) pages in the permit application.
7/21/09	Class 1A mod to require security at gates only when open or unlocked, and typo corrections.
8/20/09	Class 1 mod to replace Section D Table of Contents, replace existing Appendix D.5, and add pages D.5.1.
8/20/09	Class 1 mod to include the "Cell M Transducer Certification Report - May 2009."
9/8/09	Class 1A mod to Appendix D.15 Submersible Pumps and Transducer Specifications of Part B application.
9/15/09	Class 1 mod to replace existing pages D-12 through D-15, 17, 23, and 58.
10/7/09	Class 1A mod to revise and relocate the Stone Drain Column Specifications from Appendix D.31.
10/21/09	Class 1A mod for changes to Appendix E.13, Boring and Monitoring Well Information.
10/21/09	Class 1 mod to Appendix E.9 from affected well list, removal of benzene from affected constituent list and removal of trichlorofluoromethane.
11/6/09	Class 1A mod approval to allow for management of mixed RCRA & TSCA remediation waste with total PCBs concentrations.
11/27/09	Class 1 mod approval for changes to the Table "Maximum PQLs" located in Attachment C to Appendix E.9.
12/9/09	Class 1 mod approval for changes to ground water monitoring well reference point elevations.
12/17/09	Class 1A mod approval for changes in total metals prediction limits for monitoring wells and total cyanide prediction limit.
2010 Mods	
2/1/10	Class 1A mod to Module G (waterline trench monitoring program) to clarify the inspection, record keeping, and reporting requirements.
2/10/10	Class 2 mod approval to reduce height of Cell M landfill from 714 feet MSL to 700 feet MSL.
2/26/10	Class 1 mod for administrative and correctional updates i.e. revise pages G-1 and G-33. Update emergency coordinator information and update the Fire Brigade response personnel.
3/3/10	Class IA mod to replace Module K permit pages 140 to 156 with revised pages having the same page number.
3/12/10	Class 1 mod for page replacement in the Part A Application.
4/14/10	Class 1A mod for removal of dissolved barium from the affected constituents of concern list for affected well SW-2S.
4/21/10	Class 1A mod for revisions to Module J of the Permit regarding pumping inspection, reporting & maintenance requirement for Cell M's leachate collection system, ...
5/18/10	Class 1 mod for administrative and informational changes.
6/22/10	Class 1A mod approval to add prediction limits for total metals for Monitoring Wells I-5SA and MR-3S.
6/22/10	Class 1A mod approval to clarify miscellaneous groundwater items in the Permit and Part B Permit Application.
7/6/10	Received request from facility on 7/6/10 to WITHDRAW previous mod to provide updated performance monitoring for leachate extraction at SWMU's 5, 6 & 7.
8/23/10	Class 1A mod approval to upgrade the leachate extraction systems.
8/23/10	Class 1 mod approval to update the closure and post-closure cost estimates.
10/14/10	Class 1A mod to update Appendix E.9, Groundwater Monitoring Program Sampling and Analysis Plan
10/27/10	Class 1 mod to replace existing pages D.49-8 and D.49.9 and replace the existing Appendix D.49 Cover Page.
11/15/10	Class 1 mod replace module conditions J.1dv and J.1dva on page 119 of 165 and J.4ei and J.4eii on page 127 of 165. Also, replace existing permit application page G.1-3 with revised page dated September 27, 2010.
11/24/10	Class 1 mod to remove outdated info from the Container Storage Area Inspection form MF-07 of the Part B Permit Application.

2011 Mods	
1/11/11	Class 1 mod to permit conditions B.5 and B.5(b) & B.5(b)(iv) to specify inspection frequencies.
2/11/11	Class 1 mod to allow for container storage in any of the designated storage areas within the Stabilization/Containment Building up to the aggregate total storage capacity of 1185 cubic yards.
3/21/11	Class 1A mod approval to clarify language for Table B-1 and allows the processing of certain soil and debris wastes.
5/12/11	CLASS 1A Mod to update Attachment D, Affected and Adjacent Well Listing. Chloroethane has been added to monitoring Well F-2S.
6/20/11	CLASS 1A Mod to update the OMPM Plan for leachate extraction at SWMU 5, 6, and 7.
7/29/11	CLASS 2 Mod to treat hazardous waste containing free liquids and to add chemical oxidation, chemical reduction, and activated carbon treatments in the Stabilization/Containment BLDG.
7/29/11	CLASS 2 Mod to treat hazardous waste using encapsulation technology within 4 open-top metal tanks in Cell M.
2012 Mods	
1/25/12	CLASS 1 Permit Mod - Groundwater monitoring program sampling and analysis plan - Changes to plan as it related to sampling wells with high turbidity water.
1/25/12	CLASS 1A Permit Mod - Groundwater monitoring program sampling and analysis plan - changes to plan - affected and adjacent Well listing, 1,4 - Dioxane was removed from the affected constituent list at Well MR-1SA.
2/7/12	CLASS 1A PERMIT MOD - Revision of permit condition B.3(J)(I) to correct the citation reference to the mixture and derived-from rule in OAC 3745-51-03.
3/21/12	CLASS 1 Permit Mod - Updating the facility closure and post-closure cost estimates for inflation.
3/21/12	CLASS 1 Mod - Updating several inspection checklists used by the facility to reduce duplication and remove irrelevant questions.
8/2/12	CLASS 1A Mod to update prediction limits for barium (dissolved) at Well G-2DA and cyanide at Well R-6.
2013 Mods	
3/19/13	CLASS 1A Mod to change prediction limits for each qualifying monitoring well and a detailed description of the methods used to calculate the statistical comparison standards for the monitoring wells.
4/10/13	CLASS 1A Mods to Update: 1) Addition of tetrahydrofuran to the Affected Constituent List for Well SW-025 2) Removal of tetrahydrofuran from the Affected Constituent List for Well SW-03D 3) Removal of nickel from the Affected Constituent List for Well SW-035
4/10/13	Class 1A Mod to remove nickel from the affected constituent list for Well MR-045.
10/1/13	Class 1A mod approval to change attachment D, affected and adjacent well listing.
11/25/13	Class 1 mod approval to change EL and EH definitions and update well logs due to maintenance of well DUG-1.
11/26/13	Class 1A mod approval to reduce waste minimization requirements and reduce the required submittal of waste minimization reports to OEPA from every two years to every five years.
12/24/13	Class 1 mod approval to update permit conditions b.25 and k.7 to correct rules citations and update to current language for biennial reporting and to update section E.9 and section J of the permit application to correct rules citations and update for biennial reporting.
12/24/13	Mod approved to 1)Update dates of closure for cell M, Storage areas H and K and storage tanks s100, s200 and s400 in section 1 of permit app. 2) Correct typographical errors and remove outdated language from section 1 of permit app and 3) Update closure and post closure cost estimates and financial requirements for inflation in appendix 1.5 of the permit app.
This information came from RCRAInfo event codes on permit determinations and mod approvals. The detail about the mods was taken verbatim (in most cases) from the notes section for the permit mod approval event codes.	

APPENDIX

1. Modification Types Based on Regulatory Descriptions

This document includes: (1) the regulatory classifications for types of permit modifications and a crosswalk to applicable regulations, and (2) a table with the classification of permit modifications (Appendix I to §270.42).

2. Permit Modification Data: Background and Details

This document provides additional information and background on how the data for this report was collected, including the specific method for how information was retrieved and analyzed from EPA's national hazardous waste database (RCRAInfo).

~~~~ The materials in the appendix are contained in separate documents ~~~~

A.5 NPDES Permit Issuance Timeframes

(not available online)

National Pollutant Discharge Elimination System (NPDES) Permits

CWA Section 402

EPA estimates that the NPDES program requires permit coverage for approximately 727,200 facilities or activities. Permit coverage is provided by one of two permit types: General Permits or Individual Permits. General permits are issued to a category or class of facility of activity, and are used to cover the vast majority (680,500) of discharges requiring NPDES permits. Individual permits incorporate more site-specific limits and conditions and are issued to a relatively small number (46,700) of the more complex facilities or activities. The universe of individual permits, comprises approximately 14,200 Publicly-owned Treatment Works (POTWs), 1,000 large and medium (i.e., populations > 100,000) Municipal Separate Storm Sewer Systems (MS4s) and 31,500 non-POTW (i.e., industrial, commercial) facilities or activities. State permitting authorities issue approximately 90% of the NPDES permits and EPA Regions and EPA Headquarters issue approximately 10%.

As noted above, NPDES **General Permits** are issued by a state or EPA to cover a class or category of activity. Procedurally, the state or EPA first drafts and issues the General Permit, and once issued, eligible facilities or activities seek coverage under the permit. Each General Permit establishes the specific process for seeking and granting permit coverage. In most cases, permits require submission of a "Notice of Intent (NOI)" to be covered, which usually requires basic registration information and perhaps some supplemental site-specific information. Each General Permit also provides the timing and process by which the discharge is authorized. For most General Permits, dischargers are authorized to begin the covered activity within a matter of days (e.g., 14-days following submission of a complete NOI). This timing varies from permit to permit, typically ranging from immediate authorization to a matter of days. Both existing and new dischargers eligible for coverage under General Permits utilize the same registration process; although there may be some additional information required under some permits for first-time registrants. See Table 1 for a breakdown of the major General Permit types and timelines.

NPDES **Individual Permits** require renewing and new dischargers to submit detailed application forms prior to the drafting of the NPDES Permit. See Table 2 for breakdown of the types, categories, and timelines for issuance of individual permits.

- **Renewing (existing) dischargers** that wish to renew their NPDES permit must submit a complete renewal application at least 180 days prior to the expiration of their existing permits. This timing provides permitting authorities approximately 180 days to draft the site-specific individual permit based on the information provided by the applicant. The NPDES regulations also provide that where an applicant submits a timely application for renewal of its NPDES permit and the permitting authority (EPA or State) fails to reissue the permit before the expiration date of the existing permit, the terms and conditions of the expired permit remain in effect and the discharge remains authorized until a new permit is issued. Because the CWA establishes a maximum term of 5-years for the 46,700 individual NPDES permits, approximately 20% (9,340) require renewal each year.
- **New (proposed) dischargers** are required under federal regulations to submit completed applications at least 180 days prior to commencement of discharge, which provides the permitting authority approximately 6 months to develop a draft individual permit. EPA estimates that a relatively small number of new facilities (200) apply for their first NPDES individual permit each year.

ED_0011318_00006974-00109

Public participation is a key part of the NPDES permit issuance process. Authorized states and EPA must notify the public and any affected states of the issuance of a permit and provide an opportunity for comment. *See* CWA 402(b)(3). Additionally, depending on the permitting circumstances and applicable state/federal environmental statutes, the state permitting authority or EPA may have to consult with other entities (e.g., U.S. Fish and Wildlife Service, tribes). Any of these public participation and consultation processes can significantly affect the timing of permit issuance.

TABLE 1 – General Permit Categories and Timing (State- and EPA Issued Permits)

Facility/Activity Category	Approximate Number of Facilities/Activities	Approximate Time to Receive Coverage	Notes
Vessels	65,000	No NOI (immediate coverage) to 7 days (majority)	
Pesticide Applications	365,000	No NOI (majority) to 10 days	
Other non-stormwater	70,000	Varies widely. Typically several days.	
Stormwater: • Phase II MS4s • Industrial • Large construction • Small Construction	 6,000 90,000 36,500/year 48,000/year	 - Days to weeks - Varies days to months - 14 days - No NOI (immediate coverage) to 14 days	Coverages can be "held" where site-specific issues (e.g., ESA) identified.

TABLE 2 – Individual Permit Categories and Timing (State- and EPA-Issued Permits)

Facility/Activity Category	Approximate Number of Facilities/Activities	Approximate Time to Develop and Issue Draft Permit	Notes
POTWs • Major • Minor	 4,200 10,000	 180 days 180 days	Timelines vary widely dependent on permit significance, public involvement, and consultations
Non-POTW (Industrial) • Major • Minor	 2,500 29,000	 180 days 180 days	Timelines vary widely dependent on permit significance, public involvement, and consultations
Phase I MS4s	1,000	180 days	Timelines vary widely dependent on permit significance, public involvement, and consultations

ED_0011318_00006974-00110

B.1 Hazardous Waste, Treatment, Storage, and Disposal Facilities Regulations, 2011 (pages 3-10)

Link - Hazardous Waste Treatment, Storage, and Disposal Facilities Regulations

Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF) Regulations

A User-Friendly Reference Document for RCRA Subtitle C Permit Writers and Permittees

12/1/2014
EPA 530-R-11-006
Version 4

Overview of the Hazardous Waste RCRA Permitting Processes (Flowcharts) – interactive versions of the flowcharts

Note: *The following 7 RCRA permitting process flow diagrams that summarize public involvement activities (see the RCRA Public Participation Manual) were released for public comment pursuant to the Office of Solid Waste and Emergency Response (OSWER) Community Engagement Initiative (CEI). Under CEI Action 1, OSWER developed and posted program work plans, which identified specific processes that should be evaluated and potentially revised to enhance public participation.*

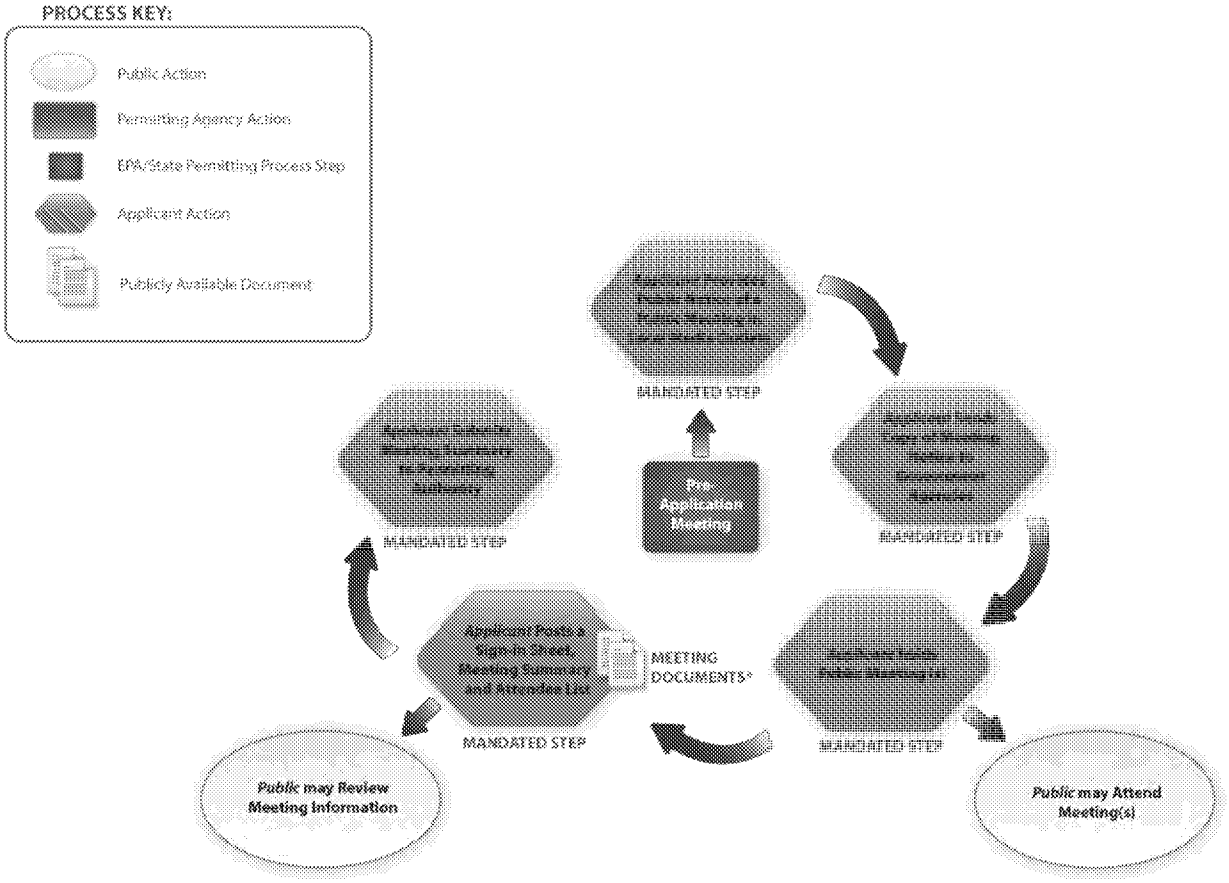
OSWER sought public comment on those work plans and on the following RCRA permitting program process diagrams, which were developed to increase transparency of the opportunities for community involvement. The comment period for the work plans and process diagrams ended on July 31, 2011. EPA will assess comments received and, as a result, may modify these process diagrams. If that happens, the following process flow diagrams will be updated accordingly.

Note: *For a short synopsis of the hazardous waste permitting process see The Hazardous Waste Permitting Process: A Citizens Guide, which uses a question and answer format.*

For a more detailed description of the hazardous waste permitting process, see Permit Applicants' Guidance Manual for Hazardous Waste Land Treatment, Storage and Disposal Facilities, Final Draft (PDF, 668 pp, 23MB)

ED_0011318_00006974-00113

RCRA Hazardous Waste Pre-Permit Application Meeting



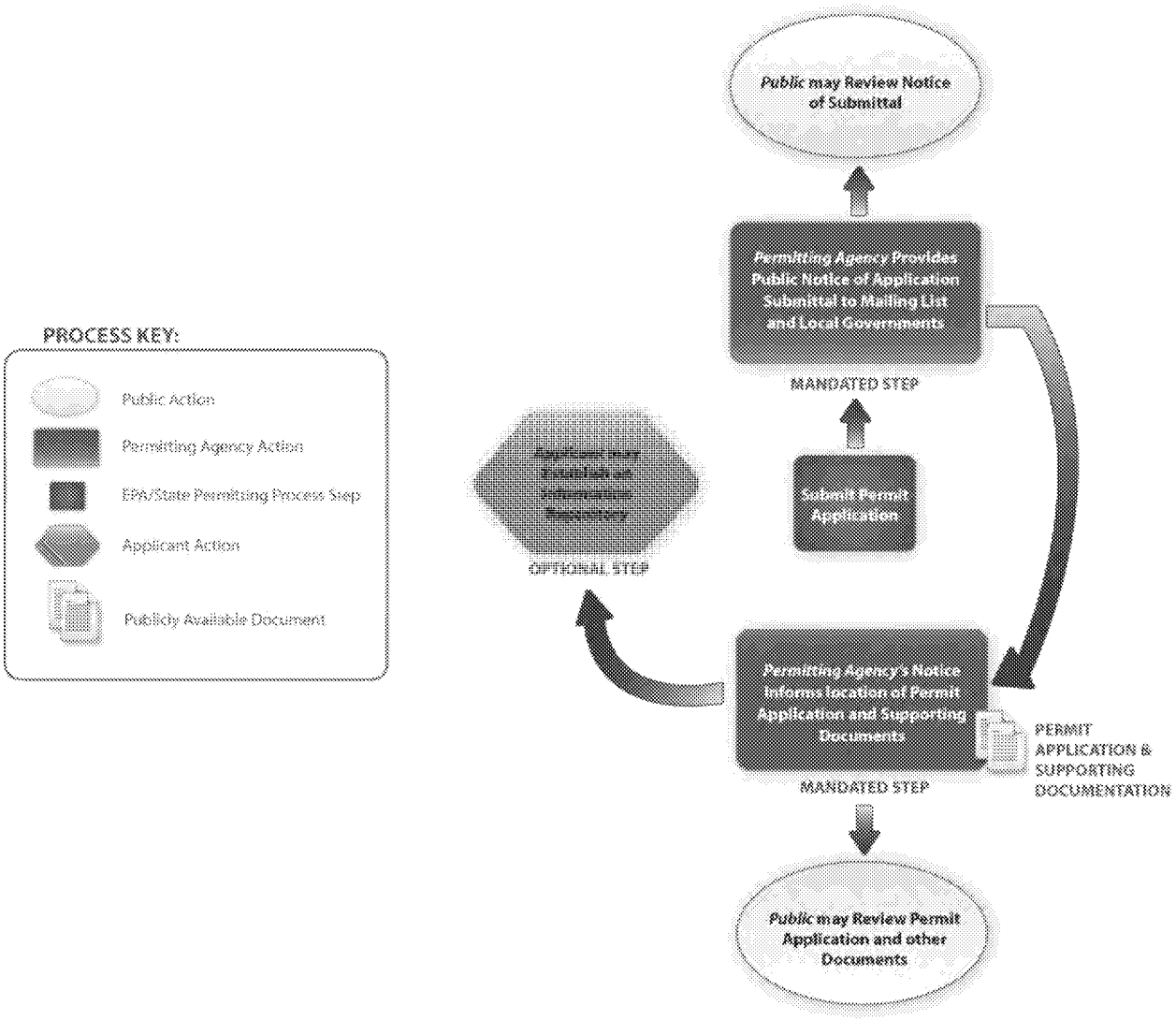
Additional Information
When an applicant announces an upcoming meeting through a public notice, it must include:

- The date, time, and location of the meeting.
- A brief description of the purpose of the meeting.
- A brief description of the facility and proposed operations, including the address or a map of the facility location.
- A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting.
- The name, address, and telephone number of a contact person for the applicant.

*Meeting Documents include: Meeting Summary, Attendee List, Attendee Feedback, and Applicant Responses to Attendee Feedback.

NOTE: This step applies only to RCRA hazardous waste permits for new TSDF facilities and RCRA hazardous waste renewal permits for existing TSDF facilities that undergo significant changes, and does not apply to post-closure or post-closure / corrective action permits.

Submit a RCRA Hazardous Waste Permit Application

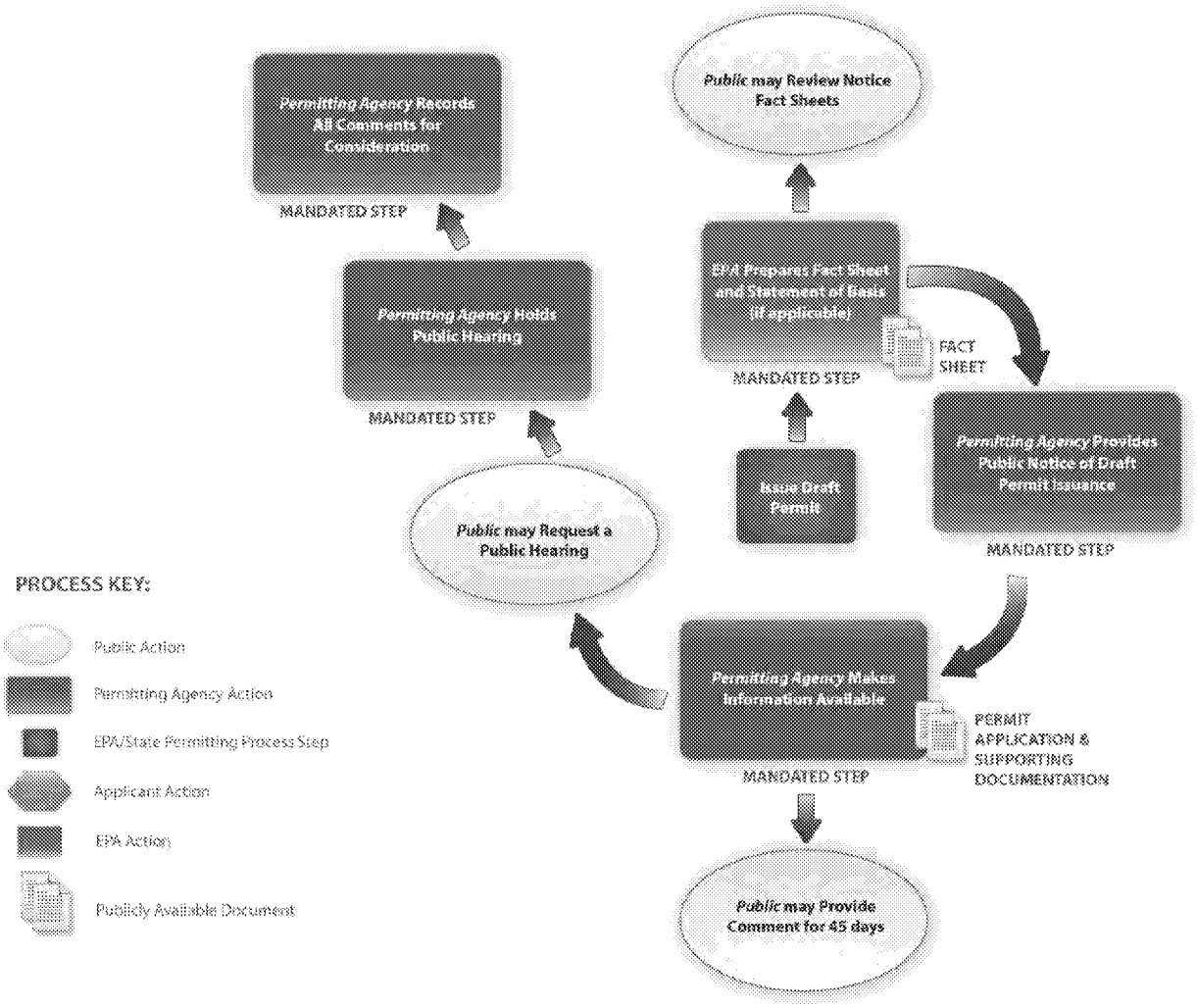


Additional Information

When the Permitting Agency announces the permit application submittal, the public notice must include:

- The name and telephone number of the applicant's contact person.
- The name and telephone number of the permitting agency's contact office and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process.
- An address to which people can write to be put on the facility mailing list.
- The location where copies of the permit application and any supporting documents can be viewed and copied.
- A brief description of the facility and proposed operations, including the address or a map of the facility location on the front page of the notice.
- The date the application was submitted.

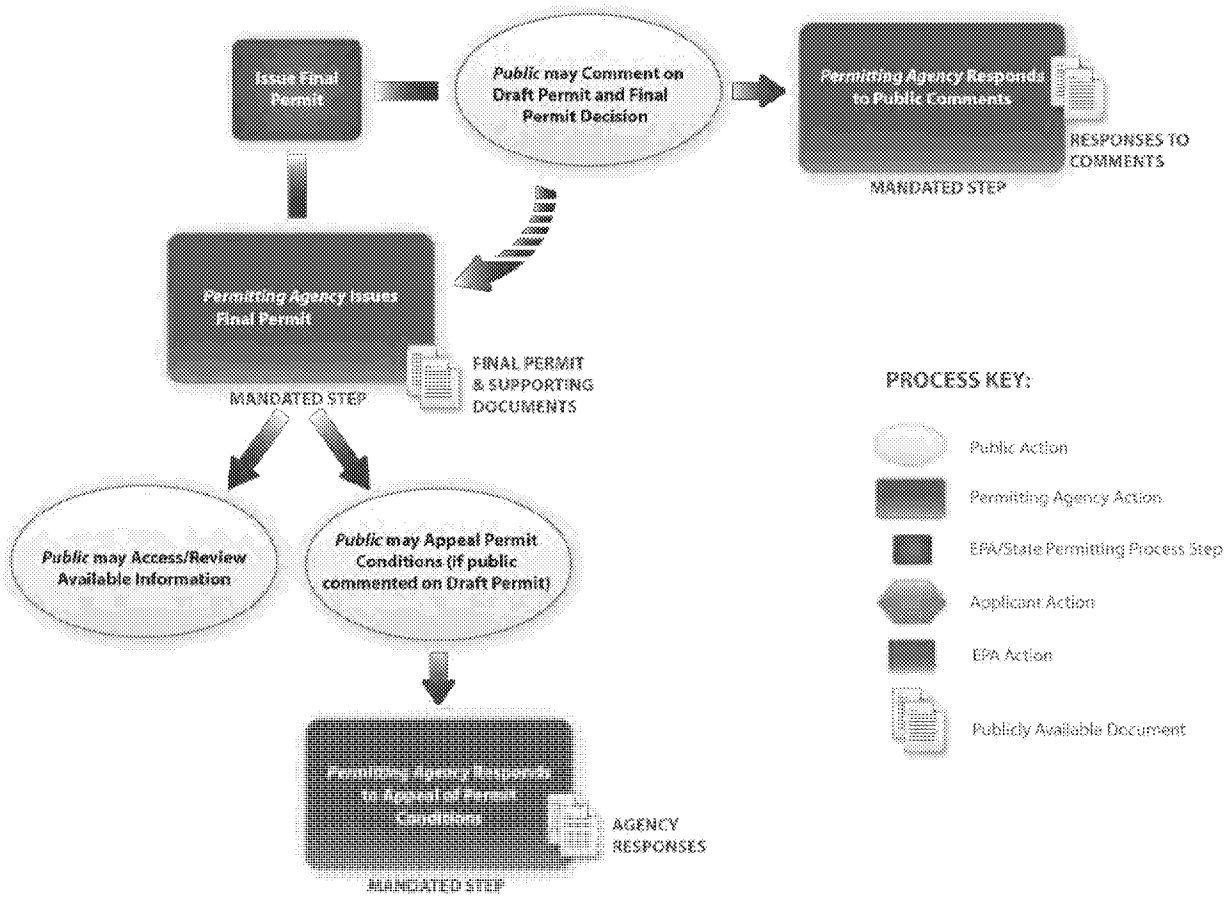
Issue a Draft RCRA Hazardous Waste Permit



Additional Information

- Permitting agencies can keep the process open by sharing all Notice of Deficiency (NOD) information with the public, whether through the administrative record, an information repository, or another activity, such as a workshop.
- Interested community groups or the permit applicant may decide to provide additional public participation activities during this stage. These could include technical discussions to explain the NOD process or informal meetings with the permitting agency.
- The agency, facility, or a public interest group may want to organize an availability session, facility tours, or some other activity prior to the comment period so that the public can be better informed about the facility.

Issue a Final RCRA Hazardous Waste Permit

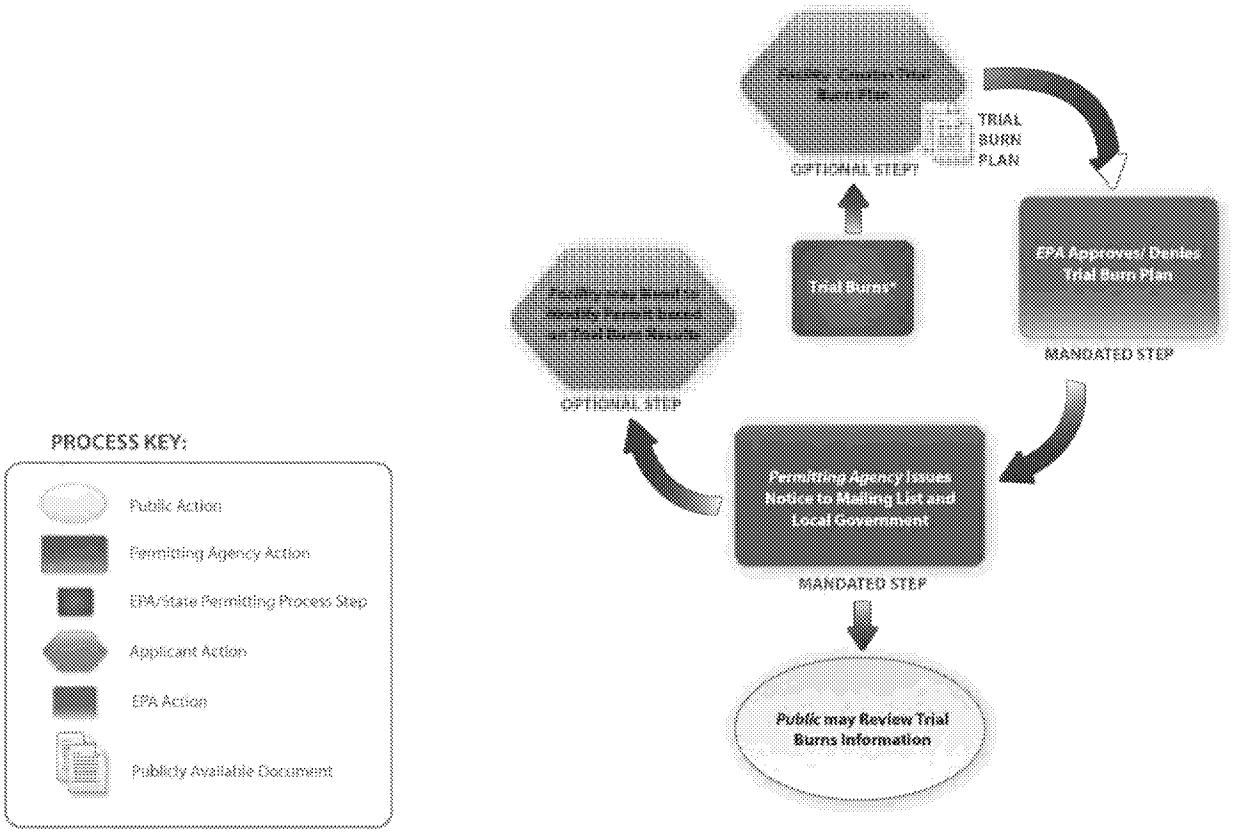


Additional Information

- If there was high interest during the comment period, the agency or the facility may want to issue a news release and fact sheet when the decision is finalized to inform a wide audience.
- The Permitting Agency may choose to update and release the fact sheet required in §124.8.

NOTE: Permitting Agency responses to public comments on the Draft Permit are placed in the Administrative Record and Information Repository.

RCRA Hazardous Waste Combustor Trial Burns



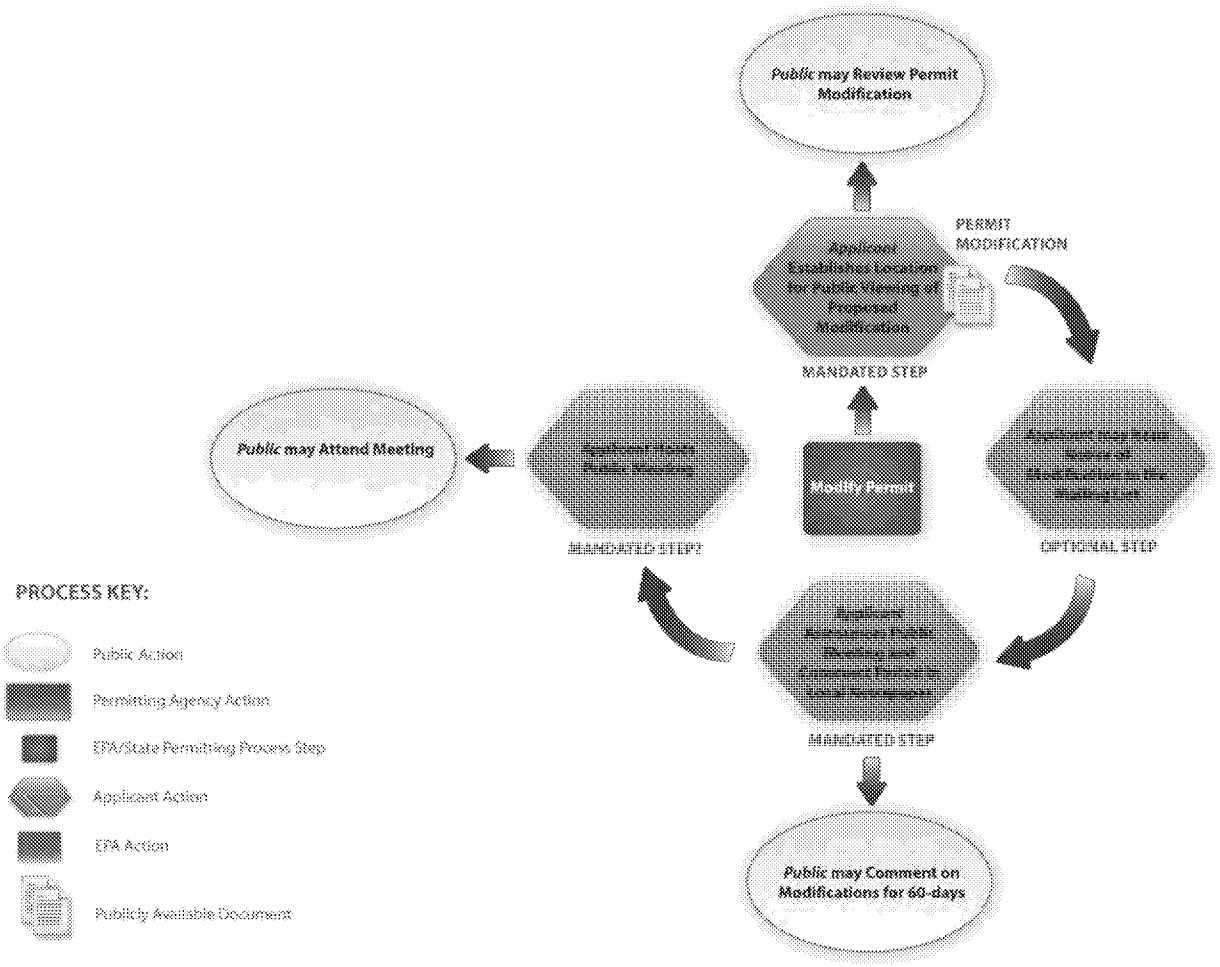
Additional Information

***NOTE:** Emissions from combustion sources burning hazardous waste (e.g., cement kilns, incinerators, lightweight aggregate kilns, boilers and hydrochloric acid production furnaces) are primarily regulated pursuant to Clean Air Act and applicable Title V requirements. However, these combustion sources still need a RCRA permit to operate even after documenting compliance with CAA requirements. The RCRA permit only needs to address basic hazardous waste management including: general facility standards; corrective action; other hazardous waste management units (such as storage units); other combustor-specific concerns such as materials handling; and, any risk-based combustor emission and operating requirements that are more stringent than the relevant MACT standard.

The Clean Air Act title V permit will focus on the operation of the combustion unit including the MACT air emission standards and related operating parameters.

- Maximum Achievable Control Technology (MACT) EEE Test Requirements
- Clean Air Act – Title V Permits

Modify a RCRA Hazardous Waste Permit

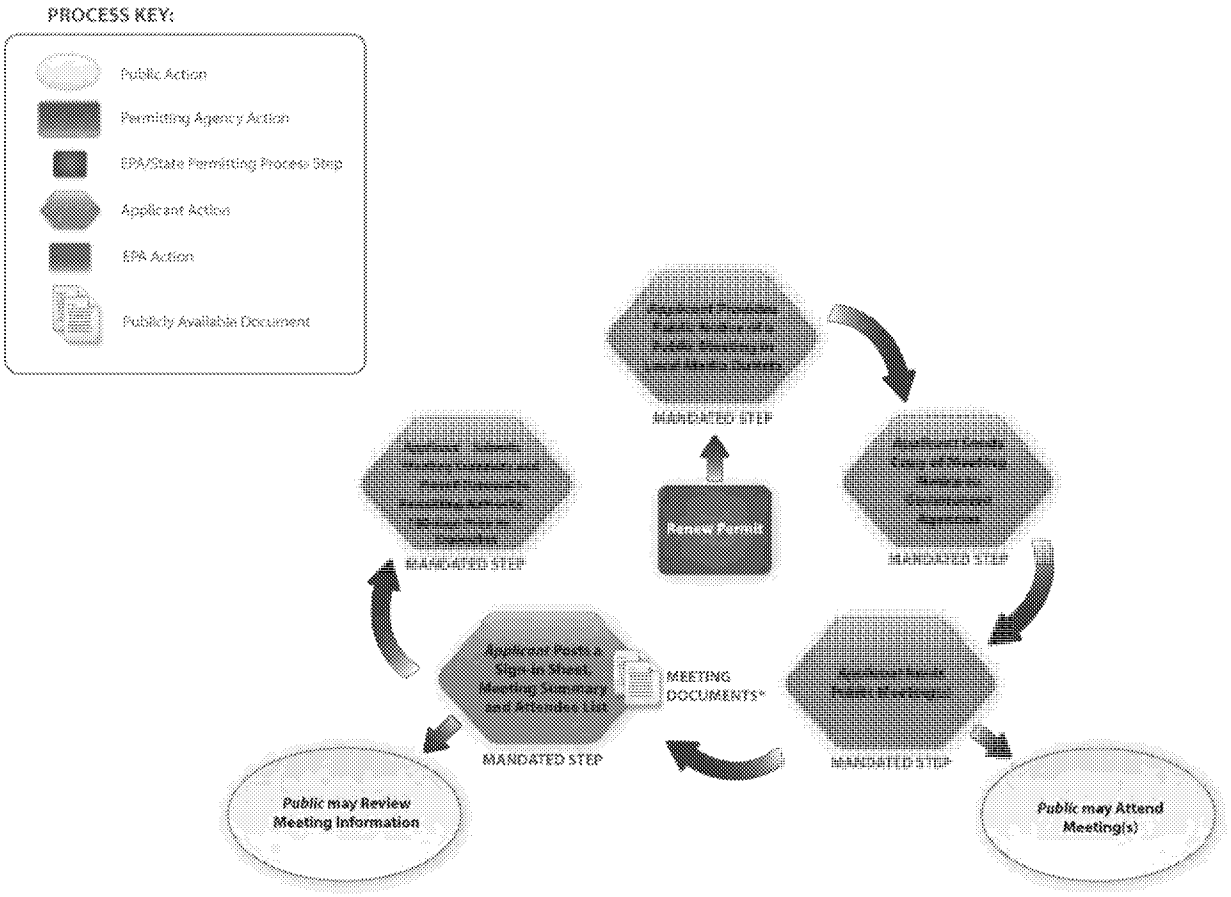


Additional Information

- Facility-initiated modifications are classified as Class 1, 2, or 3 according to the nature of the change.
- More often, facility owners or operators initiate the permit modification, rather than the permitting agency, in order to improve facility operations or make changes in response to new standards.

NOTE: Public Participation steps above are only applicable to Class 2 and Class 3 modifications. For Class 1 Modifications, the Permittee issues notice to the facility mailing list after implementation and anyone has the opportunity to request that the Director review the Class 1 Modification request.

Renew a RCRA Hazardous Waste Permit



Additional Information
Permit Renewal process is similar to issuing a new permit, requiring draft and final permit issuance steps. When an applicant announces an upcoming meeting through a public notice, it must include:

- The date, time, and location of the meeting.
- A brief description of the purpose of the meeting.
- A brief description of the facility and proposed operations, including the address or a map of the facility location.
- A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting.
- The name, address, and telephone number of a contact person for the applicant.

*Meeting Documents include: Meeting Summary, Attendee List, Attendee Feedback, and Applicant Responses to Attendee Feedback

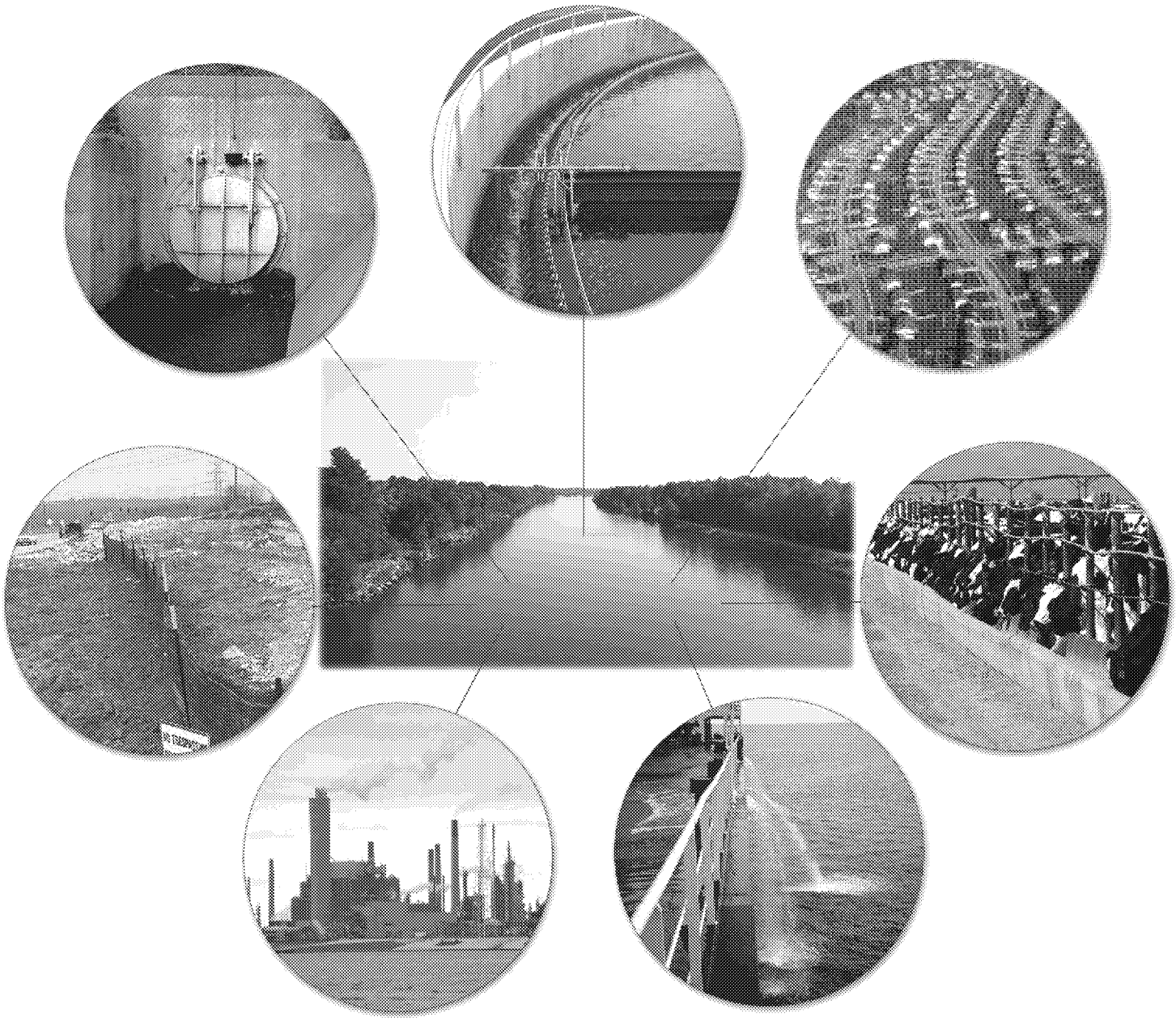
These steps only apply to renewal applications proposing changes that qualify as Class 3 permit modifications.

B.2 NPDES Permit Writers Manual, 2010. (Pages 3-1 to 3-6)

Link - NPDES Permit Writers Manual

U.S. Environmental Protection Agency

NPDES Permit Writers' Manual



U.S. Environmental Protection Agency
Office of Wastewater Management, Water Permits Division
State and Regional Branch

EPA-833-K-10-001 • September 2010

ED_0011318_00006974-00122

United States
Environmental Protection
Agency

Office of Water
Washington, DC

United States Environmental Protection Agency

National Pollutant Discharge Elimination System (NPDES) Permit Writers' Manual

This guidance was developed by staff within the U.S. Environmental Protection Agency's (EPA's) Office of Wastewater Management and addresses development of wastewater discharge permits under the National Pollutant Discharge Elimination System (NPDES). NPDES permit development is governed by existing requirements of the Clean Water Act (CWA) and the EPA NPDES implementing regulations. CWA provisions and regulations contain legally binding requirements. This document does not substitute for those provisions or regulations. Recommendations in this guidance are not binding; the permitting authority may consider other approaches consistent with the CWA and EPA regulations. When EPA makes a permitting decision, it will make each decision on a case-by-case basis and will be guided by the applicable requirements of the CWA and implementing regulations, taking into account comments and information presented at that time by interested persons regarding the appropriateness of applying these recommendations to the situation. This guidance incorporates, and does not modify, existing EPA policy and guidance on developing NPDES permits. EPA may change this guidance in the future.

Water Permits Division
Office of Wastewater Management
Washington, DC 20460
(4203)
www.epa.gov/npdes

EPA-833-K-10-001
September 2010

CHAPTER 3. Overview of the NPDES Permitting Process

This chapter presents an overview of the different types of National Pollutant Discharge Elimination System (NPDES) permits, the major permit components, and the permit development and issuance process. The permit process is illustrated by flow charts. The tasks identified within the flow charts are described in detail in subsequent chapters.

3.1 Types of Permits

The two basic types of NPDES permits are individual and general permits. These permit types share the same components but are used under different circumstances and involve different permit issuance processes.

3.1.1 Individual Permits

An individual permit is a permit specifically tailored to an individual facility. Upon receiving the appropriate application form(s), the permitting authority develops a permit for that facility on the basis of information from the permit application and other sources (e.g., previous permit requirements, discharge monitoring reports, technology and water quality standards, total maximum daily loads, ambient water quality data, special studies). The permitting authority then issues the permit to the facility for a specific period not to exceed 5 years, with a requirement to reapply before the expiration date.

3.1.2 General Permits

A permitting authority develops and issues a general permit to cover multiple facilities in a specific category of discharges or of sludge use or disposal practices. General permits can be a cost-effective option for agencies because of the large number of facilities that can be covered under a single permit. According to Title 40 of the *Code of Federal Regulations* (CFR) 122.28(a)(2), general permits may be written to cover stormwater point sources or other categories of point sources having the following common elements:

- Sources that involve the same or substantially similar types of operations.
- Sources that discharge the same types of wastes or engage in the same types of sludge use or disposal.
- Sources that require the same effluent limitations or operating conditions, or standards for sewage sludge use or disposal.
- Sources that require the same monitoring where tiered conditions may be used for minor differences within a class (e.g., size or seasonal activity).
- Sources that are more appropriately regulated by a general permit.

The regulations at § 122.28(a)(1) provide for general permits to cover dischargers within an area corresponding to specific geographic or political boundaries such as the following:

- Designated planning area.
- Sewer district.
- City, county, or state boundary.

ED_0011318_00006974-00124

- State highway system.
- Standard metropolitan statistical area.
- Urbanized area.

The regulation also allows a general permit to cover any other appropriate division or combination of such boundaries. For example, EPA has issued general permits that cover multiple states, territories, and tribes where EPA is the permitting authority.

Where a large number of similar facilities require permits, a general permit allows the permitting authority to allocate resources in a more efficient manner and to provide more timely permit coverage than issuing an individual permit to each facility. In addition, using a general permit ensures consistent permit conditions for comparable facilities.

3.2 Major Components of a Permit

All NPDES permits consist, at a minimum, of five sections:

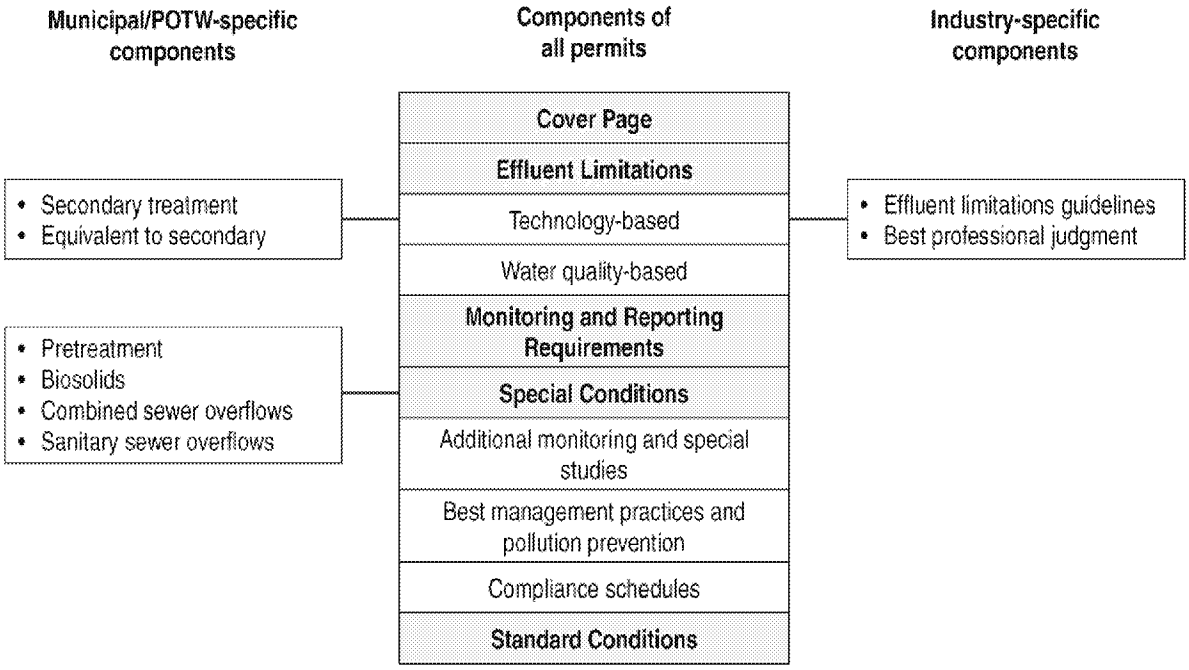
- **Cover Page:** Contains the name and location of the permittee, a statement authorizing the discharge, and a listing of the specific locations for which a discharge is authorized.
- **Effluent Limitations:** The primary mechanism for controlling discharges of pollutants to receiving waters. A permit writer spends the majority of his or her time, when drafting a permit, deriving appropriate effluent limitations on the basis of applicable technology and water quality standards.
- **Monitoring and Reporting Requirements:** Used to characterize wastestreams and receiving waters, evaluate wastewater treatment efficiency, and determine compliance with permit conditions.
- **Special Conditions:** Conditions developed to supplement numeric effluent limitations. Examples include additional monitoring activities, special studies, best management practices (BMPs), and compliance schedules.
- **Standard Conditions:** Pre-established conditions that apply to all NPDES permits and delineate the legal, administrative, and procedural requirements of the NPDES permit.

In addition to the components of the permit, a fact sheet or statement of basis explaining the rationale for permit conditions makes up part of the documentation that supports a draft permit. Section 11.2 of this manual includes additional discussion of permit documentation and the required elements of a fact sheet or statement of basis.

Although the major sections of a permit listed above are part of all permits, the contents of some sections vary depending on the nature of the discharge (e.g., municipal effluent, industrial process wastewater, stormwater, vessel discharges) and whether the permit is issued to an individual facility or to multiple dischargers (i.e., a general permit). Exhibit 3-1 shows the components of a permit and highlights some distinctions between the contents of NPDES permits for municipal (i.e., POTW) and industrial facilities. Permit writers should note that it is common for different permitting authorities to use different names for each section of a permit.

ED_0011318_00006974-00125

Exhibit 3-1 Permit components



3.3 Overview of the Development and Issuance Process for NPDES Individual Permits

While the limitations and conditions in NPDES individual permits are unique to each permittee, the process used to develop the limitations and conditions and issue each permit generally follows a common set of steps. Exhibit 3-2 illustrates the major steps to develop and issue NPDES individual permits and also serves as an index for the subsequent chapters of this manual by identifying which chapter presents more detailed information on each step.

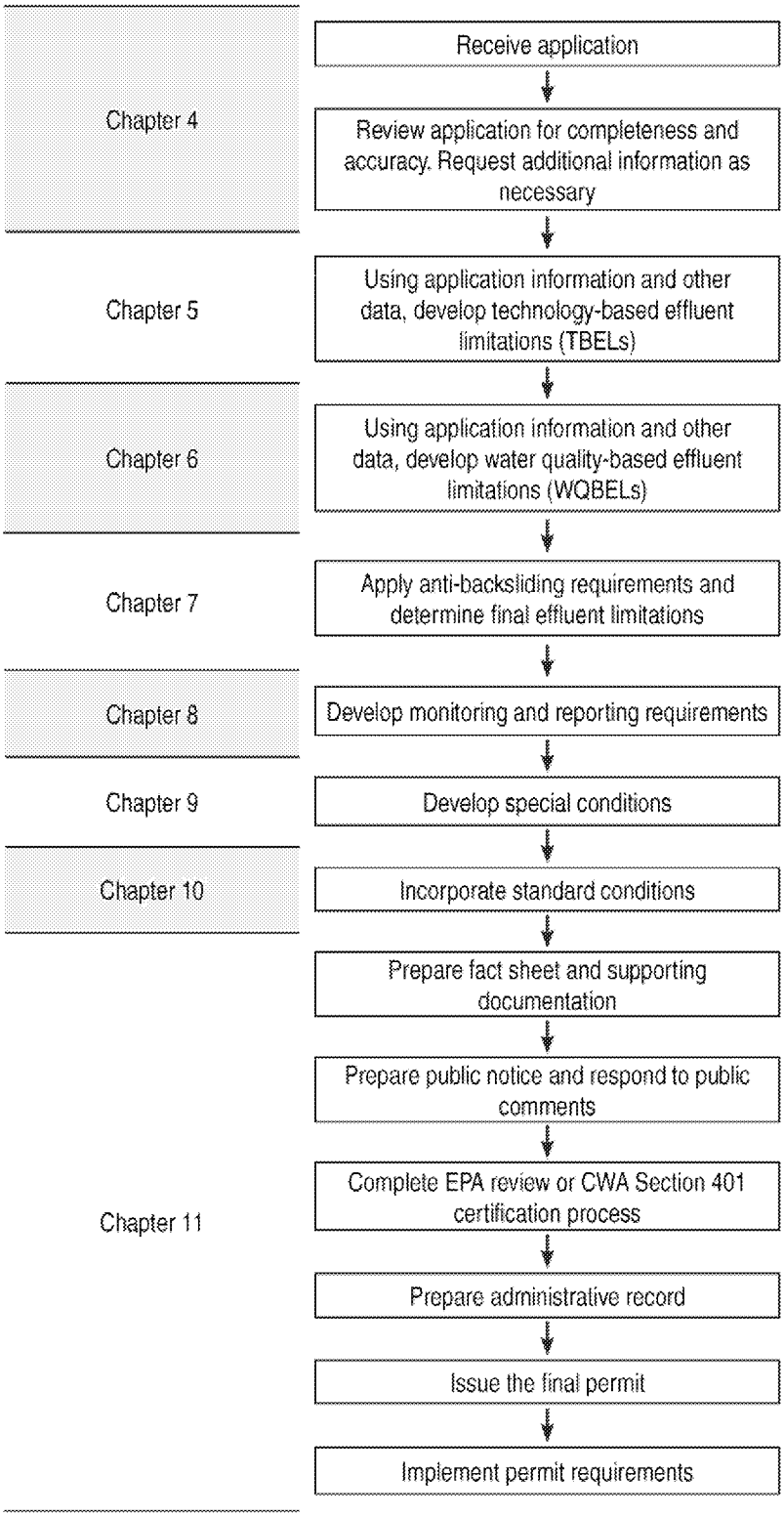
For individual permits, the permitting process generally begins when a facility operator submits an application. After receiving the application and making a decision to proceed with the permit, the permit writer reviews the application for completeness and accuracy. When the permit writer determines that the application is complete and has any additional information needed to draft the permit, the permit writer develops the draft permit and the justification for the permit conditions (i.e., the fact sheet or statement of basis).

The first major step in the permit development process is deriving technology-based effluent limitations (TBELs). Following that step, the permit writer derives effluent limitations that are protective of state water quality standards (i.e., water quality-based effluent limitations [WQBELs]) as needed. The permit writer then compares the TBELs with the WQBELs and, after conducting an anti-backsliding analysis if necessary, applies the final limitations in the NPDES permit. The permit writer must document the decision-making process for deriving limitations in the permit fact sheet. It is quite possible that a permit will have limitations that are technology-based for some parameters and water quality-based for others. For example, a permit could contain effluent limitations for total suspended solids (TSS) based on national effluent limitations guidelines and standards (effluent guidelines) (technology-based), limitations for ammonia based on preventing toxicity to aquatic life (water quality-based), and limitations for 5-day

ED_0011318_00006974-00126

biochemical oxygen demand (BOD_5) that have different bases, such as an average monthly limitation based on effluent guidelines and a maximum daily limitation based on water quality standards.

Exhibit 3-2 Major steps to develop and issue NPDES individual permits



ED_0011318_00006974-00127

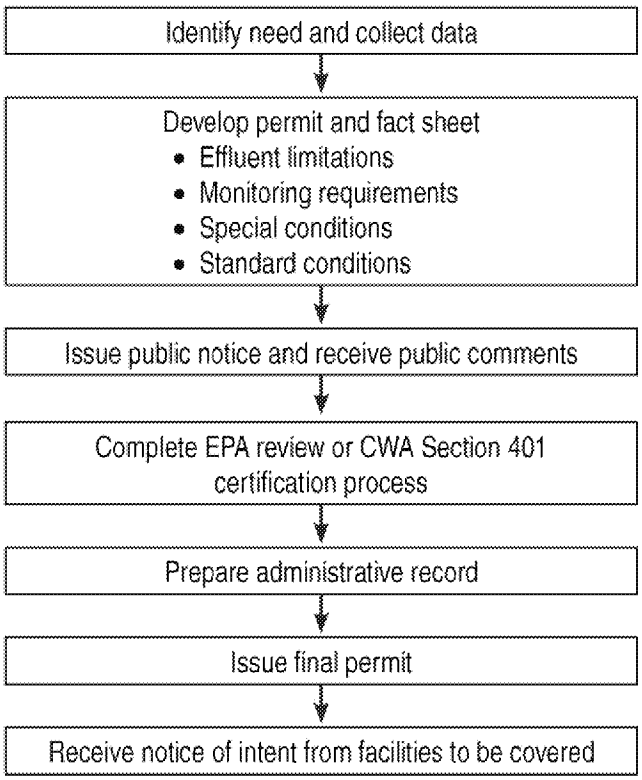
After effluent limitation development, the permit writer develops appropriate monitoring and reporting requirements and facility-specific special conditions. The permit writer then adds standard conditions, which are the same for all permits.

The next step is to provide an opportunity for public participation in the permit process and EPA review of the permit or, in the case of an EPA-issued permit, certification under CWA section 401 by the state with jurisdiction over the receiving water that the permit will comply with its water quality standards. The permitting authority issues a public notice announcing the draft permit and inviting interested parties to submit comments. If there is significant public interest, the permitting authority can hold a public hearing. Taking into consideration the public comments, the permitting authority then produces a final permit, with careful attention to documenting the process and decisions for the administrative record, and issues the final permit to the facility. The permitting authority might decide to make significant changes to the draft permit according to public comment and then provide another opportunity for public review and comment on the revised permit. Section 11.3 of this manual discusses items to address before final permit issuance in more detail.

3.4 Overview of the Development and Issuance Process for NPDES General Permits

The process for developing and issuing NPDES general permits is similar to the process for individual permits; however, there are some differences in the sequence of events. Exhibit 3-3 illustrates the major steps to develop and issue NPDES general permits.

Exhibit 3-3 Major steps to develop and issue NPDES general permits



ED_0011318_00006974-00128

For general permits, the permitting authority first identifies the need for a general permit and collects data that demonstrate that a group or category of dischargers has similarities that warrant a general permit. In deciding whether to develop a general permit, permitting authorities consider whether

- A large number of facilities will be covered.
- The facilities have similar production processes or activities.
- The facilities generate similar pollutants.
- Whether uniform WQBELs (where necessary) will appropriately implement water quality standards.

The remaining steps of the permit process are the same as for individual permits. The permitting authority develops a draft permit that includes effluent limitations, monitoring conditions, special conditions, and standard conditions. The permitting authority then issues a public notice and addresses public comments, completes the EPA review or CWA section 401 certification process, develops the administrative record, and issues the final permit. The final permit will also establish the requirements for the specific information that must be submitted by a facility that wishes to be covered under the general permit.

After the final general permit has been issued, facilities that wish to be covered under the general permit typically submit a Notice of Intent (NOI) to the permitting authority. After receiving the NOI, the permitting authority can request additional information describing the facility, notify the facility that it is covered by the general permit, or require the facility to apply for an individual permit.

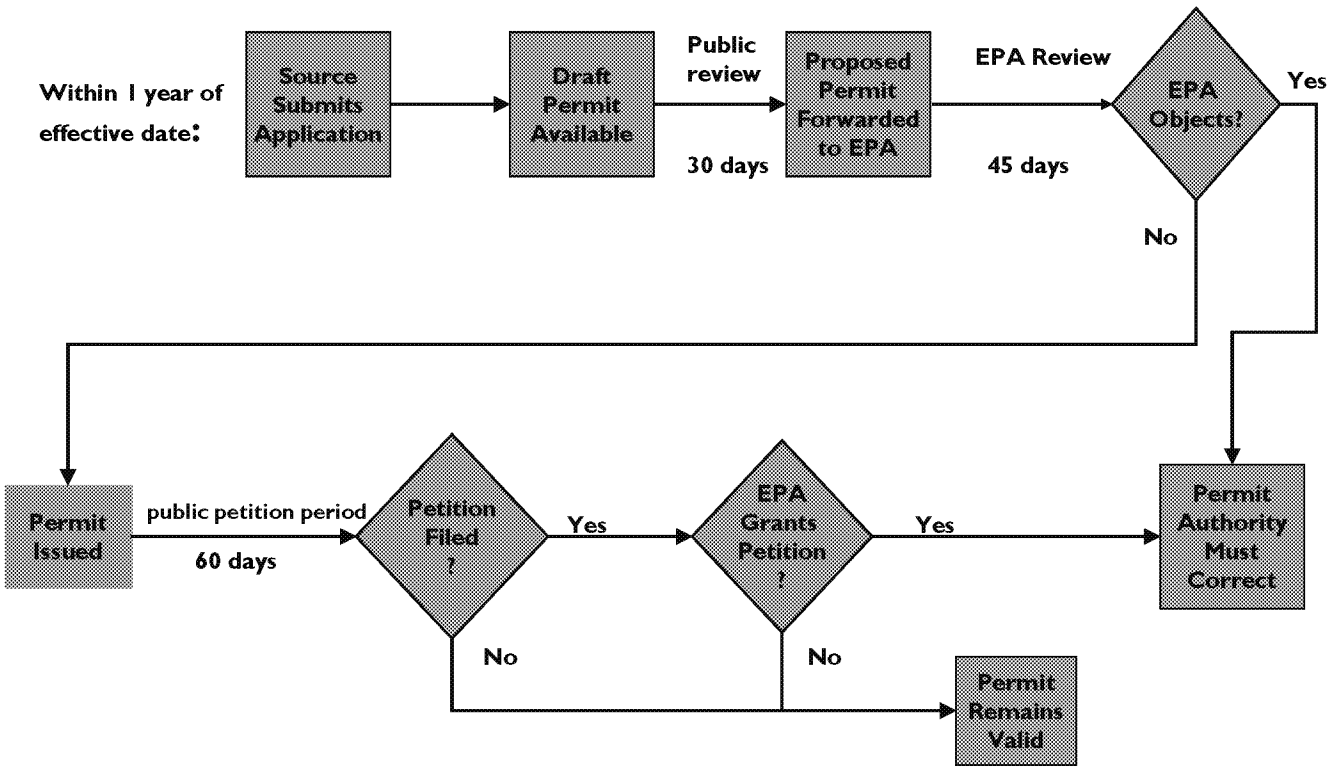
The following chapters in this manual describe steps in the permitting process in detail. In general, the chapters focus on the steps necessary to develop and issue an individual permit, but much of the technical discussion applies equally to general permit development.

ED_0011318_00006974-00129

B.3 Clean Air Act – Title V Permit Issuance Timeline

(not available online)

Permit Issuance Timeline



Message

From: Bolen, Brittany [bolen.brittany@epa.gov]
Sent: 4/20/2017 2:30:58 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: FW:

FYI – I chatted with liz about the commerce report and asked if she had any materials that maybe we could use for the intro that is consistent with the administrator's recent messaging. Below is what she sent me. It's good, but not sure it's tailored to domestic manufacturing.

From: Bowman, Liz
Sent: Friday, April 14, 2017 4:09 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: RE:

I don't know the scope of the project, but here is what I would suggest – you can cut as you see fit – it might be too much, but you can adjust (maybe remove the first P?):

Ex. 5 - Deliberative Process

Message

From: Jackson, Ryan [jackson.ryan@epa.gov]
Sent: 6/1/2017 9:59:16 AM
To: Hupp, Sydney [hupp.sydney@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Perrotta, Pasquale [Perrotta.Pasquale@epa.gov]
Subject: Fwd: Morning Energy: Trump's final Paris decision comes today at 3 p.m. — States, cities look at filling climate void — Dakota Access begins shipping today

Well so here's the deal. 3pm.

We'll need to block 2 to 4 for this I think and have him over there before the 3pm. I'll gather more info on specifics.

I guess we are getting the final rose at the boardroom scene at 3. Something like that.

Ryan Jackson
Chief of Staff
U.S. EPA
Ex. 6 - Personal Privacy

Begin forwarded message:

From: "POLITICO Pro Energy" <politicoemail@politicopro.com>
Date: June 1, 2017 at 5:44:40 AM EDT
To: <jackson.ryan@epa.gov>
Subject: Morning Energy: Trump's final Paris decision comes today at 3 p.m. — States, cities look at filling climate void — Dakota Access begins shipping today
Reply-To: "POLITICO subscriptions" <reply-fe901276736d067d77-630326_HTML-786581600-1376319-0@politicoemail.com>

By Anthony Adragna | 06/01/2017 05:42 AM EDT

With help from Esther Whieldon

DECISION DAY: In a scene that could come straight from reality TV, President Donald Trump today will announce his decision on whether to abandon the 2015 landmark Paris climate agreement today at 3 p.m. in the Rose Garden, he tweeted Wednesday night. Withdrawing from the pact would honor his campaign pledge to "cancel" the deal, but go against the wishes of vast swathes of the U.S. business community, many of his own aides and the international community. Three officials tell POLITICO's Andrew Restuccia and Josh Dawsey that Trump plans to pull out of the deal, though they noted he could still change his mind at the last minute.

Trump's decision comes after months of internal clashes between Trump's warring factions of advisers spilled into the open with a rush of leaks Wednesday, Andrew and Josh report. And if Trump follows through and withdraws, as expected, opponents of the agreement will have to thank the months-long effort by White House strategist Steve Bannon and EPA Administrator Scott Pruitt to play to his populist instincts and publicly push the narrative the accord was effectively dead. One White House official said the president's team was furiously working on an announcement of the withdrawal on Wednesday.

Some aides were still clinging to hope late Wednesday that Trump may change course and stay in the deal, while drastically scaling back the Obama administration's non-binding carbon cleanup promises, in line with a plan they had previously pushed. Trump had not officially told his entire team of senior aides he was considering leaving the agreement Wednesday when news leaked out, and administration officials cautioned against definitive reporting, warning that the president is notoriously fickle.

Takeaway from one former U.S. official: "Will global leaders trust the U.S. to negotiate a climate treaty ever again? After Kyoto and Paris, who will trust us to keep our word as a nation? Our credibility is gone."

Meanwhile, cities and states aren't waiting: Talks are just getting off the ground but several states, municipalities, and business leaders are in early discussions to create a carbon reduction agreement to replace the cuts that Trump is expected to eliminate, Pro's Eric Wolff reports. Potentially modeled after the "Nationally Determined Contributions" nations submitted to join the Paris agreement, the possible reduction pledge would help show the international community that climate action continues in the U.S. "It is really important to the international community to understand to avoid a knock-on effect of U.S. withdrawal on the actions of other countries," a source working to facilitate the conversations told Eric. Meanwhile, a group of West Coast Democratic lawmakers urged the governors of California, Washington and Oregon to keep pursuing climate policies to "send a signal" to the international community absent federal action.

California not pleased: Gov. Jerry Brown didn't mince words in calling Trump's intent to withdraw from the Paris accord "outrageous" while predicting its effects would be short-lived, POLITICO California's David Siders reports. "I think Trump, paradoxically, is giving climate denial such a bad name that he's actually building the very movement that he is [purporting] to undermine," Brown said in an interview. "You can't fight reality with a tweet."

More European reverberations: European Commission President Jean-Claude Juncker warned Trump about the consequences of following through on withdrawing from the Paris deal, POLITICO Europe's Kalina Oroschakoff reports. "I am a trans-Atlanticist, but if the American president said in the next hours or days that he wants to get out of the Paris climate deal, then it is the duty of Europe to say, 'No, that's not how it works,'" Juncker said at an event in Berlin. "Eighty-three countries run into danger of disappearing from the surface of the Earth if we don't resolutely start the fight against climate change."

Clinton weighs in too: Trump's election rival, Hillary Clinton, said it would be "really stupid" and "totally incomprehensible" to squander the economic opportunities that arise from addressing climate change if the administration withdraws from the pact. "The President is a very impulsive, reactive personality," she said at the Code Conference in California. "So if we all like the Paris Agreement, he may decide to get out of it. Not even understanding one bit about what that means."

But it's worth taking a step back to remember that regardless of the fate of Paris, Trump has been busy chipping away at Obama's climate policies. Your Pro Energy team looks at all the ways he's already taken shots at Obama's green legacy here.

Carper invokes Exxon vote: Top Senate EPW Democrat Tom Carper urged Trump to look at the fact that more than 62 percent of Exxon Mobil shareholders on Wednesday called for the company to assess how climate change and global efforts to limit temperature increases will affect its business as he mulls the fate of the Paris deal. "President Trump should take note of what happened today as he decides the fate of our country's participation in the Paris Climate

Agreement," he said in a statement. "We should seize the economic opportunities that come from combating climate change, not cede our role as a global leader."

Greens gather today: Environmental groups, including 350.org, Sierra Club, Natural Resources Defense Council, Peoples Climate Movement, NextGen Climate and the Center for American Progress Action Fund, are holding a rally outside the White House today at 5 p.m. in support of the Paris accord. The Sierra Club said more than 20,000 people have already called the White House to voice their opposition to withdrawal.

WELCOME TO THURSDAY! I'm your host Anthony Adragna, and congrats to Van Ness Feldman's Jonathan Simon for being first out of the box to correctly guess there are six non-voting members of the House (D.C., Guam, Puerto Rico, U.S. Virgin Islands, Northern Mariana Islands and American Samoa). For today: Who was D.C.'s first modern delegate in Congress? Send your tips, energy gossip and comments to aadragna@politico.com, or follow us on Twitter @AnthonyAdragna, @Morning_Energy , and @POLITICOPro.

CATANZARO GIVEN ETHICS WAIVER: The White House has granted an ethics waiver for energy aide Mike Catanzaro, a former partner at CGCN Group LLC, to participate in matters related to EPA's Clean Power Plan, waters of the U.S. rule and methane regulations. His past clients include Devon Energy, an Oklahoma oil and gas company close to Pruitt, and he has lobbied on behalf of the American Fuel and Petrochemical Manufacturers and the American Chemistry Council, among others. Catanzaro's is one of more than a dozen waivers quietly released Wednesday night after a dust up between the Office of Government Ethics and White House, which initially refused to disclose them.

DAKOTA ACCESS BEGINS SHIPPING TODAY: The hotly-contested Dakota Access pipeline is expected to begin shipping North Dakota oil today to a distribution point in Illinois, the Associated Press reports. That comes even as the North Dakota Public Service Commission plans to look later this summer at whether the pipeline's developer, Energy Transfer Partners, violated state rules during its construction.

GROUP SEEKS REVIEW OF HARLEY SETTLEMENT: The free-market Cause of Action Institute is taking aim at a settlement the Obama administration reached with Harley-Davidson over after-market "super tuner" devices the company sold to boost motorcycles' performance that allegedly led to Clean Air Act Violations. The August 2016 settlement with EPA required the motorcycle manufacturer to fund a program to replace or retrofit wood-burning stoves with cleaner appliances. But Cause of Action says that approach violates the agency's own guidance, and the group says Pruitt ought to take another look at the settlement. "EPA is overstepping its authority by requiring Harley-Davidson to implement an emissions mitigation project that lacks such a sufficient nexus to the underlying violation," the group wrote today in a letter to Pruitt, along with a FOIA request for documents related to the settlement negotiations.

ORDER AIMS AT BOOSTING ALASKAN ENERGY PRODUCTION: Interior Secretary Ryan Zinke signed an order Wednesday calling for a review of opportunities to increase oil drilling in Alaska. He directed Interior to examine whether oil production can increase in the National Petroleum Reserve in Alaska and assess how much oil and gas could be extracted from a piece of the Arctic National Wildlife Refuge, Pro's Ben Lefebvre reports. Officials have 31 days to develop a plan to implement his order. Zinke signed the order following a speech at an Alaska Oil and Gas Association conference in Anchorage. "Rules should be based on science and best practice not on arbitrariness," he said.

Alaska's congressional delegation hailed the move. "This Secretarial Order is exactly the type of announcement that so many Alaskans have been asking for: a smart, timely step to restore access to our lands, throughput to our Trans-Alaska Pipeline, and growth to our economy under reasonable regulations that do not sacrifice environmental protections," Senate Energy Chairman Lisa Murkowski said in a statement.

As for Paris, Zinke sidestepped a question on the climate change agreement that's on everyone's mind this week. Zinke told reporters in Alaska that he has "yet to read what the actual Paris agreement is," and declined to weigh in without having a chance to "sit down and read" it, the Associated Press reports.

RUSSIA LATEST COMPLICATION IN FILLING VACANCIES: Some potential federal appointees are having second thoughts about executive branch appointments given the ongoing investigations into the Trump campaign's ties with Russia, POLITICO's Andrew Restuccia and Josh Dawsey report. "You're going to have a situation where they're going to have trouble getting A-list or even B-list people to sign up," one lawyer advising potential appointees said. The administration has announced nominees for just 117 of the 559 most-important Senate-confirmed positions.

CASSIDY DOWNPLAYS PROPOSED EPA CUTS: Louisiana Sen. Bill Cassidy told attendees of a Covington, La. town hall meeting Tuesday that "EPA is not being dismantled" despite Trump's proposed cut of one-third of the agency's budget and efforts to roll back landmark Obama-era regulations addressing climate change and water quality, among other issues. "Certainly there are regulations being rolled back," Cassidy said. "But the Clean Water Act is still in place. There will not be mercury spewing out. All those regulations are still in place." (h/t Pro Health Care's Jennifer Haberkorn)

PERRY'S MOVE TOWARD JAPAN: Energy Secretary Rick Perry kicks off a week-long trip to Asia today. He'll stop in Japan and China. Stops include a trip to the Fukushima Daiichi nuclear site where Perry will look at efforts to recover from the 2011 earthquake and participation in the 8th Annual Clean Energy and Mission Innovation Ministerials in Beijing where energy ministers from around the world discuss clean energy efforts.

EPA BOOSTS EAST CHICAGO EFFORTS: Fresh off a visit to the East Chicago, Ind., Superfund site, Pruitt ordered a dedicated community coordinator deployed to the area of the contaminated site and vowed the agency would monthly community meetings to provide updates on cleanup progress. "We will take a more hands-on approach to ensure proper oversight and attention to the Superfund program at the highest levels of the agency," he said in a statement. More information is available here.

ZINKE TO FOCUS ON FOREST FIRES FRIDAY: Zinke and Agriculture Secretary Sonny Perdue will spend Friday in Boise, Idaho — the home of the National Interagency Fire Center — where the two will likely talk about forest fires and prevention techniques. The secretaries will also speak at Boise State University in the morning.

WATCHDOG QUESTIONS IF TILLERSON VIOLATED ETHICS PLEDGE: A nonprofit watchdog group launched to track the Trump administration's activities is questioning whether Secretary of State Rex Tillerson violated his ethics pledge. The group, American Oversight, is raising questions over reports Tillerson appeared at a signing ceremony between his former employer, Exxon Mobil, and the Saudi Basic Industries Corporation concerning a proposed petrochemical complex slated for Texas. American Oversight filed FOIA requests seeking any guidance or waivers issued to Tillerson regarding the signing ceremony, as well as photos of the

event and his calendar. Tillerson pledged during his confirmation process not to participate in any matters related to Exxon for one year.

MAIL CALL! STRENGTHEN ENVIRONMENTAL JUSTICE PROGRAM: Democratic Reps. Donald McEachin, Nanette Diaz Barragán and Pramila Jayapal released a letter to Pruitt urging him to build upon and strengthen EPA's environmental justice program. "We must act on climate change, recognizing that frontline communities have continually been most impacted by the effects of climate change," the letter, signed by 43 other congressmen, said. Their calls are likely to fall on deaf ears, though, given Trump's budget zeroed out the program.

MOVE THOSE FERC NOMS ALONG: The U.S. Chamber of Commerce sent a letter to the top Republican and Democrat on the Senate Energy Committee Wednesday, urging them to swiftly advance the nominations Robert Powelson and Neil Chatterjee for open slots on the quorumless FERC. "Mr. Powelson and Mr. Chatterjee have demonstrated a solid grasp on the subject matter within FERC's overview and have a demonstrated record of advocating policy over partisanship," Neil Bradley, chief policy officer for the Chamber, wrote.

PERRIELLO NABS McKIBBEN ENDORSEMENT: Two weeks ahead of the Virginia gubernatorial primary election, Tom Perriello picked up the endorsement of prominent environmentalist Bill McKibben on Wednesday. "Tom Perriello, for the first time in Virginia's political history, has stood up to Dominion Energy," McKibben said. "That's a smart move — what the politically connected utility wants to do is lock the Commonwealth into a future of pipelines and power plants, even as the energy landscape is changing fast in the direction of renewables."

NEEDS IMPROVEMENT: EPA needs to do better at tracking spending on contracts and grants to small businesses to develop and commercialize innovative technologies, GAO said in a report released Wednesday.

EDF PLANS CHALLENGE TO PRUITT METHANE ACTION: Joining the Natural Resources Defense Council, the Environmental Defense Fund announced Wednesday it would challenge Pruitt's decision to stay additional components of the agency's 2016 rule setting methane emissions limits for new oil and gas industry sources. "Colorado, Wyoming and Ohio, already have similar protections in place, which demonstrate the reasonableness of these clean air measures," Peter Zalzal, lead attorney for the group, said in a statement.

The American Petroleum Institute praised Pruitt's decision in its own statement. "As demonstrated through previous regulatory efforts, EPA's focus should be on cost-effective regulations that target emissions of volatile organic compounds, providing the co-benefit of methane emission reductions," the group said in statement.

QUICK HITS

— God 'can take care of' climate change if it's a real problem, congressman says. MLive.

— Lawsuit alleges EPA failed to protect Shenandoah River. AP.

— Trump is deciding on the Paris climate agreement with virtually no science advisers on staff. Vox.

— California, Canada are teaming up to fight climate change — again. USA Today.

— Controversial EPA chief skips Lexington speech, but groups still protest. Lexington Herald Leader.

— EPA sues over tailings near Park City. Salt Lake Tribune.

— Gas May Be Killing the Nuclear Option. Bloomberg.

HAPPENING TODAY

11:30 a.m. — API to release new report on safety, environmental stewardship, and benefits to local communities, RSVP: SammonB@api.org

12:30 p.m. — "The Political Economy of Forests: REDD+, Good Governance and Land Rights," World Resources Institute, 10 G Street NE, Suite 800

THAT'S ALL FOR ME!

To view online:
https://www.politicopro.com/tipsheets/morning-energy/2017/06/how-pruitt-bannon-outsmarted-ivanka-on-paris-023090

Stories from POLITICO Pro

How Bannon and Pruitt boxed in Trump on climate pact Back

By Andrew Restuccia and Josh Dawsey | 05/31/2017 08:00 PM EDT

Donald Trump's chief strategist and EPA administrator maneuvered for months to get the president to exit the Paris climate accord, shrewdly playing to his populist instincts and publicly pressing the narrative that the nearly 200-nation deal was effectively dead — boxing in the president on one of his highest-profile decisions to date.

Steve Bannon and Scott Pruitt have sought to outsmart the administration's pro-Paris group of advisers, including Trump's daughter Ivanka, who were hoping the president could be swayed by a global swell of support for the deal from major corporations, U.S. allies, Al Gore and even the pope. But some of that pro-Paris sentiment wound up being surprisingly tepid, according to White House aides who had expected that European leaders would make a stronger case during Trump's trip abroad earlier this month.

Those who want Trump to remain also faced an insurmountable hurdle: The president has long believed, rightly or wrongly, that the U.S. is getting a raw deal under the accord, and it proved nearly impossible to change his mind.

The internal reality show will culminate Thursday when Trump finally announces his decision, after a rush of leaks Wednesday from administration officials saying he was on the verge of pulling the plug on U.S. participation in history's most comprehensive global climate agreement.

"I will be announcing my decision on Paris Accord, Thursday at 3:00 P.M.," Trump tweeted Wednesday night, without revealing the outcome. "The White House Rose Garden. MAKE AMERICA GREAT AGAIN!"

Some White House aides held out the prospect that the president still might take the middle course that Ivanka Trump and others had advocated — staying in the deal while drastically scaling back the Obama administration's non-binding carbon cleanup promises. But three White House officials said Wednesday that they expect Trump to make a clean break by withdrawing from the agreement, though they noted it's possible the president changes his mind at the last minute.

In recent months, Pruitt and Bannon made sure Trump heard from a parade of conservative leaders and Republican lawmakers who raised concerns that the deal would hobble his pro-fossil-fuel energy agenda.

"We made very much the economic message argument," said Club for Growth President David McIntosh, whose group wrote letters to the White House and spoke to senior staff. "It was bad for the U.S. economy. It would stifle economic growth and the United States should withdraw."

As the news of the impending decision spread Wednesday, White House chief of staff Reince Priebus began calling and fielding calls from lawmakers, indicating that the U.S. was unlikely to stay in the agreement, one person familiar with the conversations said.

If he withdraws, Paris' foes will have Pruitt and Bannon to thank.

One Republican close to the White House called it the "classic split" and said conservative activists had flooded the White House in recent weeks, after seeing increasing chatter that Trump may stay in. This person said Bannon and Pruitt worked quietly to make sure Trump was hearing their side and touched base occasionally on political strategy to woo him.

"You had the New Yorkers against it, and all the campaign loyalists for it," this person said, referring to the push to withdraw. "When the New Yorkers get involved, it gets complicated for Trump and everyone else around him."

Pruitt and Bannon have told others repeatedly for months that Trump will pull out of the agreement, as they aggressively pushed a narrative that they hoped would prove to be true, even as White House aides continued to debate the issue.

"Some of the debate was for show to help the moderates feel like they had their say," said one person who has spoken to Pruitt. "Pruitt has believed all along that this was never in doubt."

Pruitt, who frequently attacked the EPA's regulations in court when he was Oklahoma's attorney general, used his new post as EPA administrator to orchestrate an aggressive campaign to marshal conservative opposition to the Paris agreement.

He bashed the deal during a closed-door April meeting of the National Mining Association's executive committee, telling the group that the agreement would hurt the economy. Pruitt's staff also urged lawmakers and conservative groups to publicly criticize the agreement, sources familiar with the issue told POLITICO, which had the effect of increasing public pressure on Trump.

Bannon similarly argued in meetings with Trump and his team that the president would be breaking his campaign promise to "cancel" the agreement if he decided to remain. And he argued that the accord is a bad deal for the United States because other countries aren't doing enough to curb their emissions.

Pruitt and Bannon's anti-Paris campaign was meant to counter a separate offensive by members of the administration who supported staying in the pact, including Ivanka Trump and her husband, Jared Kushner.

In recent months, Ivanka Trump set up a process in which the president would regularly hear from people who supported remaining in the agreement, according to administration officials.

The remain camp believed, perhaps naively, that Trump could be influenced by the support the Paris deal has received from major corporations, including Exxon Mobil, which Secretary of State Rex Tillerson led for more than a decade.

"Ivanka is doing what she can to get him to stay," one official said. "But that doesn't mean he's going to do it."

White House aides outlined a plan to remain in the agreement while weakening former President Barack Obama's pledge to cut domestic greenhouse gas emissions. They made the case that Trump could use the good will generated from remaining to negotiate better economic incentives for fossil fuels, and they even won the buy-in of several coal companies that detested Obama's climate policies.

They hoped European leaders could persuade Trump he would risk damaging diplomatic relations if he withdrew. Ivanka Trump also brought Gore to Trump Tower to try to sway her father's mind during the presidential transition, and Pope Francis handed the president a copy of his papal encyclical on climate change when the two men met at the Vatican last week.

Trump took calls from a parade of business leaders and foreign leaders in recent weeks, most pressing him to remain, according to a senior administration official — and the calls continued on Wednesday.

"He had tremendous pressure from international leaders, from members of his own Cabinet and advisers in the international sphere not to pull out of the accord because of the perceived loss of face," said McIntosh, the Club for Growth president.

But while the leaders of G-7 nations all pressed Trump to remain in the agreement during last week's summit in Italy, Paris supporters in the White House have privately groused that they didn't make an aggressive enough case.

European officials countered they tried not to push Trump too much during the meetings, believing that a hard-sell could backfire. And they were buoyed by early signals from White House officials ahead of the summit that Trump was open to remaining.

Indeed, European officials received a series of mixed messages from Trump's team during the summit. National Economic Council Director Gary Cohn, a Paris supporter and the only U.S. official permitted to attend meetings with G-7 leaders, told reporters that Trump was "evolving" on climate change, which many interpreted to mean that he would remain.

White House officials chalked up Cohn's comments to Trump's habit of echoing the perspective of the last person he talked to. By that time, Bannon and other opponents of the agreement had returned the United States. But Trump's decision to delay a final verdict on the agreement gave Pruitt and Bannon a final opportunity to make their case. Pruitt met with Trump to discuss Paris on Tuesday.

Most European officials were unwilling to comment about the prospect that Trump will withdraw, as they have not yet received official word from the White House and they are still holding out hope that the president will change his mind.

The officials have already begun looking to other countries for support on climate change, with the European Union set to promise deeper cooperation with China. Some officials have even adopted a new informal nickname for the major remaining countries that support action on climate change: the G-6.

Some Trump administration officials were reeling on Wednesday after the news first broke that Trump was prepared to withdraw.

Trump had not officially told his entire team of senior aides he was considering leaving the agreement Wednesday when news leaked out. "Everyone assumed that's what was going to happen, but we weren't called all in and told, 'Oh, we're putting this story out today," one person said.

Having learned a lesson after Trump changed his mind about pulling out of NAFTA, administration officials cautioned against definitive reporting, warning that the president is notoriously fickle. As administration officials began tamping down reports that Trump's decision was final, White House aides were swamped with calls, emails and texts from lobbyists and diplomats seeking clarification.

Officials close to Trump sometimes leak information before it is final — hoping to back him into a corner, or believing that comments during a private meeting represent his ultimate view. White House officials put out word in April that he was pulling out of NAFTA, even though Trump had not made up his mind, and news leaked during the campaign that he would pick Mike Pence as his running mate even as he weighed other candidates.

"Sometimes people close to Trump put things into the media environment to see how he'll react to it," one adviser said. "If your idea gets good coverage, it's likely to help him decide to go with what you're saying."

One of the biggest lingering questions: If he withdraws, how will Trump do it?

He could abide by the formal procedures in the underlying text of the agreement, which mandate that a formal withdrawal will not go into effect until at least Nov. 4, 2020. Or he could pull out of the United Nations Framework Convention on Climate Change, the underlying 1992 treaty that governs the negotiations, which would allow for a speedier pullout — a far more radical step that would see the U.S. abstain from the entire climate negotiating process.

He could also declare that the agreement is a treaty, which would require a two-thirds-majority ratification vote in the Senate that would certainly fail.

Whatever he does, supporters of the climate agreement expect a harsh reaction from the United States' friends if the country pulls out.

"I think the diplomatic backlash will be worse than it was when the U.S. rejected Kyoto," said Susan Biniaz, the State Department's longtime former climate change lawyer, referring to the George W. Bush administration's decision to spurn the 1997 Kyoto climate agreement.

One former U.S. official agreed: "Will global leaders trust the U.S. to negotiate a climate treaty ever again? After Kyoto and Paris, who will trust us to keep our word as a nation? Our credibility is gone."

To view online click here.

Back

How Bannon and Pruitt boxed in Trump on climate pact Back

By Andrew Restuccia and Josh Dawsey | 05/31/2017 08:00 PM EDT

Donald Trump's chief strategist and EPA administrator maneuvered for months to get the president to exit the Paris climate accord, shrewdly playing to his populist instincts and publicly pressing the narrative that the nearly 200-nation deal was effectively dead — boxing in the president on one of his highest-profile decisions to date.

Steve Bannon and Scott Pruitt have sought to outsmart the administration's pro-Paris group of advisers, including Trump's daughter Ivanka, who were hoping the president could be swayed by a global swell of support for the deal from major corporations, U.S. allies, Al Gore and even the pope. But some of that pro-Paris sentiment wound up being surprisingly tepid, according to White House aides who had expected that European leaders would make a stronger case during Trump's trip abroad earlier this month.

Those who want Trump to remain also faced an insurmountable hurdle: The president has long believed, rightly or wrongly, that the U.S. is getting a raw deal under the accord, and it proved nearly impossible to change his mind.

The internal reality show will culminate Thursday when Trump finally announces his decision, after a rush of leaks Wednesday from administration officials saying he was on the verge of pulling the plug on U.S. participation in history's most comprehensive global climate agreement.

"I will be announcing my decision on Paris Accord, Thursday at 3:00 P.M.," Trump tweeted Wednesday night, without revealing the outcome. "The White House Rose Garden. MAKE AMERICA GREAT AGAIN!"

Some White House aides held out the prospect that the president still might take the middle course that Ivanka Trump and others had advocated — staying in the deal while drastically scaling back the Obama administration's non-binding carbon cleanup promises. But three White House officials said Wednesday that they expect Trump to make a clean break by withdrawing from the agreement, though they noted it's possible the president changes his mind at the last minute.

In recent months, Pruitt and Bannon made sure Trump heard from a parade of conservative leaders and Republican lawmakers who raised concerns that the deal would hobble his pro-fossil-fuel energy agenda.

"We made very much the economic message argument," said Club for Growth President David McIntosh, whose group wrote letters to the White House and spoke to senior staff. "It was bad for the U.S. economy. It would stifle economic growth and the United States should withdraw."

As the news of the impending decision spread Wednesday, White House chief of staff Reince Priebus began calling and fielding calls from lawmakers, indicating that the U.S. was unlikely to stay in the agreement, one person familiar with the conversations said.

If he withdraws, Paris' foes will have Pruitt and Bannon to thank.

One Republican close to the White House called it the "classic split" and said conservative activists had flooded the White House in recent weeks, after seeing increasing chatter that Trump may stay in. This person said Bannon and Pruitt worked quietly to make sure Trump was hearing their side and touched base occasionally on political strategy to woo him.

"You had the New Yorkers against it, and all the campaign loyalists for it," this person said, referring to the push to withdraw. "When the New Yorkers get involved, it gets complicated for Trump and everyone else around him."

Pruitt and Bannon have told others repeatedly for months that Trump will pull out of the agreement, as they aggressively pushed a narrative that they hoped would prove to be true, even as White House aides continued to debate the issue.

"Some of the debate was for show to help the moderates feel like they had their say," said one person who has spoken to Pruitt. "Pruitt has believed all along that this was never in doubt."

Pruitt, who frequently attacked the EPA's regulations in court when he was Oklahoma's attorney general, used his new post as EPA administrator to orchestrate an aggressive campaign to marshal conservative opposition to the Paris agreement.

He bashed the deal during a closed-door April meeting of the National Mining Association's executive committee, telling the group that the agreement would hurt the economy. Pruitt's staff also urged lawmakers and conservative groups to publicly criticize the agreement, sources familiar with the issue told POLITICO, which had the effect of increasing public pressure on Trump.

Bannon similarly argued in meetings with Trump and his team that the president would be breaking his campaign promise to "cancel" the agreement if he decided to remain. And he argued that the accord is a bad deal for the United States because other countries aren't doing enough to curb their emissions.

Pruitt and Bannon's anti-Paris campaign was meant to counter a separate offensive by members of the administration who supported staying in the pact, including Ivanka Trump and her husband, Jared Kushner.

In recent months, Ivanka Trump set up a process in which the president would regularly hear from people who supported remaining in the agreement, according to administration officials.

The remain camp believed, perhaps naively, that Trump could be influenced by the support the Paris deal has received from major corporations, including Exxon Mobil, which Secretary of State Rex Tillerson led for more than a decade.

"Ivanka is doing what she can to get him to stay," one official said. "But that doesn't mean he's going to do it."

White House aides outlined a plan to remain in the agreement while weakening former President Barack Obama's pledge to cut domestic greenhouse gas emissions. They made the case that Trump could use the good will generated from remaining to negotiate better economic incentives for fossil fuels, and they even won the buy-in of several coal companies that detested Obama's climate policies.

They hoped European leaders could persuade Trump he would risk damaging diplomatic relations if he withdrew. Ivanka Trump also brought Gore to Trump Tower to try to sway her father's mind during the presidential transition, and Pope Francis handed the president a copy of his papal encyclical on climate change when the two men met at the Vatican last week.

Trump took calls from a parade of business leaders and foreign leaders in recent weeks, most pressing him to remain, according to a senior administration official — and the calls continued on Wednesday.

"He had tremendous pressure from international leaders, from members of his own Cabinet and advisers in the international sphere not to pull out of the accord because of the perceived loss of face," said McIntosh, the Club for Growth president.

But while the leaders of G-7 nations all pressed Trump to remain in the agreement during last week's summit in Italy, Paris supporters in the White House have privately groused that they didn't make an aggressive enough case.

European officials countered they tried not to push Trump too much during the meetings, believing that a hard-sell could backfire. And they were buoyed by early signals from White House officials ahead of the summit that Trump was open to remaining.

Indeed, European officials received a series of mixed messages from Trump's team during the summit. National Economic Council Director Gary Cohn, a Paris supporter and the only U.S. official permitted to attend meetings with G-7 leaders, told reporters that Trump was "evolving" on climate change, which many interpreted to mean that he would remain.

White House officials chalked up Cohn's comments to Trump's habit of echoing the perspective of the last person he talked to. By that time, Bannon and other opponents of the agreement had returned the United States. But Trump's decision to delay a final verdict on the agreement gave Pruitt and Bannon a final opportunity to make their case. Pruitt met with Trump to discuss Paris on Tuesday.

Most European officials were unwilling to comment about the prospect that Trump will withdraw, as they have not yet received official word from the White House and they are still holding out hope that the president will change his mind.

The officials have already begun looking to other countries for support on climate change, with the European Union set to promise deeper cooperation with China. Some officials have even adopted a new informal nickname for the major remaining countries that support action on climate change: the G-6.

Some Trump administration officials were reeling on Wednesday after the news first broke that Trump was prepared to withdraw.

Trump had not officially told his entire team of senior aides he was considering leaving the agreement Wednesday when news leaked out. "Everyone assumed that's what was going to happen, but we weren't called all in and told, 'Oh, we're putting this story out today," one person said.

Having learned a lesson after Trump changed his mind about pulling out of NAFTA, administration officials cautioned against definitive reporting, warning that the president is notoriously fickle. As administration officials began tamping down reports that Trump's decision was final, White House aides were swamped with calls, emails and texts from lobbyists and diplomats seeking clarification.

Officials close to Trump sometimes leak information before it is final — hoping to back him into a corner, or believing that comments during a private meeting represent his ultimate view. White House officials put out word in April that he was pulling out of NAFTA, even though Trump had not made up his mind, and news leaked during the campaign that he would pick Mike Pence as his running mate even as he weighed other candidates.

"Sometimes people close to Trump put things into the media environment to see how he'll react to it," one adviser said. "If your idea gets good coverage, it's likely to help him decide to go with what you're saying."

One of the biggest lingering questions: If he withdraws, how will Trump do it?

He could abide by the formal procedures in the underlying text of the agreement, which mandate that a formal withdrawal will not go into effect until at least Nov. 4, 2020. Or he could pull out of the United Nations Framework Convention on Climate Change, the underlying 1992 treaty that governs the negotiations, which would allow for a speedier pullout — a far more radical step that would see the U.S. abstain from the entire climate negotiating process.

He could also declare that the agreement is a treaty, which would require a two-thirds-majority ratification vote in the Senate that would certainly fail.

Whatever he does, supporters of the climate agreement expect a harsh reaction from the United States' friends if the country pulls out.

"I think the diplomatic backlash will be worse than it was when the U.S. rejected Kyoto," said Susan Biniaz, the State Department's longtime former climate change lawyer, referring to the George W. Bush administration's decision to spurn the 1997 Kyoto climate agreement.

One former U.S. official agreed: "Will global leaders trust the U.S. to negotiate a climate treaty ever again? After Kyoto and Paris, who will trust us to keep our word as a nation? Our credibility is gone."

To view online click here.

Back

Trump aides weighing staying in Paris deal, but rejecting Obama pledge Back

By Andrew Restuccia | 03/09/2017 03:08 PM EDT

Trump administration officials are considering a plan to remain part of the nearly 200-nation Paris climate change agreement, while weakening former President Barack Obama's pledge to reduce U.S. greenhouse gas emissions, multiple sources told POLITICO.

The plan has not yet won the buy-in of key Trump aides and the president has not signed off. Sources familiar with the plan cautioned that it remains in flux, and could be scuttled by Trump advisers who are critical of the agreement.

But keeping the U.S. in the 2015 Paris pact would be a victory for some in the Trump administration, including the president's daughter Ivanka and his son-in-law Jared Kushner, who have sought to boost the president's green credentials and fear that pulling out would damage relations with key U.S. allies. Many conservatives have been pushing President Donald Trump to withdraw from the deal altogether, as the president himself pledged to do during the campaign.

One way to square those conflicting imperatives would be to reject the pledge Obama offered as part of the 2015 Paris pact — a nonbinding target for reducing the United States' emissions of planet-warming greenhouse gas emissions. That's increasingly seen within the White House as a possible way forward.

Obama had pledged that by 2025 the U.S. would reduce its greenhouse gas emissions by 26 percent to 28 percent below where it was in 2005.

Weakening Obama's pledge would probably frustrate many American allies, who see the United States' commitment to tackling climate change as a bedrock of the Paris agreement. It would also reflect the likelihood that Trump's push to revoke key Obama environmental regulations would make it more difficult to meet the existing target.

George David Banks, a White House senior adviser on international energy and environmental issues, has briefed people outside the administration on the plan in recent days, according to people who have spoken with him.

Banks discussed the plan during a Thursday meeting with about a dozen fossil fuel industry officials, according to people familiar with the closed-door discussion.

Banks did not respond to a request for comment. A White House spokeswoman said, "We have no announcements to make at this time."

It's unclear when the Trump administration will announce a final decision on its approach to Paris. Sources cautioned a verdict may not be made public for weeks or even months, and could hinge on broader energy-related discussions with other countries.

Ivanka Trump and Kushner, a senior adviser to the president, have been strong advocates of staying in the agreement, sources said. And other advisers raised fears that withdrawing altogether would greatly damage U.S. diplomatic relations with other countries.

Trump's appointees are separately taking steps to revoke regulations requiring cuts in greenhouse gas pollution from the nation's power plants, among other rollbacks of Obama-era environmental rules.

Those regulations were the bulwark of Obama's promise that the United States, the world's second-largest carbon polluter, would do its share to address the problem — even though scientists have said steeper cuts are needed to avoid catastrophic harm from climate change.

Trump's advisers have sometimes been at odds over how to approach Paris — and Trump's chief strategist, Steve Bannon, is said to be advocating for withdrawing from the agreement. Bannon's influence with Trump could undercut the proposal to stay in the deal.

Some Trump supporters have even hoped he would pull out from the entire decades-old "framework" of United Nations climate negotiations. Such a step would have been even more extreme than former President George W. Bush's abandonment of the 1997 Kyoto climate accord, which made the U.S. an untrusted figure in international climate circles for years afterward.

To clinch the Paris agreement, the Obama administration had to pull off some tricky diplomatic gymnastics, bringing together rich and poor countries that had disagreed for decades about how to divide the burden of curbing the world's carbon output. The pact, reached in December 2015 after two weeks of negotiations in a Paris suburb, followed months of U.S. pressure on China and India to make their own commitments, despite arguments from the developing world that already-wealthy nations should be doing the lion's share.

Ultimately, the talks were successful because negotiators allowed countries to write their own domestic pledges to tackle climate change, rather than imposing across-the-board mandates to slash emissions.

Those pledges are largely nonbinding, which enabled Obama to avoid a politically disastrous ratification fight in the Senate. But that also makes it easier for Trump to change Obama's pledge.

Even if Obama's target remained in place, scientists and climate activists have warned that the deal won't cut carbon pollution enough to prevent the worst effects of climate change, including rising seas and worsening droughts and storms. Instead, they said, countries would need to steadily escalate their targets.

The agreement calls on countries to aim to limit global warming to "well below" 3.6 degrees Fahrenheit from pre-industrial levels, and it said countries should "pursue efforts" to keep temperature increases to 2.7 degrees Fahrenheit. Under a business-as-usual scenario, global temperatures could rise by 4.7 to 8.6 degrees Fahrenheit by the end of the century, according to scientists, an increase that would have catastrophic consequences for the planet.

To view online click here.

Back

States, cities to boost climate action as Trump's Paris withdrawal looms Back

By Eric Wolff | 05/31/2017 07:49 PM EDT

Amid news that President Donald Trump is preparing to withdraw the U.S. from the Paris climate agreement, several cities, states and private businesses are hoping to accelerate their efforts to fight climate change and fill any gap left by Washington.

Mayors of New York, Los Angeles and other cities are promising to maintain their own commitments to reduce their cities' carbon dioxide emissions, and New York Gov. Andrew Cuomo responded to Wednesday's leaks from the White House with a new proclamation that he would advance "bold" renewable energy goals.

While governments below the national level cannot officially sign onto the Paris agreement, Trump's expected move to pull out of the 2015 accord signed by 195 countries is prompting them to look for other paths they can follow to contribute to the international effort. Sources tell POLITICO that several states, municipalities, and business leaders are in early discussions to create a carbon reduction agreement that could be called a "Societally Determined Contribution," a name that aims to mimic the "Nationally Determined Contribution" that each of the Paris accord's members submitted.

Liberal states like New York and California have already launched efforts to fight greenhouse gas emissions, and climate change is becoming an issue in Virginia's gubernatorial race. And while questions remain whether states, cities and businesses have the political will and the capacity to make a significant contribution to reducing the pollution blamed for global warming, for climate activists,they offer the best chance to reduce emissions.

"Local governments, corporations, individuals, they're the ones who have made a difference in America, and not the Obama administration," said former New York Mayor Michael Bloomberg, now the U.N. Special Envoy for Cities and Climate change. "I think the danger and the damage that the Trump administration decision to pull out would [have] is more psychological -- it isolates us from the rest of the world, it sends exactly the wrong message."

Former President Barack Obama had pledged under the U.S.' Nationally Determined Contribution to reduce carbon dioxide emissions between 26 percent to 28 percent of 2005 levels by 2025. That promise, though not legally binding, was built on Obama's policies like the Clean Power Plan, which would have shrunk emissions at power plants but is now being unwound by Trump's administration.

Trump tweeted that he'd announce a decision in the "next few days," prompting calls from business heavyweights like Apple's Tim Cook and Tesla's Elon Musk to remain in the global deal, but the local and state leaders are working to develop their plan B to step in for the U.S. on the international climate scene, sources tell POLITICO.

Discussions are still very preliminary, but the participants are trying to come up with a combined carbon reduction from states, cities and businesses to replace the cuts that Trump is expected to eliminate. The structure and operation of the group behind the "SDC" is still unknown, as is the final target, whether it would set a single reduction target for the group or if there will be other clean energy or carbon reduction goals. Developing an agreement would require analysis to determine whether policies like California's carbon price and commitments like Facebook's promise to rely solely on renewable power could be merged, but proponents are hopeful they can find some way to set a target.

"It strikes folks as an obvious thing, a great way to show the international community that there's a lot going on in the U.S." said a source working to facilitate the conversations. "It is really

important to the international community to understand to avoid a knock-on effect of U.S. withdrawal on the actions of other countries."

Even without a binding document, states are moving into the space created by the absence of federal action. A group of 18 lawmakers led by Democratic Reps. Earl Blumenauer (Ore.), Jared Huffman (Calif.), and Suzan DelBene (Wash.). sent a letter to Govs. Kate Brown (Ore.), Jerry Brown (Calif.) , and Jay Inslee (Wash.), calling for them to act.

"Given the vacuum in climate leadership that has resulted from the election of Donald Trump, our states must continue to form a 'green wall' in the West that will maintain climate leadership in the United States. The Paris Agreement calls for significant reductions in greenhouse gas emissions, and if Donald Trump's administration won't lead, our states must," the lawmakers wrote.

Virginia Gov. Terry McAuliffe enacted a series of policies that will make the commonwealth "trading ready" for a carbon cap-and-trade program, a move seen as a precursor to Virginia's joining the nine-state Regional Greenhouse Gas Initiative. McAuliffe's successor will have to decide whether to take that next step, thrusting the issue into this year's gubernatorial race, where Republican candidates have been critical of his efforts.

To be sure, there may be limits to what the green-minded cities and states can do. California plus the nine states in RGGI comprised less than 14 percent of U.S. emissions in 2014, according to the Energy Information Administration, and they have been working toward decarbonization for years. Meanwhile, Texas, a state with an intensive energy industry and little appetite for carbon action, contributes nearly 12 percent of U.S. emissions on its own.

Pennsylvania and Illinois are the third and fourth biggest emitters among U.S. states, and both states have active coal-mining industries that would likely oppose aggressive state action. Pennsylvania Gov. Tom Wolf, who signed a letter calling on Trump to stay in the Paris agreement earlier this month, made joining RGGI a campaign promise, but has rarely mentioned it since taking office.

Critics of climate change policies say any state efforts are likely to have no effect, except to raise energy prices.

"Climate regulations at the state and local levels will still be all cost and no climate benefit but I would say that if states want to pursue climate policies that's their prerogative," said Nick Loris, an economist at the conservative Heritage Foundation. "There's also a matter of politics. Even a pretty liberal state like Washington couldn't get through an aggressive carbon tax policy because environmental groups didn't like that the money wasn't being spent on green technologies."

But for environmental leaders, like California's Brown, Trump's expected rejection of the Paris pact has only helped make the case for climate action clearer.

"This current departure from reality in Washington will be very short-lived, that I promise you," Brown told POLITICO in an interview. "I've spoken with Republicans here in the legislature, and they're beginning to get very serious about climate action, so the momentum is all the other way. And I think Trump, paradoxically, is giving climate denial such a bad name that he's actually building the very movement that he is [purporting] to undermine."

Helena Bottemiller Evich and David Siders contributed to this report

To view online click here.

Back

Brown: 'The rest of the world is against' Trump Back

By David Siders | 05/31/2017 04:10 PM EDT

LOS ANGELES — California Gov. Jerry Brown, one of the nation's foremost proponents of efforts to address climate change, on Wednesday called President Donald Trump's planned withdrawal from the Paris climate accord "outrageous," while predicting the effect of the move will be short-lived.

"This current departure from reality in Washington will be very short-lived, that I promise you," Brown told POLITICO in an interview. "I've spoken with Republicans here in the Legislature, and they're beginning to get very serious about climate action, so the momentum is all the other way. And I think Trump, paradoxically, is giving climate denial such a bad name that he's actually building the very movement that he is [purporting] to undermine."

Brown added, "You can't fight reality with a tweet."

News of the president's decision drew ire from Democrats and environmental groups across the country, nowhere more so than in California, where the state Senate hours later passed major climate legislation requiring utilities to obtain 100 percent of their electricity from renewable sources by 2045.

After the vote, state Senate President Pro Tem Kevin de León told reporters that Trump's decision is "distressing" but that California "will forge ahead."

Brown has been harshly critical of Trump on climate policy, but he said last week that he believed the Republican president to be a political "realist" and that progress on the issue might be "not as disastrous as we thought a few months ago."

On Wednesday, Brown said, "I don't think the Trump deviation will stand."

"Yes, he's making this announcement," the governor said. "But the rest of the world is against him. California is against him. New York is against him. We are for sensible, scientifically based climate action. And this is unfortunate, even tragic, but we will overcome it. And through Trump's outrageous action, the contrary movement is galvanized, and we're mobilizing people, states, provinces and working with other countries to move in a direction that is sustainable and is compatible with what we know we must do to survive."

Brown is preparing to travel this week to China, where he will participate in an international climate summit, meet with Chinese officials and rally support for local efforts to counteract the effects of climate change. The fourth-term Democratic governor, a longtime champion of environmental causes, has helped sign more than 170 mostly subnational governments to a nonbinding pact to limit greenhouse gas emissions.

Asked what he would tell Chinese officials about Trump, Brown said, "I don't think I'll have much to say about the president. I'll have a lot to say about California, and I'll have a lot to say about the 170-plus states and provinces that have joined with California in the 'Under 2' initiative."

To view online click here.

Back

All the ways Trump is shredding Obama's climate agenda Back

By Ben Lefebvre, Esther Whieldon, Darius Dixon, Alex Guillén and Andrew Restuccia | 05/31/2017 04:45 PM EDT

President Donald Trump's expected decision to withdraw the United States from the Paris climate agreement is a huge morale blow to the worldwide effort to head off the worst effects of global warming. But it's just the latest step in his determined campaign to erase Barack Obama's green agenda.

Pulling out of the Paris deal means that the United States — the world's second-largest producer of greenhouse gases — would no longer take part in the most comprehensive international pact ever crafted on climate change, joining Syria and Nicaragua as the only holdouts among nearly 200 nations.

But Trump's domestic environmental efforts will have the most immediate real-world impact on the planet's fate, by halting Obama's attempts to achieve steep cuts in U.S. carbon emissions and shift the country away from fossil fuels. The impact of those regulation rollbacks and other steps could be equivalent to adding almost 2 percent to the world's carbon output by 2025 compared with Obama's targets, based on recent analyses — at a time when climate researchers say the world urgently needs to accelerate its reductions.

This is POLITICO's rundown of the steps Trump has already set in motion:

Lifting limits on coal

— Trump ordered the Environmental Protection Agency to take the **first steps toward repealing** Obama's Clean Power Plan, a suite of curbs on greenhouse gas pollution from thousands of existing power plants. Those restrictions, and a separate regulation on future plants, would have encouraged power companies to shift away from coal.

— The administration lifted **Obama's freeze** on new coal leases on federal land, and **halted the Interior Department's formal environmental review** of coal leasing charges.

— Interior announced it will **repeal an Obama-era rule** that threatened to increase companies' royalty payments for coal, oil and natural gas they extract on federal lands.

— Energy Secretary Rick Perry ordered a 60-day review of tax and regulatory policies that "are responsible for forcing the premature retirement of baseload power plants," language suggesting the report will **criticize federal support for wind and solar power.**

Drill, baby drill

— Trump ordered Interior to **end restrictions on oil drilling in Arctic waters**, and told it to consider opening up the Atlantic coast for drilling.

— He ordered Interior to **rewrite a 2015 rule that called for tighter environmental standards** for fracked oil and gas wells on public lands. He also ordered reviews of a rule on offshore oil well safety, as well as one relating to air quality evaluations for offshore oil and gas drillers.

— He signed a **congressional repeal** of an Interior Department land-use planning update **after fossil fuel companies complained** it would hurt their access to federal lands.

— EPA withdrew a request for information from oil and gas companies about methane emissions from their operations. The Obama administration's request had been seen as an early step toward regulating those sources.

— Trump ordered the Commerce Department to **review all marine sanctuaries** established or expanded in the past 10 years **for possible oil and natural gas drilling** opportunities.

— He **reversed Obama's denial of a permit for the Keystone XL pipeline** and ordered the Army Corps of Engineers to allow final construction on the Dakota Access pipeline. Neither project would have much impact on the climate by itself, but the moves sent a strong signal of the administration's intention to increase fossil fuel production.

Rolling back regulations

— Trump ordered EPA to reopen its review of Obama's tightened automobile emissions standards for model years 2022-2025. The review is the first step toward **relaxing the standards.**

— The administration froze the rollout of several Energy Department **energy efficiency rules.**

— EPA is reviewing whether to continue a 2013 waiver that lets California impose stricter **air pollution limits** regulations than the federal government does on "non-road" diesel engines like bulldozers and tractors.

— EPA is **reviewing several regulations still in litigation**, including rules on mercury from power plants, ozone, wetlands and waterways, pollution from heavy-duty trucks, methane emissions from new oil and gas operations, coal plants' pollution discharges into waterways and refrigerants, plus a rule that would let citizen groups sue power plants that exceed emissions limits during startup, shutdown or malfunction.

Cutting climate and green energy programs

— Trump's 2018 budget request proposed a **31 percent cut to EPA's budget**, which especially **targeted its climate programs**. He also proposed cutting climate research at other agencies, including Interior's U.S. Geological Survey.

— EPA reassigned employees who had been working on adapting to the effects of climate change.

— Trump called for **eliminating DOE's loan program** and its Advanced Research Projects Agency-Energy, which supports commercially risky technologies aimed at reducing greenhouse gas emissions. The administration also sought **deep cuts to** offices devoted to fossil, nuclear and renewable energy as well as **energy efficiency.**

— DOE **placed a hold on** funding for nearly two dozen ARPA-E projects. Only three have gotten approval under the Trump administration.

To view online click here.

Back

Exxon shareholders win vote to build Paris climate pact into plans Back

By Ben Lefebvre | 05/31/2017 02:37 PM EDT

The Trump administration may be preparing to withdraw the U.S. from the Paris climate change accords, but shareholders at Exxon Mobil and at least one other U.S. oil company are demanding the companies incorporate the international deal in their business models.

Nearly two-thirds of Exxon's shareholders backed a proposal on Wednesday calling for the company to assess how climate change and global efforts to limit temperature increases will affect its business. The vote is non-binding, but the results show that the once-fringe idea of linking climate change to big oil's operations has gained momentum.

The vote at the Exxon annual shareholder meeting in Dallas came after investors in its smaller rival Occidental Petroleum earlier this month cast more than two-thirds of their votes for a measure calling for the company to assess how its business would be affected by the Paris climate change accord's target of holding global warming to 2-degrees. Company credit rating agency Moody's said last year it would start to use the Paris pledge to assess financial risk for corporations.

"Shareholders have spoken clearly on climate," said Danielle Fugere, president and chief counsel for As You Sow, a group that helps shareholders introduce environmental proposals. "If there's less demand for oil and the world is awash in oil, there's going to be more competition among these companies. Shareholders are trying to figure out who is the best bet."

Not all of these climate-related investor proposals succeeded, however. Chevron shareholders Wednesday morning rejected a motion that the company issue a report on how limiting global temperature increase to 2 degrees Celsius (3.6 degrees Fahrenheit) would affect its business. Only 27 percent of voting shareholders approved the proposal, down from more than 40 percent who voted for a similar proposal last year.

Exxon, Chevron and other energy companies facing such proposals argue that they are already taking the Paris agreement seriously and incorporating it into their business plans. Exxon in particular pointed out that it was developing technology that would capture the carbon emitted at natural gas power plans and then either store it or use it to produce more electricity.

"We believe the goal of carbon policy is to reduce emissions at the lowest cost to society," Exxon Chief Executive Darren Woods said at the shareholder meeting. "These goals led us to support the Paris Agreement." Woods sent President Donald Trump a letter earlier this month urging the U.S. to stay in the Paris deal.

For Exxon, the votes also illustrate how entangled the company has become in New York state climate change politics. The climate change proposal shareholders approved was partly sponsored by the New York State Common Retirement Fund, which is run by the State's comptroller. Meanwhile, the company is embroiled in a lawsuit with the New York and Massachusetts attorneys general over whether it withheld its own research on climate change from shareholders.

"The burden is now on Exxon Mobil to respond swiftly and demonstrate that it takes shareholder concerns about climate risk seriously," New York State Comptroller Thomas P. DiNapoli said in a prepared statement after the vote.

To view online click here.

Back

Feds reach settlement with Harley-Davidson over defeat devices Back

By Alex Guillén | 08/18/2016 12:32 PM EDT

Harley-Davidson riders may have to do a little less freewheel burning after the motorcycle maker agreed to stop selling defeat devices that had EPA spitting flames.

In a lawsuit and settlement announced today, the Justice Department and EPA allege that Harley-Davidson sold 340,000 "super tuners," after-market defeat devices that can be installed on motorcycles to boost their performance. But they also increase emissions of hydrocarbons and nitrogen oxides, which contribute to smog formation.

The company has agreed to buy back and destroy the devices, which it sold at dealerships across the U.S. since 2008. It also will pay a $12 million civil penalty and spend $3 million on air quality mitigation projects.

"Given Harley-Davidson's prominence in the industry, this is a very significant step toward our goal of stopping the sale of illegal aftermarket defeat devices that cause harmful pollution on our roads and in our communities," said John Cruden, DOJ's top environmental prosecutor.

The violations were discovered following a "routine" inspection, according to the agencies.

Any tuners Harley-Davidson looks to sell in the future will have to be approved by the California Air Resources Board.

DOJ and EPA also say Harley-Davidson sold more than 12,000 bikes from 2006 to 2008 that were not covered by a key EPA certification. The company agreed to have all future motorcycle models certified by EPA.

The deal is open to a 30-day public comment period and judicial approval.

To view online click here.

Back

Zinke signs order to promote oil drilling in Alaska Back

By Ben Lefebvre | 05/31/2017 05:27 PM EDT

Interior Secretary Ryan Zinke today signed an order aimed at sparking additional oil development in Alaska.

Interior will review the possibility of increasing oil production in the National Petroleum Reserve in Alaska and to assess how much oil and gas could be extracted from part of the Arctic National Wildlife Refuge.

The order seeks to revise BLM's Integrated Activity Plan to evaluate "efficiently and effectively maximizing the tracts offered for sale during the next NPR-A lease sale."

It also tells officials to come up with a plan to measure undiscovered, technically recoverable oil and natural gas resources of Alaska's North Slope, focusing in part on Section 1002 of the ANWR.

"Working with the Alaska Native community, Interior will identify areas in the NPR-A where responsible energy development makes the most sense and devise a plan to extract resources," Zinke said in a statement. "We will do it in a way that both respects the environment and traditional uses of the land as well as maintains subsistence hunting and fishing access."

Alaskan Republican Sens. Lisa Murkowski and Dan Sullivan hailed the move. Both senators have submitted bills this year in an attempt to jump-start energy production in the state.

The U.S Geological Survey in 2010 estimated the NPR-A held about 895 million barrels of economically recoverable oil and 52.8 trillion cubic feet of natural gas. In 1995, then-President Bill Clinton vetoed legislation Congress sent him that called for oil and gas exploration in the 1.5-million-acre Section 1002 of the ANWR.

WHAT'S NEXT: Interior officials have 31 days to come up with a plan to implement Zinke's directive.

To view online click here.

Back

Russia probe scares off potential appointees Back

By Andrew Restuccia and Josh Dawsey | 05/31/2017 05:05 AM EDT

President Donald Trump's effort to fill hundreds of vacant jobs across the federal government has hit a new snag: Russia.

Potential hires are paying close attention to the expanding investigations, which have now begun to touch senior Trump aides, with some questioning whether they want to join the administration.

Four people who work closely with prospective nominees told POLITICO that some potential hires are having second thoughts about trying to land executive branch appointments as federal and congressional investigations threaten to pose a serious distraction to Trump's agenda.

"It's an additional factor that makes what was an already complicated process of staffing the government even harder," said Max Stier, head of the Partnership for Public Service, which has advised the Trump transition on hiring.

According to the nonpartisan Partnership for Public Service, the White House has announced nominees for just 117 of the 559 most important Senate-confirmed positions.

That trails the records of Presidents Barack Obama and George W. Bush, who had each nominated about twice as many people by this point in the first year of their first terms.

Trump has not yet nominated a No. 2 at the Agriculture Department, Education Department, Department of Veterans Affairs or Environmental Protection Agency, and dozens of top positions at every federal agency remain vacant. Trump's nominees for deputy secretary of Commerce and Treasury both withdrew.

One lawyer who represents prospective political appointees told POLITICO that three clients said over the past two weeks that they are no longer interested in working for the Trump administration following the appointment of Robert Mueller as special counsel overseeing the federal investigation into Trump associates' contacts with Russian officials during the campaign.

"There's no doubt in my mind that people are being very cautious, to put it mildly," this lawyer said, adding that there is growing concern in Republican circles that the caliber of hires could deteriorate if the administration's top picks drop out.

"You're going to have a situation where they're going to have trouble getting A-list or even B-list people to sign up," the lawyer added.

Others agreed. "With all that is going on now, there is certainly a greater amount of hesitation," said a former government official who regularly speaks with one of Trump's Cabinet secretaries. "They have a real talent problem that continues to grow."

A White House spokeswoman said the Russia investigation and the series of news stories that have pummeled the administration in recent weeks have had no impact on hiring. She said the president is recruiting individuals "of the highest quality."

But the steady stream of palace intrigue stories about internal tensions and plans for a staff shakeup — after months of rumors about various senior officials getting pushed out — are making it harder to persuade people to join the administration, another White House official said.

White House communications director Michael Dubke said Tuesday he will leave his role, while Trump is weighing the possibility of bringing former campaign aides Corey Lewandowski and David Bossie into the White House.

"It's not the best place to work right now, but you're still working at the White House, so there are far worse jobs," the official said.

Former Bush and Obama administration officials who worked on personnel issues told POLITICO they never struggled to find qualified candidates for top jobs.

"I can't speak to Republicans not wanting to join this administration but, as a general matter, we didn't have trouble recruiting people — quite the opposite," said Lisa Brown, who served as White House staff secretary under Obama for two years.

Along with distracting from lower-level hires, the Russia probe has slowed and complicated the process of filling the administration's highest-profile vacancy — director of the FBI.

Trump administration officials have been frustrated by the difficulties they've faced in finding a new FBI director. Top White House officials, including chief of staff Reince Priebus and chief strategist Steve Bannon, hoped to have made a decision made by now.

Instead, leading candidates Sen. John Cornyn (R-Texas), Rep. Trey Gowdy (R-S.C.) and former Sen. Joe Lieberman have all withdrawn from consideration. The White House is now looking at a new field of candidates, and Trump met with two possibilities — John Pistole and Chris Wray — on Tuesday.

"It's not so easy to find an FBI director in the Trump administration," the White House official said.

The official added that Trump and his senior team are aware that hiring is not moving fast enough at agencies but said that, right now, "It's just not priority No. 1."

A second White House official said he was not aware of any potential nominees dropping out because of the recent news but echoed concerns that the Russia probe would inevitably add to further delays filling empty jobs.

"The problem we are likely to have is it may be difficult to get people to focus on hiring with all of this going on," the official said.

To view online click here.

Back

EPA to reconsider more provisions of oil and gas well emissions rule Back

By Alex Guillén | 05/31/2017 11:55 AM EDT

EPA today placed a 90-day stay on several additional portions of its 2016 rule setting methane emissions limits for new oil and gas industry sources.

The delay is needed as the agency considers several petitions to reconsider parts of the regulation, EPA said. The agency in April stayed some other portions of the rule, including fugitive emissions requirements, but today's announcement covers other key parts of the regulation.

Two more parts of the rule EPA will now reconsider are standards for well site pneumatic pumps and requirements for closed vent systems to be certified by a professional engineer, according to a Federal Register notice signed by Administrator Scott Pruitt on Friday and running soon.

Those requirements will be placed on hold for 90 days while EPA reviews them, and the agency "intends to look broadly at the entire 2016 Rule," not just the specific portions already identified, according to the notice.

EPA will have to take public comment on any proposed changes to the rule before finalizing them, and could subsequently face litigation.

WHAT'S NEXT: EPA will issue proposed changes to the rule's requirements and take public comment.

To view online click here.

Back

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

Yes, very | Somewhat | Neutral | Not really | Not at all

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 jackson.ryan@epa.gov by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

Message

From: Bowman, Liz [Bowman.Liz@epa.gov]
Sent: 5/10/2017 4:27:59 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]
CC: Graham, Amy [graham.amy@epa.gov]; Wilcox, Jahan [wilcox.jahan@epa.gov]; Ferguson, Lincoln [ferguson.lincoln@epa.gov]
Subject: FW: AP: Trump delaying decision on Paris Climate Deal, 5/9/17

Samantha/Ryan – Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

From: Wilcox, Jahan
Sent: Tuesday, May 9, 2017 4:47 PM
To: Graham, Amy <graham.amy@epa.gov>
Cc: Bowman, Liz <Bowman.Liz@epa.gov>
Subject: Re: AP: Trump delaying decision on Paris Climate Deal, 5/9/17

Ex. 5 - Deliberative Process

Sent from my iPhone

On May 9, 2017, at 4:45 PM, Graham, Amy <graham.amy@epa.gov> wrote:

Ex. 5 - Deliberative Process

High-profile supporters of the deal on Monday urged the U.S. to stay in the Paris accord. In a conference call organized by the liberal Center for American Progress, Brian Deese, a climate adviser to former President Barack Obama, said that "the race is on for which countries are going to be the 21st century clean energy super-powers."

From: So, Katherine
Sent: Tuesday, May 9, 2017 4:31 PM
To: AO OPA OMR CLIPS <AO_OPA_OMR_CLIPS@epa.gov>
Subject: AP: Trump delaying decision on Paris Climate Deal, 5/9/17

AP
http://hosted.ap.org/dynamic/stories/U/US_UNITED_STATES_CLIMATE_CHANGE?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT
Trump delaying decision on Paris Climate Deal
By Catherine Lucey and Michael Biesecker 5/9/17, 2:50PM

WASHINGTON (AP) -- President Donald Trump is delaying a decision on whether to withdraw from the landmark international climate deal struck in Paris under the Obama administration.

White House spokesman Sean Spicer said Tuesday that the president will not make an announcement on the agreement until after the G7 summit in Italy in the end of May. The White House had previously said a decision would be reached before Trump's appearance at the summit.

A meeting of top White House aides to discuss the agreement had been scheduled for Tuesday. But it was postponed. It was the second time a meeting of top aides on the issue had been delayed.

Spicer said Trump wants to "continue to meet with his team," seeking advice from both an economic and an environmental perspective as he works to make a decision.

Donald Trump pledged during the presidential campaign to renegotiate the accord, but he has wavered on the issue since winning the presidency. His top officials have appeared divided about what to do about the deal, under which the United States pledged to significantly reduce planet-warming carbon emissions in the coming decade.

Secretary of State Rex Tillerson, the former chief executive of the oil company Exxon, said at his Senate confirmation hearing in January that he supports staying in the deal. But Environmental Protection Agency Administrator Scott Pruitt has said the Paris pact "is a bad deal for America" that will cost jobs. Ivanka Trump, who serves as an adviser to her father, was supposed to meet separately Tuesday with Pruitt and Sen. Lisa Murkowski, R-Alaska. That meeting was also canceled, according to a White House official who requested anonymity to discuss private talks.

The Paris accord, signed by nearly 200 nations in 2015, was never ratified by the Senate due to the staunch oppositions of Republicans. It therefore does not have the force of a binding treaty, and the United States could potentially withdraw from the deal without legal penalty.

A senior administration official said the president's inclination has been to leave the pact, but Ivanka Trump set up a review process to make sure he received information from experts in the public and private sector before a making a decision. The official requested anonymity to discuss private conversations.

As speculation continues about how Trump will handle the agreement, Tillerson is set to travel to Alaska for an Arctic Summit council this week amid concerns from other nations that the Trump administration will undermine global efforts to address climate change in the Arctic, where rising temperatures are having a disproportionate effect.

David Balton, a top U.S. diplomat who works on environmental issues, said there would be "no change" in U.S. participation even if Trump ultimately decides to pull out of the Paris pact.

"The U.S. will remain engaged in the work that the Arctic Council does on climate change throughout," Balton said Monday.

In his prior post as the elected attorney general of Oklahoma, Pruitt closely aligned himself with the needs of the state's oil and gas industry. He repeatedly sued the EPA over restrictions on extracting and burning fossil fuels. Among the regulations he opposed in court was the EPA's Clean Power Plan, which sought to place new restrictions on carbon emissions from coal-fired power plants with the goal of helping the United States meet its commitments under the Paris accord.

Like Trump, Pruitt has questioned the consensus of climate scientists that man-made carbon emissions are the primary driver of global warming.
Over the weekend, the EPA administrator released a letter stating that under federal ethics standards he is obligated to recuse himself from legal cases he was involved with in his old job. However, in his letter Pruitt said his recusal does not extend to matters of "general applicability," such as making policy decisions involving current or future environmental regulations. The EPA contends, therefore, there is no ethical issue with Pruitt making decisions to roll back carbon limits he previously opposed in court, because those decisions affect the nation as a whole rather than just Oklahoma.

"Federal ethics rules distinguish between specific party matters such as an individual permit or lawsuit and matters that apply generally such as a nationally applicable regulation," said Kevi Minoli, the EPA lawyer who advises Pruitt on ethics issues.

High-profile supporters of the deal on Monday urged the U.S. to stay in the Paris accord. In a conference call organized by the liberal Center for American Progress, Brian Deese, a climate adviser to former President Barack Obama, said that "the race is on for which countries are going to be the 21st century clean energy super-powers."

Deese said the U.S. must decide whether to "continue to play in that race or step off the field."

Mindy Lubber, president of the nonprofit Ceres, which works with companies on sustainability issues, said that investors around the world are "eager to open their wallets to a low-carbon future."

"We must stay in Paris, we must pass on a healthy economy and a healthy environment to our children," Lubber said.

Katherine So
Office of Media Relations Intern
U.S. Environmental Protection Agency
Telephone: (202)-564-4511
so.katherine@epa.gov

Message

From: Myron Ebell [Myron.Ebell@cei.org]
Sent: 5/8/2017 2:17:12 PM
To: Myron Ebell [Myron.Ebell@cei.org]
Subject: Cooler Heads Coalition alert : Joint Letter to President Trump on the Paris Climate Treaty
Attachments: Letter to President Trump on Paris Climate Treaty from CEI, AEA, and 39 organizations, 8 May 2017.pdf

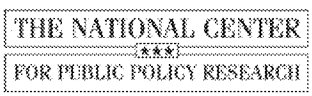
Please find the PDF of our joint letter attached.

Here is the link: https://cei.org/content/forty-free-market-groups-urge-trump-withdraw-paris-climate-agreement.

Here is the link to our press release: https://cei.org/content/cei-and-aea-lead-coalition-forty-free-market-groups-urging-trump-withdraw-paris-climate.

Also here is the link to an AP story, which shows what we are up against: http://www.timesofisrael.com/ivanka-trump-to-review-climate-change-as-us-mulls-paris-pullout/.

Myron Ebell
Director, Center for Energy and Environment
Competitive Enterprise Institute
1310 L Street, N. W., Seventh Floor
Washington, DC 20005, USA
Tel direct: Ex. 6 - Personal Privacy
Tel mobile
E-mail: Myron.Ebell@cei.org
Stop continental drift!



May 8, 2017

The Honorable Donald J. Trump
President of the United States
The White House
1600 Pennsylvania Ave., N.W.
Washington, D.C. 20500

Dear Mr. President,

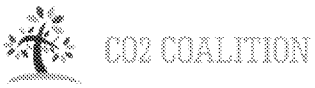
We, the undersigned, write in enthusiastic support of your campaign commitments to withdraw fully from the Paris Climate Treaty and to stop all taxpayer funding of UN global warming programs. We were heartened by the comments you made at your 100-day rally in Harrisburg and agree that the treaty is not in the interest of the American people and the U. S. should therefore not be a party to it.

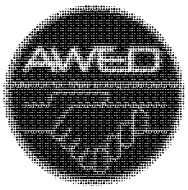
Withdrawing from the Paris Climate Treaty is an integral part of your energy agenda. The Obama administration's Nationally Determined Contribution (or NDC) to the Paris Climate Treaty commits the United States to take actions that will reduce greenhouse gas emissions by 17% below 2005 levels by 2020 and by 26% to 28% below 2005 levels by 2025. Paris then requires a more ambitious NDC every five years in perpetuity.

The NDC cites specific policies undertaken by the Obama administration as part of the NDC. These include: the greenhouse gas emissions rules for existing (the "Clean Power" Plan) and new power plants; Corporate Average Fuel Economy (CAFE) standards for vehicles; methane emissions rules for the oil and gas sector and for landfills; and energy efficiency and conservation standards for buildings and appliances.

Environmental pressure groups and several state attorneys general have begun to prepare lawsuits in federal court to block withdrawal of the "Clean Power" Plan and other greenhouse gas rules. One argument that they have already put forward is that these rules cannot be withdrawn because they are part of our international commitment under the Paris Climate Treaty. Failing to withdraw from Paris thus exposes key parts of your deregulatory energy agenda to unnecessary legal risk. The AGs revealed in a recruiting letter that they also plan other lawsuits "ensuring that the promises made in Paris become reality."

Some officials in your administration are relying on recent statements from former Obama administration officials that the U. S. can withdraw its NDC and submit a new NDC that makes far less ambitious commitments to reduce greenhouse gas emissions. The clear language of Article 4 of the Paris Climate Treaty contradicts that claim. Section 11 states: "A Party may at any time adjust





its existing nationally determined contribution ***with a view to enhancing its level of ambition***" (*emphasis added*).

Even if the U. S. were to be cleared by UN officials to submit a less ambitious NDC, this is not the end of the threats posed by the Paris Climate Treaty to your pro-energy agenda and to the economic future of our country. Article 4 requires each party to submit a more ambitious NDC at least every five years in perpetuity. This commitment to reduce fossil fuel use every five years cannot be wished away by those who argue that the U. S. should keep a seat at the negotiating table in order to advocate for fossil fuels.

In urging you to keep your campaign commitment, we recognize that there are several options for you to withdraw the U.S. from Paris. Of the three options listed below, we think the first two are preferable to the third.

First, you could submit the Paris Climate Treaty to the Senate for its advice and consent with a recommendation that the treaty not be ratified. Submitting the treaty to the Senate would return us to and restore the proper constitutional method for treaty-making and require a future administration to go through proper procedures if it were to attempt to rejoin the treaty.

Second, you could withdraw from the underlying UN Framework Convention on Climate Change (UNFCCC). This action would also achieve your commitment to "stop all payments of the United States tax dollars to UN global warming programs," including the Green Climate Fund, which is a part of the UNFCCC.

Third, you could announce your intention to withdraw the U. S. from the Paris Climate Treaty according to the four-year schedule specified in the treaty and continue the process of repealing the regulations that the previous administration submitted as part of its NDC. This option is the least preferable because it runs the risk of legitimizing the Obama administration's false claim that the treaty is merely an executive agreement.

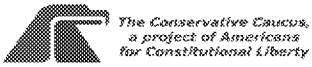
The undersigned organizations believe that withdrawing completely from Paris is a key part of your plan to protect U.S. energy producers and manufacturers from regulatory warfare not just for the next four years but also for decades to come. We will strongly support your decision to keep your campaign commitment to withdraw from the Paris Climate Treaty.

Sincerely,

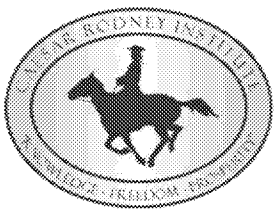
Myron Ebell, Director, Center for Energy and Environment
Competitive Enterprise Institute

Thomas J. Pyle, President
American Energy Alliance

Joseph Bast, President
The Heartland Institute



EAGLE FORUM
EDUCATION & LEGAL DEFENSE FUND



LIBERTY • OPPORTUNITY • PROSPERITY

FAITH & FREEDOM
FOUNDATION

Grover G. Norquist, President
Americans for Tax Reform

Chrissy Harbin, Vice President of External Affairs
Americans for Prosperity

Michael Needham, CEO
Heritage Action for America

Michael Costigan, Senior Advisor, Strategic Outreach
The Heritage Foundation

James L. Martin, Founder and Chairman
60 Plus Association

Craig Rucker, Executive Director
Committee For A Constructive Tomorrow

David Ridenour, President
National Center for Public Policy Research

Thomas Schatz, President
Citizens Against Government Waste

Craig Richardson, President
Energy and Environment Legal Institute

Tom DeWeese, President
American Policy Center

Richard Manning, President
Americans for Limited Government

Phil Kerpen, President
American Commitment

David Williams, President
Taxpayers Protection Alliance

Mario H. Lopez, President
Hispanic Leadership Fund

David Bozell, President
For America

Kenneth Haapala, President
Science and Environmental Policy Project

Craig D. Idso, Chairman
Center for the Study of Carbon Dioxide and Global Change

William Happer, President
The CO2 Coalition

E. Calvin Beisner, Founder and National Spokesman
Cornwall Alliance for the Stewardship of Creation

John Droz, Jr., Founder
Alliance for Wise Energy Decisions

Timothy Lee, Senior Vice President of Legal and Public Affairs
Center for Individual Freedom

Peter J. Thomas, Chairman
Americans for Constitutional Liberty

Ed Martin, President
Eagle Forum Education and Legal Defense Fund

Amy Oliver Cooke, Executive Vice President
Independence Institute (CO)

David T. Stevenson, Director, Center for Energy Competitiveness
Caesar Rodney Institute (DE)

Paul Gessing, President
Rio Grande Foundation

Kory Swanson, President and CEO
John Locke Foundation

Francis De Luca, President
Civitas Institute

Forest Thigpen, President
Mississippi Center for Public Policy

Eldon Alexander, President
Faith and Freedom Foundation

Lynne Roberts, President
Americans United for Freedom

Rich Johns, President
Liberty Tree Alliance

Aileen Milton, President
The Villages Tea Party

Debbie Gunnoe, President
Navarre Patriots

Sam Mullins, Co-Founder
Santa Rosa Tea Party Patriots

Hon. Mike Hill, Founder
Northwest Florida Tea Party

Stephani Scruggs Bowen, COO
Coalition for a Strong America

Alan Moran, Director
Australian Environment Foundation

Message

From: Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]
Sent: 4/24/2017 8:52:17 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: Paris Docs
Attachments: Paris Agreement EPA.pdf; Additional Points on Paris.docx; Paris Agreement_response.docx; 115 Pitch Document.pdf

See attached:

1. PDF is from last week
2. Additional Points are from last week
3. Response doc is addressing what Cohn brought up to SP this weekend.
    a. The pitch document is relevant to the response – shows what the dems/enviros had planned if Clinton won.

Final Paris Points

The 26 to 28% percent reduction commitment by the previous administration is an effective baseline for action under the Paris Agreement: The US Nationally Determined Contribution (NDC) characterized the commitments as the first step in a "long range, collective effort to transition to a low-carbon global economy as rapidly as possible."

- The US NDC makes clear that the goal is to reach a "deep, economy-wide emission reduction of 80% or more by 2050."
- "Ratcheting Up" Provision: Paris Agreement parties are required to submit a new commitment every five years starting in 2020 reflective of the "ratcheting up" provision that requires commitments to be more ambitious than the previous submission. There is no provision that allows for reduced commitments.

The Green Climate Fund is intimately connected to the Paris Agreement: The Paris Agreement does not explicitly refer to the GCF for one strategic reason – to avoid the U.S. Senate. Yet, the Agreement is structured to include the GCF by referencing the overarching "Convention".

- As one international consultant firm explained in February 2016: "The reason both quantitative targets are missing from the actual Agreement is a pragmatic one – in doing so the COP has enabled the US President to adopt the Agreement as 'sole-executive agreement' under US law, without the requirement for the US Senate to approve."[1]
- The relationship is captured in Article 9.8 of the Agreement, which recognizes that "the Financial Mechanism of the Convention, **including its operating entities**, shall serve as the financial mechanism of this Agreement."
- The Green Climate Fund is one of the main operating entities under the United Nations Convention on Climate Change, which is the overarching treaty ratified by US in 1992.

Paris Agreement creates legal exposure and an obligation to regulate: Staying in Paris leaves in place a mechanism by which environmentalists and Obama's activist judges could compel the EPA to put in place a future Clean Power Plan or worse.

- Even if the US NDC commitment is reduced, it still compels regulatory action covering top greenhouse gas (GHG) emitters in this country. The Clean Power Plan was step one and covered power plants. Environmentalists hoped to use the Clean Power Plan as a template for action covering refineries, chemical plants, cement plants and every industrial sector in the U.S.
- Further, environmentalists hope to use the Paris Agreement to trigger Section 115 of the Clean Air Act. The architects of the Cap and Trade legislation that failed in Congress created a "Pitch Document" laying out their plan.
- Prior to the elections environmentalists and democrats were candid about the Paris Agreement and Section 115:

[1] Climate Focus, "Green Climate Fund and the Paris Agreement, February 2016, available at: http://www.climatefocus.com/sites/default/files/GCF%20and%20Paris%20Brief%202016.new_.pdf

- Former Sierra Club General Counsel in June 2016: "It is the silver bullet de jour of the enviros, and they are dead serious about this."

This is not an either or situation – Getting out of Paris allows us to renegotiate a better deal: Getting out of Paris does not limit future conversations with the same international parties about a better deal or approach to climate. We will still have a seat at the table.

- The U.S. is the best in the world at balancing sound stewardship of our environment with economic growth and job creation.
- Carbon dioxide emissions are to pre-1994 levels and we lead the world in energy extraction innovations as apparent by the natural gas boom.
- Paris to Pittsburgh - Americans should not apologize for its successes, but continue to advance and share them with the rest of the world.

Message

From: Myron Ebell [Myron.Ebell@cei.org]
Sent: 4/17/2017 6:31:16 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: Embargoed Paris Paper
Attachments: Chris Horner and Marlo Lewis - Paris Climate Agreement - EMBARGOED.pdf

Dear Samantha, I forgot to send you this paper earlier this afternoon. It's going to be published soon. And yes, I look forward to getting together when you have a half hour or an hour. Yours, Myron.

More than you ever wanted to know about the Paris Climate Treaty by Marlo and Chris. Some much shorter talking points to follow.

Myron Ebell
Director, Center for Energy and Environment
Competitive Enterprise Institute
1310 L Street, N. W., Seventh Floor
Washington, DC 20005, USA
Tel direct: Ex. 6 - Personal Privacy
Tel mobile
E-mail: Myron.Ebell@cei.org
Stop continental drift!

The Paris Climate Agreement Is a Treaty Requiring Senate Review

By Christopher Horner, Esq. and Marlo Lewis, Jr., Esq.

Executive Summary

President Trump should keep his two-part campaign promise to both cancel U.S. participation in the Paris Climate Agreement and stop all payments to United Nations global warming programs. The Paris Agreement is a costly and ineffectual solution to the alleged climate crisis. It is also plainly a treaty, yet President Obama purported to adopt it without asking for the Senate's advice and consent. Failure to withdraw from the agreement would entrench a constitutionally damaging precedent, set President Trump's domestic and foreign policies in conflict, and ensure many years of diplomatic blowback.

For those and other reasons, the Paris Agreement imperils both America's economic future and capacity for self-government.

The Paris Agreement and the 1992 treaty it purports to modify, the United Nations Framework on Climate Change, both contain provisions for withdrawal. The Senate can entertain it as the treaty it is. Concerns about "diplomatic blowback" if President Trump withdraws from the Agreement or submits it for the Senate's advice and consent actually confirm the wisdom of exercising one of those options. The Paris Agreement is designed to institutionalize a running campaign of diplomatic blowback unless the U.S. submits to ever-tightening constraints, spiking every five years. If Trump withdraws, any diplomatic blowback would largely be a muted one-off event, without the economic, political and security costs that staying in Paris entails.

To safeguard America's economic future and capacity for self-government, President Trump should pull out of the Paris Agreement. There are several options for doing so, which are discussed in this paper. Regardless of which option Trump selects, his administration should make the case for withdrawal based on the following key points:

1. The Paris Agreement is a treaty by virtue of its costs and risks, ambition compared to predecessor climate treaties, dependence on subsequent legislation by Congress, intent to affect state laws, U.S. historic practice with regard to multilateral environmental agreements, and other common-sense criteria.

2. In America's constitutional system, treaties must obtain the advice and consent of the Senate before the United States may lawfully join them. President Obama deemed the Paris Agreement to not be a treaty in order to evade constitutional review, which the Agreement almost certainly would not have survived.

3. Allowing Obama's climate coup to stand will set a dangerous precedent that will undermine one of the Constitution's important checks and balances. It will allow future presidents to adopt any treaty he and foreign elites want, without Senate ratification, just by deeming it "not a treaty."

4. The Agreement endangers America's capacity for self-government. It empowers one administration to make legislative commitments for decades to come, without

NOT PRODUCED FOR PUBLICATION

ED_0011318_00007024-00001

congressional authorization, and regardless of the outcome of future elections. It would also make U.S. energy policies increasingly unaccountable to voters, and increasingly beholden to the demands of foreign leaders, U.N. bureaucrats, and international pressure groups.

5. The United States cannot comply with the Paris Agreement and pursue a pro-growth energy agenda. Affordable, plentiful, reliable energy is the lifeblood of modern economic life. Yet, the Paris Agreement's central goal is to make fossil fuels, America's most plentiful and affordable energy source, more expensive across the board. Implementing the agreement's progressively more restrictive five-year emission-reduction pledges—called Nationally Determined Contributions (NDCs)—would destroy U.S. manufacturing's energy price edge.

6. The Agreement entails more cost and risk than the country is willing to bear. A majority of states have sued to overturn the Obama EPA's end-run around Congress, the Clean Power Plan, which is also the centerpiece of the U.S. NDC under the Paris Agreement. Yet, the CPP is only a start. All of Obama's adopted and proposed climate policies would only achieve about 51 percent of just the first NDC, and the Paris Agreement requires parties to promise more "ambitious" NDCs every five years.

7. The Agreement has no democratic legitimacy. President Obama kept mum about climate change during the 2012 elections. Only after being reelected did he unveil a climate agenda featuring an EPA-redesigned electric power system and the most "ambitious" climate agreement in history.

8. Withdrawing from the Paris Agreement is a humanitarian imperative. The Agreement will produce no detectable climate benefits. Instead, it will divert trillions of dollars from productive investments that would advance global welfare to political uses. Worse, the Agreement's mid-century emission-reduction goals cannot be achieved without drastically reducing energy-poor countries' current access to affordable energy from fossil fuels.

For all the foregoing reasons, President Trump should stick to his campaign promises to end America's participation in the Paris Climate Agreement and stop payments to the U.N. Green Climate Fund.

NOT FOR CIRCULATION

ED_0011318_00007024-00002

Introduction

President Trump should keep his two-part campaign promise to cancel U.S. participation in the Paris Climate Agreement and stop all payments to United Nations global warming programs.[1] As several studies have shown, the Paris Agreement is a costly and ineffectual solution to the alleged climate crisis. The Paris Agreement is also plainly a treaty. For this and other cited reasons, this paper makes the complementary case that, left as is, the Paris Agreement imperils both America's economic future and capacity for self-government. Failure to withdraw from the agreement would entrench a constitutionally damaging precedent, set the president's domestic and foreign policies in conflict, and ensure decades of diplomatic blowback.

President Trump is already taking steps to rescind the Clean Power Plan and other greenhouse gas (GHG) emission-reduction policies President Obama promised to the 21st Conference of the Parties (COP) to the United Nations Framework on Climate Change (UNFCC).[2] However, Obama had no authority to make such commitments in the first place.

The Paris Agreement is a treaty by virtue of its costs and risks, ambition compared to previous climate treaties, dependence on subsequent legislation by Congress, and other common-sense and long-respected criteria. Under the U.S. Constitution, treaty making is a shared power between the president and Congress. However, Obama refused to submit the pact to the Senate for its advice and consent, because there is no chance of obtaining the requisite support of "two thirds of the Senators present."[3] Instead, he simply, and without precedent, declared the sweeping pact it an "executive agreement" that he could undertake unilaterally.

In short, President Obama tried to imbue his climate agenda with a treaty-like status, but without going through the treaty process. Such a gamble might have worked had Hillary Clinton won the White House and Republicans lost the Senate. But the Paris Agreement could still undermine Trump's energy and deregulatory agendas if he tries to split the policy baby—dismantle Obama administration climate policies while staying in a pact that purportedly makes those policies promises to the world, while mobilizing political pressure to keep those "commitments."

Failure to withdraw also invites climate policy litigation, already intended by NGOs and activist attorneys general, because joining the Paris Agreement tacitly affirms the preferred narrative that climate change is humanity's greatest peril and "inaction" threatens millions of lives.

U.S. industry has a huge energy price advantage over its global competitors, which underpins the American manufacturing revival Trump campaigned on. The climate policies required to meet President Obama's emission reduction commitments under the Paris Agreement would destroy that edge. Obama pledged to reduce U.S. emissions by 26 to 28 percent below 2005 levels by 2025, with deeper cuts every five years thereafter. That is already significant, but he went much further. He also committed the United States to rapidly phase out fossil fuels over 35 years.[4]

Therefore, President Trump should withdraw from the Paris Agreement to dispel the long shadow it casts on America's energy producers and job creators, and to annul the precedential force of Obama's attempted end-run around the constitutional treaty process. If Trump does not do so, any future president who wants to join an unpopular or unwise treaty will feel free to simply deem it an "executive agreement" to evade Senate review. Repairing that breach in the constitutional fabric is reason enough alone to withdraw from the Agreement.

ED_0011318_00007024-00003

There are several withdrawal options, each with its own relative benefits and risks. The quickest and most durable option is to withdraw from the 1992 parent treaty, the United Nations Framework Convention on Climate Change. All are described below.

Climate Coup

The December 2015 Paris Agreement is a treaty by virtue of its costs, risks, prescriptiveness, "ambition" compared to previous climate treaties, dependence on subsequent legislation, intent to affect state laws, U.S. historic practice, and other common-sense criteria.[5] Thus, America cannot constitutionally join the Agreement absent the Senate's advice and consent. President Obama ignored those criteria, which are detailed in a well-known State Department Circular,[6] to which President Trump should refer in following through on his promise to exit the pact.

To evade Senate review, President Obama claimed the Paris Agreement is not a treaty, even after describing it as "the most ambitious climate change agreement in history."[7] Worse, the Obama administration took the position that the executive alone may determine which agreements are treaties and which are not. Acceptance of this reasoning would allow the executive to adopt any treaty at whim by simply deeming it "not a treaty." Thus, the Paris Agreement threatens to reduce the Senate's "advice and consent" function to a mere rubber stamp for uncontroversial agreements.

Proponents of the Paris Agreement—including, we are informed, some career State Department lawyers advising the Trump White House on the matter—dismiss that danger by claiming it is "non-binding." In fact, the Agreement's numerous procedural commitments—which address reporting, monitoring, verification, committee functions, and conferences—are binding under international law. However, proponents in effect claim the addition of substantive non-binding provisions somehow makes the entirety "not a treaty."

The Agreement has two principal, substantive commitments:

9. Five-year emission-reduction pledges called Nationally Determined Contributions (NDCs); and

10. Foreign aid pledges called "climate finance."

Signatory countries are legally obligated to make such promises, but are not legally obligated to keep them. However, for the United States, that is a distinction without a difference. As all parties are aware, it is U.S. practice to keep the country's promises, and the American people expect their leaders to do so. As designed by Obama administration officials, the Paris climate regime would create plenty of opportunities for America to be "named and shamed" into keeping Obama's non-binding promises.[8] The Paris Agreement is the framework document for a multi-decade, global, political-pressure campaign by climate activists and their political allies to force the U.S. and other industrialized nations to suppress the production and use of the United States'—and the world's—most affordable, reliable, and abundant energy sources.

The Agreement provides for the creation or continuation of at least 17 multilateral committees specializing in such matters as mitigation, adaptation, compliance, implementation, technology transfer, and finance. Some eight committees may have a role in monitoring Nationally Determined Contributions and related actions.[9] Nearly a dozen committees may have a role in

ED_0011318_00007024-00004

debating, monitoring, and reporting on financial contributions.[10] In addition, every annual Conference of the Parties meeting will provide a forum for 160-plus developing countries to demand more foreign aid under the name of "climate finance."

In short, the Paris Agreement envisions endless rounds of meetings and reports creating endless media opportunities to "name and shame"[11] countries whose governments question the alleged climate consensus, deviate from their five-year NDC plans, or fail to make more "ambitious" commitments every five years.[12] Inevitably, the United States will face relentless political pressure to promise much, and to keep the initial and all subsequent promises. Thus, concerns about "diplomatic blowback" if Trump withdraws from the Agreement actually confirm the wisdom of pulling out. The Paris Agreement is constructed to institutionalize a running campaign of diplomatic blowback, spiking every five years.

Moreover, the Paris Agreement will grow the U.S. administrative state while aligning it with an international coalition beyond the reach of U.S. voters. The U.S. Environmental Protection Agency (EPA)—an agency already prone to overreach—would lead the development and implementation of U.S. commitments under the Agreement. Federal climate regulators would become even less accountable to Congress, as they work "cooperatively" with their counterparts in foreign governments, multilateral organizations, and "civil society" pressure groups.

The Paris Agreement is hard-wired to narrow the American people's policy options and political choices in three ways:

1. Pressure President Obama's successors, future Congresses, and even courts to uphold the Clean Power Plan and other climate regulations by rebranding those policies as "promises" America has made to the world.

2. Pressure future U.S. policy makers to pledge increasingly "ambitious" Nationally Determined Contributions every five years starting in 2020, implement those promises via ever-more stringent regulations, and grow the international echo chamber via ever-more lavish "climate finance" handouts.

3. Make U.S. energy policies increasingly unaccountable to voters, and instead increasingly beholden to the demands of foreign leaders, U.N. bureaucrats, and environmental lobbyists.

In short, in addition to licensing an unconstitutional power grab, the Paris Agreement is a mechanism to lock in progressive policies regardless of electoral outcomes.

The Paris Agreement and the Trump Administration—Engineering Policy Conflict

Trump's advisors are reportedly divided on whether he should keep his campaign promise to cancel America's participation in the Paris Agreement.[13] At the same time, a White House spokesperson says that even if Trump stays in the Agreement, he will "knock out"[14] Obama's Climate Action Plan,[15] for which he has now issued an executive order.[16] Yet, the Agreement is the Action Plan's capstone, committing the United States to preserve that Plan and strengthen it.

Rescinding Obama's climate policies and maintaining the Paris Agreement are irreconcilable objectives. Such baby-splitting would commit the Trump administration to conflicting policy

ED_0011318_00007024-00005

directions, hobble his deregulatory and energy agendas, and put America in a political straitjacket hostile to the administration's policies.

The pro-Paris camp is itself conflicted. On the one hand, beguiled by Obama's claim the Agreement is "non-binding," "non-enforceable," and, thus, supposedly, "not a treaty," they view it as posing no threat to anything conservatives care about. On the other hand, they warn that withdrawing from treaty will provoke political and diplomatic blowback, second only to withdrawing from NATO,[17] which implies it carries grave responsibilities and has teeth.[18]

They supposedly worry about upsetting allies who claim to be counting on the United States to make the Agreement work. During the Paris negotiating sessions, the Obama administration claimed the EPA's Clean Power Plan (CPP), the single largest component of the proposed U.S. emission reduction commitment, was legally "bulletproof."[19] However, no serious negotiating party could fail to notice that Obama's commitments were an audacious roll of the legal and political dice.

Secretary of State John Kerry signed and President Obama "accepted" the Agreement on behalf of the United States despite an unprecedented Supreme Court stay of the Clean Power Plan, which was itself concocted as an end-run around Congress. As all parties were aware, a majority of U.S. states were suing to overturn the CPP, and the stay, in *West Virginia, et al. v. EPA*, meant five justices thought petitioners were likely to prevail on the merits.

The parties also knew that Republicans in Congress and one of the two major-party candidates in the 2016 presidential race would oppose such a deal. Thus, much of the blowback if Trump withdraws from the Agreement will be political theater. Protest over the Paris Agreement will fade once Trump makes clear America is getting out and there is no turning back.

In contrast, if Trump fails to get out now and affirms Obama's claim to have made America a party to the Agreement, "diplomatic blowback" will become a running saga. The Paris pressure machine will trigger blowback every time this president, Congress, or future administrations deviate from Obama's NDC emission-reduction promises, hesitate to fund or increase "climate finance," or fail to adopt more stringent NDCs every five years as well as the accompanying laws and regulations required to implement them.

Obama's commitments under the Paris Agreement went much further than the climate rules Trump is rescinding. The goals of just the first U.S. NDC surpasses the emission reductions achievable by the entire suite of Obama's adopted and proposed climate policies by about 49 percent.[20] Of course, subsequent NDCs promise to go even further than that.

Trump campaigned against Obama's overreaching at the EPA, specifically those under the Clean Air Act—including, for example, the greenhouse gas emissions rules that are the largest component of Obama's plan to implement the Paris Agreement. That law instructs the EPA to periodically review its regulations and make them more stringent if it finds the situation and technology warrant it. This very model underlies the Paris climate regime, which would grant the same bureaucracy, driven by the same philosophy—not only at the EPA but also across the massive sweep of the federal government—the ability to determine every five years whether expanding their power over individuals and the economy is warranted or not.

ED_0011318_00007024-00006

Trump can either keep his promise to the people who elected him or keep the promises Obama made to the United Nations in an attempt to circumvent American constitutional constraints. He cannot do both. Hoping to square this circle, some conservatives argue that because the Paris Agreement provides no legal penalties for non-compliance, Trump can stay in it yet ignore it.[21] That is not politically viable. Americans expect their leaders to keep all bona fide commitments, whether or not those are legally enforceable. To paraphrase the GEICO ad, "When you're the United States, you keep your promises; it's what you do." Under the Paris Agreement, a nation honors its "non-binding" emission-reduction and climate-finance commitments by turning those promises into enforceable obligations—domestic laws and regulations. Thus, the only way to unplug from the pressure machine is to withdraw from the Agreement.

A similar have-your-cake-and-eat-it recommendation is for Trump to "effectively withdraw" from the Paris treaty by declaring it was never properly ratified. While we agree with that assessment, this does nothing to fence in activist courts. Words without deeds are not politically persuasive. To extricate America from the pressure box and annul the precedential force of Obama's evasion of the treaty process, Trump must withdraw from Paris, not merely criticize it.

As for claims that the world looks to the United States for "climate leadership," U.S. leadership would be squandered by signing on to a deal that will produce no detectable climate benefits[22] and divert trillions of dollars from more productive investments that would actually improve living standards and health.[23] Worse, the agreement is a potential humanitarian disaster, as its mid-century emission reduction goals cannot be achieved without drastically reducing energy-poor countries' *current* access to affordable energy from fossil fuels.[24]

Renegotiating the Paris Agreement, so that it leaves open a future for coal and other fossil fuels, is also a nonstarter. That supposedly would be accomplished by scaling back Obama's first NDC and obtaining an international commitment to develop and commercialize carbon capture and storage (CCS) technology.[25] This not only ignores that the Paris agreement is supposedly the instrument that would force the development of CCS breakthrough, no amount of "forcing" of CCS will bring it about. The U.S. government has been trying to develop such technologies for decades, and there is still not a single utility-scale carbon capture and storage power plant in operation anywhere that does not depend on taxpayer and ratepayer subsidies.[26] Pouring more taxpayer dollars into uneconomic energy is no way to drain the swamp.

More importantly, whatever rhetorical concessions other parties might make to keep America at the table (in the hope that Trump's successor will pick up where Obama left off), the main political forces driving the Agreement are dedicated to eliminating the production and use of fossil fuels. The climate lobby and its allies in legislatures, executives, and attorney general offices will not stop trying to use the Paris Agreement to constrain U.S. energy policy choices. Moreover, whatever deal Trump makes today could be undone by any of his successors. In short, no modifications negotiated by the Trump administration can secure the future of U.S. energy producers as well as exiting an Agreement that is designed to bankrupt them.

Lessons from Kyoto

To draw some political lessons from history, the Trump administration should look to President George W. Bush's political struggles over the Kyoto Protocol—a global warming treaty with little popular support that was nixed in advance by the U.S. Senate.[27]

ED_0011318_00007024-00007

On March 27, 2001, the Bush administration reportedly "rejected" the Kyoto Protocol—which President Bill Clinton signed despite Senate "advice" to the contrary—when newly appointed EPA Administrator Christine Todd Whitman said, "we have no interest in implementing that treaty," while National Security Advisor Condoleezza Rice proclaimed, "Kyoto is dead."[28] Actually, Bush never "unsigned" or otherwise officially rejected Kyoto. Rather, the George W. Bush administration merely continued the Clinton-Gore policy of not seeking Senate ratification. For the United States, Kyoto remains a signed treaty pending ratification.[29] Nonetheless, under a fusillade of diplomatic and media opprobrium, which seemed to have caught the administration off guard, the Bush administration soon found itself making excuses for something it had not done.[30]

Consider this June 2001 *post mortem* from National Security Advisor Rice:

> [T]he President had made clear when he was a candidate that he did not believe the Kyoto Protocol addressed the problem of climate change in a way that the United States could support. He had the backing, by the way, of a Senate that was under no means prepared to ratify such an accord. … In retrospect, perhaps the fact that we understood that we had already said this was not immediately observable to everybody, and it might have been better to let people know again, in advance, including our allies, that we were not going to support the protocol. But as I said to European ambassadors, I was surprised that anyone was surprised.[31]

Bush officials should have anticipated the controversy and environmentalist pushback, and developed a plan to set the terms of debate before announcing their decision. Alternatively, Bush could have submitted Kyoto to the Senate for a ratification debate, especially considering that many Democrats likely would have opposed ratification at the time. The treaty almost certainly would have failed to obtain the requisite support of "two thirds of the Senators present." Much of the "diplomatic blowback" could have been avoided, or at least mitigated. The climate lobby now seeks to rerun the Bush playbook against Trump, with near-identical talking points, right down to the "diplomatic blowback" claims.[32]

Trump should avoid entreaties to compromise with a "Paris Lite" policy that ignores Obama's first NDC yet affirms Obama's claim to have made the United States a party to the Agreement, which purports to commit us to deeper cuts every five years. Any such equivocation will embolden the climate lobby to demand further concessions and position the next progressive administration to use the Agreement as the global bully pulpit and wealth transfer program Obama envisioned.

Don't Admit It Is a Treaty

After having failed to get climate change legislation through Congress, President Obama kept mum about climate change in the 2012 presidential race. Only after getting reelected did Obama resume his climate change agenda as a priority, and went on to unveil the Paris Agreement and Clean Power Plan as "legacy" policies.[33] These rules represented an effort to go around the legislature which refused to grant him this authority. Similarly, to push the Paris Agreement through, the Obama administration claimed it is not a treaty subject to Senate review.

ED_0011318_00007024-00008

However, Obama administration officials explained matters differently. On November 24, 2015, National Security Council member Paul Bodnar briefed reporters on the impending COP 21 Paris Climate Change Summit. The Obama administration, he explained, had "absorbed the hard lessons of Kyoto":

> On the international stage, we knew a new approach would be needed to rally all nations to take action. We absorbed the hard lessons of Kyoto and heeded bipartisan concerns. We concluded that climate targets should be set by countries themselves, not imposed on them; that all countries should be expected to act even though developing countries faced unique challenges; and that we should expect strong transparency and accountability from all countries. That's the deal this administration has been fighting for.[34]

But were Kyoto's hard lessons simply that the next agreement should rely on self-chosen targets and challenge developing countries to participate? Clearly not, because despite those features, the Agreement was no more likely than Kyoto and the subsequent Copenhagen Accord to overcome Congress' concerns.[35]

The key lesson the Obama team and its negotiating partners took from Kyoto and Copenhagen is that the United States will not ratify new climate treaties, so next time just insist it is *not a treaty*. That "lesson" was the heart of the Obama administration's plan. Consider a December 2009 email to then-EPA Administrator Lisa Jackson (obtained by CEI in Freedom of Information Act litigation over her false-identity "Richard Windsor" email account), which is redacted in its entirety except for the topline caution:

> [Please note: It is important to refer to the goal at Copenhagen as an "accord" (and especially not as a "treaty")].[36]

As of August 2014, long before the terms or legal form of the Paris treaty were agreed upon, the Obama administration's key negotiating partners knew not to call the pact a treaty. Laurence Tubiana, the French climate change ambassador to the U.N. and President of the Paris COP, told the *New York Times*:

> There's a strong understanding of the difficulties of the U.S. situation, and a willingness to work with the U.S. to get out of this impasse. There is an implicit understanding that this not require ratification by the Senate.[37]

Six months before the COP 21 meeting in Paris, negotiators openly discussed the reality that under America's constitutional treaty-making process, any climate deal submitted to the Senate for its advice and consent would be dead on arrival. Addressing a group of African delegates at the June climate change conference in Bonn, Germany, COP-21 host Laurent Fabius expressed his desire to negotiate an agreement that could bypass Congress:

> We must find a formula which is valuable for everybody and valuable for the U.S. without going to Congress. … [W]e know the politics in the U.S. Whether we like it or not, if it comes to the Congress, they will refuse.[38]

In July 2015, Secretary of State Kerry told the House Foreign Affairs Committee that the administration was not pursuing the Iran arms deal as a treaty because obtaining the Senate's

ED_0011318_00007024-00009

advice and consent to treaties has "become physically impossible."[39] Kerry was wrong. The Bush administration secured the Senate's consent to 163 treaties from 2001 to 2009.[40] The Senate even approved a multilateral nuclear security treaty two days after Kerry pronounced the treaty process defunct.[41]

What is hard—by constitutional design—is to obtain the Senate's consent to major international commitments that lack broad political support. That the treaty process does not give the president free rein to do as he pleases is not a reason to evade the process, but rather to vigilantly protect it.

In late August 2015, still months before the Paris Agreement had taken its final form, Obama asserted that it is not a treaty and therefore he could make America a party to it without the Senate's consent.[42] Numerous State Department emails obtained under FOIA by the Energy and Environment Legal Institute (E&E Legal) show close consultation with ideological climate activists on legal concerns regarding the Agreement.[43]

Two weeks before the Paris Climate Summit, Kerry told the *Financial Times* the Agreement is "definitively not going to be a treaty."[44] Then, at Kerry's behest, COP 21 President Fabius agreed, only two days before the conference, to instruct all 25,000-plus COP delegates that they were not to call the Agreement a "treaty."[45] Yet, just two months later the U.N. Climate Change Secretariat issued a legal memorandum to the parties outlining "next steps" for ensuring "the proper execution of all *treaty action* related to the agreement."[46]

Unfortunately, the Senate set the stage for Obama's climate power grab when it caved to the Obama administration's claim that the Joint Comprehensive Plan of Action, also known as the Iran deal, is not a treaty. Despite widespread criticism by GOP leaders that the Iran deal is a treaty requiring Senate review,[47] Congress in May 2015 instead passed the Iran Nuclear Agreement Review Act (H.R. 1191), which authorized the House and Senate to block the deal by passing a joint resolution of disapproval.[48] The resolution was subject to a presidential veto, effectively requiring supermajorities in both chambers for passage. (The Senate never got to vote on the resolution, because a procedural motion to move to a final vote fell two votes short of the 60 needed to overcome a filibuster.[49])

The Act was a caricature of the treaty process which, in recognition of the seriousness with which the institution is supposed to take such entanglements, empowers 34 Senators or fewer (if fewer than 100 are present) to stop an agreement. Substituting H.R. 1191 for the constitutional process, on a matter as critical and controversial as a nuclear arms deal, sent an unmistakable signal that the Senate would avoid institutional confrontation at all costs. It let opponents blow off steam while Obama got his way. Then when Obama inevitably followed this by deeming the Paris Agreement a non-treaty that he could approve as an executive agreement, the Senate did not even go through the motions of putting up a fight.

Fortunately, that does not necessarily end the discussion. Even if a president could unilaterally decide what is and is not a treaty, his successor would be free to conclude the Paris Agreement is a treaty and therefore not a commitment of the United States until approved by the Senate. Under this "what are you going to do about it?" approach, things are what one branch of government says until another branch or successor claims otherwise.

ED_0011318_00007024-00010

The fragility of Obama's climate coup is reflected in the parties' rush to bring the pact into effect before the U.S. election. As the *New York Times* observed:

> Complex and controversial international accords usually take several years to enter into legal force. But the haste on the Paris accord was driven at least in part by the looming American election. Donald J. Trump, the Republican candidate, has vowed to pull the United States out of the accord if he is elected. If the deal comes into legal force before the presidential inauguration, it will take four years under the accord's rules for the United States to legally withdraw. That would keep the country bound to the measure through the first term of the next administration. "We have no time," Mr. Ban [Ki Moon, UN Secretary General] said, addressing the General Assembly on Tuesday. "I urge you to bring the Paris agreement into force this year."[50]

"Complex and controversial international accords" certainly suggests a pact important enough to warrant Senate review. If Trump were to declare the Paris Agreement a treaty for Article II purposes, climate activists would have to identify and put forward rational criteria for distinguishing treaties from non-treaties. Fortunately, the State Department has already done so, but regardless, such a debate could be healthy for the Republic. It might revive the old constitutional spirit in the Senate and restore institutional protection of congressional prerogatives.

The Framers' Perspective

The most important reason for treaty making to be a shared power is to check the president's discretion. As Alexander Hamilton argued in *Federalist* 75:

> The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States.[51]

By "created and circumstanced," Hamilton meant the president is not a monarch, but a temporary custodian of executive power, so his personal interests and those of the state are more likely to diverge. Given his limited tenure in office, a president is likely to face greater temptation than a monarch to negotiate treaties for personal or partisan gain. The "most ambitious climate change agreement in history" would necessarily affect "momentous" interests. Thus, leaving the approval of such a pact to the executive's discretion would be unwise.

Article II of the Constitution also establishes treaty making as a shared power because it partakes of both executive and legislative functions. *Federalist* 75 continues:

> Though several writers on the subject of government place that power in the class of executive authorities, yet this is evidently an arbitrary disposition; for if we attend carefully to its operation, it will be found to partake more of the legislative than of the executive character, though it does not seem strictly to fall within the definition of either of them. The essence of the legislative authority is to enact laws, or, in other words, to prescribe rules for the regulation of the society; while the execution of the laws, and the employment of the common strength, either for this purpose or for the common defense,

ED_0011318_00007024-00011

> seem to comprise all the functions of the executive magistrate. The power of making treaties is, plainly, neither the one nor the other. It relates neither to the execution of the subsisting laws, nor to the enaction of new ones; and still less to an exertion of the common strength. Its objects are CONTRACTS with foreign nations, which have the force of law, but derive it from the obligations of good faith. They are not rules prescribed by the sovereign to the subject, but agreements between sovereign and sovereign. The power in question seems therefore to form a distinct department, and to belong, properly, neither to the legislative nor to the executive.[52]

Two points are noteworthy. First, the treaty power partakes "more of the legislative than the executive character." Second, Hamilton was proved more correct than he knew. The Framers did not anticipate modern health, labor, and environmental treaties, which typically require extensive enactment of new laws and regulations "prescribed by the sovereign to the subject."

The predominately legislative character of the Paris Agreement is obvious, as affirmed by the Paris construct's resemblance to the Clean Air Act. A party's NDC is inescapably a promise to enact new laws and regulations to meet ever-more stringent emission reduction targets. As noted, Obama pledged to reduce U.S. emissions by 26 to 28 percent below 2005 levels by 2025 and to rapidly phase out fossil fuels over the next 35 years.[53] The laws and regulations required to implement NDCs primarily affect the U.S. economy and domestic policy priorities, not America's relations with other nations. In addition, climate finance payments drawn from the Treasury must be pursuant to appropriations by Congress. By what constitutional logic does the Senate have no role in making the pact promising NDCs?

Federalist 63 is also relevant. A key reason for the Senate's comparatively small size, long tenures, and staggered elections is to foster a "due sense of national character":

> A FIFTH desideratum, illustrating the utility of a senate, is the want of a due sense of national character [under the Articles of Confederation]. Without a select and stable member of the government, the esteem of foreign powers will not only be forfeited by an unenlightened and variable policy, proceeding from the causes already mentioned, but the national councils will not possess that sensibility to the opinion of the world, which is perhaps not less necessary in order to merit, than it is to obtain, its respect and confidence.[54]

Some might argue that a "sensibility to the opinion of the world" requires President Trump to stay in the Paris Agreement, which supposedly represents the collective aspirations of mankind. A pact designed to provide trillions of dollars in "climate finance"[55] to supranational organizations and elites in developing countries and expand every government's control of private energy-related capital investment has many cheerleaders. George Bernard Shaw said it best: "A government that robs Peter to pay Paul can always depend on Paul's support."[56]

However, the notion that such voices speak for the interests of humanity is debatable, to put it mildly. For example, the Copenhagen Consensus finds that dollars spent on climate change mitigation and adaptation produce far less social, economic, or environmental benefit than the same dollars spent on dozens of other development targets, such as reducing child malnutrition and improving health outcomes.[57]

ED_0011318_00007024-00012

Moreover, despite all the government-orchestrated PR behind it, the Paris Agreement's supposed beneficiaries do not seem to buy the party line. The U.N.'s "My World" survey of nearly 10 million people worldwide, places "action on climate change" at the bottom of 16 development priorities, well behind a good education, better health care, better job opportunities, and honest governance.[58]

Acting with a "sensibility" to world opinion does not mean aligning with the policy preferences of foreign elites. If that were the case, the Framers would not have adopted a republican form of government. During the 1980s, the United States often showed strength of character by standing alone, or nearly alone, in opposing agendas at the U.N. that were hostile to American interests and American allies.[59] More fundamentally, leaders with a due sense of national character honor the rules of international engagement laid down in the Constitution. How can foreign governments rely on us if we allow passions of the moment or partisan agendas to upend our constitutional arrangements?

If America's trustworthiness as a negotiating partner is now in doubt, it is because Obama did not vet his promises with the Senate before signing on the dotted line. EPA Administrator Gina McCarthy's assurance that the Clean Power Plan is legally "bulletproof" may have impressed some delegates at the Paris COP, but few Senators would put much stock in such boasting (at least five Supreme Court justices were less than awestruck).[60] Involving the Senate through its constitutional treaty-making role would have spared everyone the current controversy.

The advice and consent process is a quality control filter. Although not infallible, it is unique to international agreements because of their seriousness. Combined with the supermajority ratification requirement, it ensures that no treaty will be adopted without broad-based political support. That discourages the executive from promising others more than the political composition of the country and statutory authorities actually allow him, or his successors, to deliver. The treaty process minimizes the risk that national interest concerns will impel one executive to upend international commitments made by his predecessor. Disregarding it creates great risks.

If Obama's defiance of the treaty process is allowed to stand, it will become precedent, tempting future administrations to make grandiose promises deficient in public support and statutory authority. A due sense of national character counsels Trump to repudiate Obama's climate diplomacy power grab, as he promised he would do.

"Not-A-Treaty" Word Games

We now examine several claims that allegedly prove the Paris Climate Agreement is not a treaty subject to Senate review.[61]

CLAIM I: *It's non-binding.*

ANALYSIS: False and irrelevant. First, the Agreement's numerous procedural requirements *are* binding. Second, "not binding" has never meant "not a treaty." Many treaties contain non-binding provisions. Exhibit A: the UNFCCC *treaty* ratified on October 15, 1992, establishing *non-binding goals*, which the Paris Agreement purports to modify or supplement.

ED_0011318_00007024-00013

The treaty status of the UNFCCC, with its non-binding emission targets, has never been challenged. Not by the Clinton administration, which cited the UNFCCC's "non-binding goal" as the treaty's fundamental weakness that needed to be remedied via the Kyoto Protocol, which was widely recognized to be a treaty.[62] Not by Senator John Kerry at a 2007 Senate Foreign Relations Committee lamenting the insufficiency of the UNFCCC's "voluntary" emission-reduction goals.[63] Not by reporters supportive of the Paris Agreement at major media outlets.[64]

CLAIM I (modified): *By insisting that Article 4.4 use "should" instead of "shall," the Obama team ensured Paris is not a treaty subject to Senate review.*

The argument here is that "shall" is a term of legal obligation, and "should" merely a term of moral suasion or aspiration. Examples of the liturgy abound: "The one word that almost sank the climate talks" (*Politico*),[65] "The One Word That Almost Scuttled the Climate Deal" (Slate),[66] "How US negotiators ensured landmark Paris climate deal was Republican-proof" (*The Guardian*).[67] Curiously, the "shall" version remains the one posted at the UNFCC website, agreed before the heroic intervention of lore to save the deal.[68]

ANALYSIS: This is pure rhetorical sleight of hand. The words "should" and "shall" appear in all manner of agreements, treaty and non-treaty alike, and both appear throughout the Paris Agreement, including Article 4.

Consider this question: Which of the following provisions is from the UNFCCC treaty and which is the magical Paris language that supposedly transformed the latter pact into a non-treaty?

> "Accordingly, *the developed country Parties should take the lead in combating climate change* and the adverse effects thereof…"
>
> "*Developed country Parties should continue taking the lead* by undertaking economy-wide absolute emission reduction targets."

The word "continue" is the only thing that gives it away. The Paris Agreement's "should continue taking the lead" echoes the UNFCCC's "should take the lead" (Art. 3.1) So, according to the Obama administration, a pact with "should take the lead" is a treaty, a pact that contains "should *continue* taking the lead"—and in a more specific, prescriptive way through economy-wide absolute emission reduction targets—is a non-treaty.

There are important differences between the two pacts, but in ways that confirm the Paris Agreement's treaty status. The Paris treaty is more prescriptive by the specific promises it requires of developed countries. It is more inclusive than either the UNFCCC or the Kyoto Protocol, as it abandons their bright-line division between Annex I developed country parties, which have quantified emission-reduction goals, and Annex II developing country parties, which have not. The Paris Agreement is also more "ambitious" than Kyoto because parties "shall communicate a nationally determined contribution every five years" (Art. 4.9), such that each successive NDC "will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition" (Art. 4.3). How does the more prescriptive, inclusive, and ambitious Paris Agreement qualify as the one non-treaty among the three?

ED_0011318_00007024-00014

Try this thought exercise: Take out the Paris Agreement's Article 4.4 allusion to the UNFCCC and leave the rest of the pact that promises all of the climate finance; all of the reporting, monitoring, and verification; and the first-ever commitments surpassing those of the Kyoto Protocol. Delete Article 4.4, and Paris is still more ambitious than Kyoto, still more prescriptive the UNFCCC, and still more inclusive than both. Moreover, the U.S. NDC pledge to "reduce emissions by 26-28 percent below 2005 levels by 2025, and to make best efforts to reduce by 28 percent" is more stringent than the U.S. emission reduction target under the Kyoto Protocol.[69]

Remove Article 4.4, and Paris is still a treaty. U.S. negotiators' last-minute substitution of "should" for "shall" does not a treaty unmake.

CLAIM I (modified further): *It is not a treaty because it lacks legally binding emission reduction targets.*

The following statements are illustrative of this line of argumentation, in which the term "need" acts as a code word for giving greater discretion to the executive. "[I]t is becoming clear that it may lack the elements that would suggest *the need for congressional consent*, such as legally binding national emissions reduction targets" (Center for American Progress).[70] "A deal that would have assigned legal requirements for countries to cut emissions at specific levels *would need to go* before the United States Senate for ratification" (*New York Times*).[71]

ANALYSIS: An agreement with legally binding emission reduction targets would require Senate review due to its potential costs and risks. No dispute there—but the converse does not hold. Just because a climate agreement lacks binding targets does not make it a non-treaty exempt from Senate review. The Paris Agreement imposes many new binding commitments on the United States with significant implications for the U.S. economy and domestic policy. That is sufficient to make the Agreement a treaty for purposes of the U.S. constitutional system.

As noted, whether an agreement's provisions are binding or non-binding is less important in U.S. politics than whether a promise has been made or mere aspirations declared. Americans expect their government to keep its promises, whether or not those are binding under international law. Parties to the Paris Agreement meet their voluntary emission reduction and climate finance commitments by turning them into legal commitments—domestic laws and regulations. No chains are more binding than those we forge for ourselves.

To borrow the Framers' terminology, whether an agreement engages interests "momentous" enough to warrant Senate review does not depend on whether certain provisions are declared binding. For example, Senate review is warranted if the pact might later be found to damage important national interests. The Paris Agreement clearly falls into that category. Senate review is also warranted if the pact might compromise the "national character"—America's credibility and good name—by making promises lacking broad political support and clear statutory authority. Paris also fits that description.

CLAIM II: *It is not a treaty because there is no enforcement mechanism.*

ANALYSIS: This is another red herring. The UNFCCC had no enforcement mechanism. The presence or absence of such a mechanism does not determine a pact's status with respect to the

ED_0011318_00007024-00015

constitutional treaty process. Even the Kyoto Protocol's emission reduction targets are binding in name only. That does not make either pact a non-treaty.

The Kyoto Protocol's Article 18 requires the parties to establish mechanisms and procedures to address cases of non-compliance, including "development of a list of consequences." At its 2001 Marrakesh meeting, the Conference of the Parties decided that in the treaty's second commitment period, 2013-2020, developed countries "shall" reduce emissions by 1.3 tons for every ton exceeding their emission reduction targets in the first commitment period, 2008-2012.[72]

Even in theory the Kyoto enforcement mechanism has almost no sting. In practice, the 1.3-ton non-compliance sanction is a nullity. As Hannah Chang of Columbia University's Climate Law Center explains:

> For one thing, like an individual indefinitely passing on debt into the future, a country could simply borrow from one commitment period to the next and never meet its target. If the international community failed to "force" the country to meet its target in the first compliance period, it's unclear how it might force the country to meet its target with the included penalty in the subsequent period. Second, each party negotiates its own target for each commitment period, so a non-complying party could simply negotiate a higher [less stringent] target in a second period to accommodate the 30 percent penalty, effectively negating any impact of the enforcement mechanism.[73]

National Public Radio agrees: "The reality, however, is that even a legally binding framework such as the Kyoto Protocol doesn't punish infractions. Nations that miss their mark are simply expected to try harder next time (if there is a next time)."[74]

CLAIM III: *Paris is not a treaty because it merely updates the UNFCCC, which the Senate ratified in 1992.*

ANALYSIS: Here we come to the crux of proponents' argument that the Paris Agreement is not a treaty. It goes like this. In 1992, the Senate approved a treaty obligating the parties to "report" or "communicate" their actions to reduce emissions. The UNFCCC also authorizes the parties to amend the treaty. Ergo, a) the parties at any time may alter the content and form of what is to be communicated, and b) the executive is free to accept whatever the parties decide. Although a) is correct, b) is nonsense. Again, because America is a nation that keeps its promises, the Senate cannot give the President a blank check to make subsequent promises to other countries or international bodies that the United States will adopt whatever legislative and regulatory initiatives he proposes.

In fact, the Senate specifically declined to do so when it approved the UNFCCC. The Senate Foreign Relations Committee expressly stipulated, and the George H. W. Bush administration agreed, that any future decision by the parties to "adopt targets and timetables would have to be submitted to the Senate for its advice and consent before the United States could deposit its instruments of ratification for such an agreement."[75]

At the Paris COP 21 meeting, the parties made a decision to adopt targets and timetables in the form of NDCs. The U.S. NDC, for example, is a pledge to reduce U.S. emissions by 26 to 28

ED_0011318_00007024-00016

percent below 2005 levels by 2025.[76] So, by the terms on which the Senate approved U.S. ratification of the UNFCCC, Obama had no authority to join the Paris Agreement without obtaining the Senate's further advice and consent.[77]

Consider also that the UNFCCC—widely acknowledged as a treaty—has a time-limited objective. It aims to return parties' emissions to 1990 levels "by the end of the present decade."[78] In contrast, the Paris Agreement requires parties to submit more "ambitious" NDCs every five years, in perpetuity. The Senate's reservation against a decision to adopt targets and timetables applies with greater force against an agreement that includes automatically escalating targets and timetables.

More importantly, had there been no such express reservation, the Senate still could not be presumed to have given future presidents *carte blanche* to promise changes in U.S. domestic law and regulation. Such an open-ended delegation to the executive conflicts with Article I of the Constitution, which vests "all legislative powers" in Congress.[79]

This *carte blanche* view of the UNFCCC has another bizarre implication. Most climate policies aim to curb—and ultimately eliminate—the production and use of fossil fuels. Consequently, climate policies have an enormous potential to raise energy costs and depress economic growth. If the UNFCCC authorizes the executive to make increasingly ambitious emission reduction promises without obtaining the Senate's advice and consent, then the treaty is effectively an economic suicide pact (albeit one agreed under false pretenses). The UNFCCC as amended by the Paris Agreement, and as interpreted by progressive politicians and activists, threatens America's economic future and capacity for self-government. Trump should withdraw from it as well.

CLAIM IV: "*[I]t has become physically impossible… you can't pass a treaty anymore.*" That is a quote from Secretary of State John Kerry during his July 28, 2015, testimony before the House Foreign Affairs Committee on why the administration did not negotiate the Iran deal as a treaty.[80] Translation: The treaty process is dead.

ANALYSIS: As noted, Kerry's "physically impossible" assessment is woefully inaccurate. The treaty process is not dead, though ignoring the Obama administration's efforts to cut out the Senate does threaten to kill it. Approval of treaties is difficult under America's constitutional system—intentionally so. That obtaining the Senate's consent to bad treaties is hard is an argument against negotiating bad treaties, not against overturning the constitutionally established treaty-making process.

CLAIM V: *President George W. Bush "joined important international environmental agreements by using executive agreements."*

ANALYSIS: Aside from being an example of the "everybody does it" fallacy, the quote above from Obama climate advisor Brian Deese[81] is incorrect. Bush's environmental executive agreements provide no precedent for Obama's adoption of the most ambitious climate pact ever as an executive agreement.

Deese provided no examples of important environmental pacts joined by previous presidents as executive agreements, so we decided to check. Using the search terms "environment" and

ED_0011318_00007024-00017

"conservation" in the State Department's searchable database,[82] we found 15 Bush-era environmental executive agreements.[83]

Deese did not define what he meant by an "important" agreement. The "most ambitious … ever" Paris Agreement is clearly at the high end of the scale. It aims to mobilize trillions of dollars in climate finance over the next 15 years, and "govern, regulate and incentivize the next generation of climate actions" in nearly 200 countries.[84]

The Bush environmental executive agreements were small potatoes by comparison. None entailed commitments or risks affecting the nation as a whole. Three are bilateral agreements to promote environmental education in public schools, and eight are bilateral agreements to promote forest conservation via debt-for-nature swaps. The largest annual expenditure authorized for any of those agreements was $7.1 million.

All the Bush environmental executive agreements were clearly authorized by Congress, by current treaties of the United States, or by the president's inherent powers as commander-in-chief or chief executive. For example, the $7.1 million authorization is part of a bilateral side agreement with Mexico that was included in the North American Free Trade Agreement at Congress' behest, as a condition for approving the trade treaty.[85]

State Department Treaty Criteria

The State Department uses eight factors to assess whether an agreement should be negotiated as a treaty requiring the Senate's advice and consent. Those criteria, set forth in a documented titled Circular 175, distinguish treaties from other types of agreements the president may adopt on his own or with the approval of simple majorities in both chambers.

The Paris Agreement plainly qualifies as a treaty under several criteria, and arguably under all.[86]

1. *The extent to which the agreement involves commitments or risks affecting the nation as a whole.* Achieving just the initial U.S. NDC will require costly new regulations to decarbonize all major sectors of the U.S. economy. As noted, *just the first* U.S. NDC emission reduction pledge outstrips by about 45 percent the achievable emission reductions of the entire suite of all adopted and proposed Obama climate policies, including the Clean Power Plan and other regulations Trump is rescinding.

As also noted, just this initial NDC is more stringent than the U.S. emission reduction target under the Kyoto Protocol, which was universally acknowledged to be a treaty. Moreover, Paris Agreement parties are required to report a new NDC of increasing "ambition" every five years, in principle through 2050. In contrast, the Kyoto Protocol envisioned two commitment periods—2008-2012 and 2013-2020—while only assuring one.[87] So from the perspective of cost and risk, the Paris Agreement is more of a treaty than the Kyoto Protocol, which no one has claimed is not a treaty.

2. *Whether the agreement is intended to affect state laws*. For the Obama administration, the Paris Agreement was partly a political strategy to shield the Clean Power Plan from hostile legislation and litigation. For example, on December 3, 2015, top U.S. climate negotiator Todd Stern urged the D.C. Circuit Court of Appeals not to stay the rule.[88] A stay, he argued, would

ED_0011318_00007024-00018

cast doubt on U.S. "leadership" in international climate negotiations, which could induce other countries to scale back or renege on their NDCs. So according to Stern—before the Paris Summit convened and months before the treaty opened for signature on April 22, 2016—the pact already made the CPP too important for courts to tamper with.[89] Translated: *You should reject states' petition to stay the CPP because it is a major component of our intended commitment under the Paris Agreement.*

The EPA openly acknowledged the CPP would compel states to change their laws regarding electricity fuel mix, energy dispatch policy, demand management, and carbon trading.[90] Like the Paris treaty, the CPP is a framework for increasingly ambitious emission reduction targets, and the Obama administration intended for the two policies to develop in coordination. As NDCs become more ambitious, so would CPP compliance targets, requiring further changes in state laws.

3. *Whether the agreement can be given effect without the enactment of subsequent legislation by the Congress*. New legislation would be required to meet both the initial NDC and future more ambitious NDCs. In addition, the Agreement falls apart unless Congress ponies up billions for the Green Climate Fund. Only Congress has the power to appropriate monies from the Treasury.[91]

President Obama's Fiscal Year 2017 budget provides a telling example of the treaty's dependence on subsequent legislation. The budget calls for a $10 per barrel tax on oil to fund Obama's 21st Century Clean Infrastructure Plan,[92] a proposal touted as helping the United States meet its NDC.[93] Imposing any revenue-raising measure requires an act of Congress.[94] More such revenue-raising would be needed to comply with increasingly stringent future NDCs.

4. *Past U.S. practice regarding similar agreements.* To our knowledge, all major pre-Paris multilateral environmental agreements negotiated by the United States were subject to the Senate's advice and consent, including both of the Paris treaty's predecessor agreements, the UNFCCC and Kyoto Protocol.[95] As noted, the Paris treaty is more prescriptive than the UNFCCC and more ambitious and inclusive than both the UNFCCC and Kyoto. The Obama White House boasted the Agreement was in a class of its own in terms of ambition, so the fact that even one predecessor climate pact was a treaty is largely determinative.

5. *The preference of Congress as to a particular type of agreement.* The most authoritative expression of congressional preference is the Senate Foreign Relations Committee's stipulation when it approved the UNFCCC that a decision of the parties to adopt targets and timetables would have to be reviewed as a treaty:

> The committee notes that a decision by the Conference of the Parties to adopt targets and timetables would have to be submitted to the Senate for its advice and consent before the United States could deposit its instruments of ratification for such an agreement.[96]

While the Paris Agreement was being negotiated, the Senate Republican caucus affirmed almost unanimously that Senate review is required for any new international climate commitments.[97]

6. *The degree of formality desired for an agreement.* The Paris Agreement contains more Articles than its predecessor climate treaties. At 31 pages, its 29 treaty Articles, as well as the

ED_0011318_00007024-00019

140 paragraphs of the accompanying "Decision of the Parties," contain detailed instructions with regard to mitigation, adaptation, finance, technology transfer, capacity building, transparency, implementation, and compliance.[98]

There is also a high degree of formality in the treaty's genesis. The Agreement and Decision are expressly pursuant to the "Platform," adopted in December 2011 by the 17th Conference of the Parties in Durban, South Africa, to "develop" and "adopt" a "protocol, another legal instrument or an agreed outcome with legal force at the twenty-first session of the Conference of the Parties and for it to come into effect and be implemented from 2020."[99]

7. *The proposed duration of the agreement, the need for prompt conclusion of an agreement, and the desirability of concluding a routine or short-term agreement.* The proposed duration of the Paris Agreement greatly exceeds that of the Kyoto Protocol. White House Deputy National Security Advisor for Strategic Communications Ben Rhodes gave a full confession in a media availability about this important treaty criterion, acknowledging that "our task in Paris is to secure a long-term framework in which countries set successive rounds of targets into the future, beyond 2030, and ratchet down their carbon emissions over the course of the coming decades in the context of strong transparency and accountability provisions."[100]

While United Nations Secretary General Ban Ki Moon and others felt an urgency to beat the U.S. electoral calendar, there was no inherent need for a prompt conclusion that might justify bypassing the ratification process, for three reasons.

First, it makes no difference to potential climate change impacts whether mitigation actions begin in one year rather than another.

Second, the Agreement's first commitment period does not begin until 2020, which would allow the Senate plenty of time to debate the pros and cons of the treaty.

Third, the formality of the treaty process was not an impediment to prompt conclusion. The Obama administration sought to avoid not delay, but outright rejection. For example, the Conference of the Parties adopted the Paris Agreement on December 12, 2015, Secretary Kerry signed it on April 22, 2016, and President Obama accepted it on September 3, 2016—a period of 265 days. In contrast, the gestation period for the UNFCCC, from adoption to signing to ratification, was only 152 days.[101] President George H.W. Bush, acting through the treaty process, ratified the UNFCCC more quickly than President Obama joined the Paris Agreement by evading that process.

Thus, the Paris Agreement is a treaty according to the first element of Factor 7, and bypassing Senate review cannot be justified by appeal to the other elements.

8. *General international practice regarding similar agreements*. The Paris Agreement is the successor to the UNFCCC and Kyoto Protocol, both demonstrably treaties requiring the Senate's consent for U.S. participation. The Agreement developed from the Durban Platform commitment to develop and adopt a "protocol, another legal instrument, or an agreed outcome with legal force." Those descriptors are synonyms for "treaty," just like "Convention" in the UNFCCC.

ED_0011318_00007024-00020

Although the "T" word was verboten at the Paris Summit, the U.N. Climate Change Secretariat administers the Agreement as a treaty on a par with any other U.N.-sponsored multilateral agreements.[102] Note the following excerpt from the Secretariat's legal memorandum, "The Paris Agreement: Next Steps."

> Section 4: "Article 26 of the Paris Agreement provides that the Secretary-General will be responsible for ensuring the proper execution of all *treaty action related to the agreement*."
>
> Section 5: "Pursuant to Article 29 of the Paris Agreement, the texts of the Agreement in Arabic, Chinese, English, French, Russian and Spanish ... will be transmitted by the UNFCCC Executive Secretary to the *Treaty Section* of the Office of Legal Affairs of the United Nations in New York shortly after that document becomes available in all six authentic languages of the Agreement. The *Treaty Section* assists the Secretary-General in carrying out his depositary function relating to *multilateral treaties*."
>
> Section 7: "In accordance with *treaty law*, signing the Paris Agreement would indicate the intention of a Party to the Convention to take steps to express its consent to be bound by the Agreement at a later date (see paragraph 10 below)."[103] [Emphases added]

Of the 139 countries joining the Agreement, 132—95 percent—have "ratified" it.[104] Four countries besides the United States—Belarus, Iceland, Japan, and the United Arab Emirates—chose to "accept" the Agreement, while two others chose to "approve" it. However, the six other non-ratifying parties are not evidence the Paris Agreement is not a treaty. Different countries have different legal systems. Japan also "accepted" the UNFCCC and the Kyoto Protocol, which are treaties for purposes of our legal system.

What if They Say ...
Here we address certain talking points President Trump will likely encounter if he has not already.

TALKING POINT: *Unprecedented!* The charge here is that there is no precedent for a president canceling a predecessor's executive agreement on the grounds that it is a non-ratified treaty.

RESPONSE: Claiming there is no precedent for blocking an unprecedented usurpation proves too much. The absence of precedent arises precisely because we have never confronted an executive who dares the Senate to stop him from denying its shared role in the treaty process. The "unprecedented" move was Obama's decision to abandon established custom, practice, and law with a coordinated effort to claim an obvious treaty is not a treaty, in order to evade a constitutional system established to prevent executives from binding the United States to schemes lacking broad political support.

Moreover, the United States has withdrawn from agreements before. Indeed, like all pacts, the Paris Agreement includes a procedure for withdrawal.

ED_0011318_00007024-00021

TALKING POINT: *Calling it a treaty dignifies it!* This is a claim made by Republicans who want to duck a fight and, we are informed, career State Department lawyers. They note that "even Obama says it's not a treaty."

RESPONSE: Confirming that the Paris Agreement is a treaty does not strengthen the U.S. commitment to the agreement, but neuters it. Giving the Paris Agreement treaty status freezes it for U.S. purposes unless and until the Senate votes on it—like the other 400-plus signed but never ratified treaties, which now gather dust on shelves.

TALKING POINT: *Don't say the Paris Agreement is a treaty subject to Senate review or else Democrats will challenge Trump's executive agreements!*

RESPONSE: This concern—which according to our understanding has also been advanced by State Department lawyers—is either overblown or disingenuous. The Senate could no more force Trump to submit a bona fide executive agreement for its review than it could force Obama to submit the Paris Agreement, a pact with all the hallmarks of a treaty. What the Senate can do is consider an agreement for approval as a treaty on its own, although in recent years Senators have been unwillingness to engage in such confrontation. It will always be an option, but to be persuasive that an executive agreement is actually a treaty, Senators need to articulate non-partisan criteria such as the State Department Circular 125 factors, which rebut Obama's claim that the Paris Agreement is not a treaty. Perhaps what the lawyers really want is to enable Trump to do what Obama did—evade Senate review by deeming treaties to be non-treaties. The dubious legality of such reasoning aside, no political self-interest warrants maintaining such a dangerous precedent.

TALKING POINT: *There's no urgency to withdraw from Paris.* This is an argument made by some Republicans in Congress seeking to avoid a fight over the Agreement. As E&E News reported: "Sen. Bob Corker (R-Tenn.), chairman of the Foreign Affairs Committee, recently noted to reporters that the deal doesn't require the United States to take even procedural steps until late in Trump's term."[105]

RESPONSE: It is not surprising that the very parties into whose lap the work would fall by acknowledging Paris is a treaty are advising Trump to punt on the issue. The same parties went to great lengths to avoid institutional confrontation over the treaty status of the Iran arms deal. Apparently, some Republicans would prefer to avoid almost any inconvenience today, on their watch, in return for massive problems for somebody else later.

Fortunately, others understand that "politically binding" promises are not harmless, and that Trump cannot wait until 2020 to disavow an agreement with a first compliance period that starts in 2020. E&E News reports:

> The U.S. Chamber of Commerce's Stephen Eule, who attended U.N. summits as a delegate during the George W. Bush administration, said that failing to withdraw from the Paris Agreement would allow subsequent administrations to pick up where the Obama administration left off, even though the Senate never approved it.
>
> Paris isn't as nonbinding as it might appear, argues Eule, who is vice president of climate and technology at the chamber's Institute for 21st Century Energy. If the United States

ED_0011318_00007024-00022

> remains a party, it will have to participate in actions in 2018 and later that lead to a tougher emissions-reduction commitment. It will also have to make a statement on climate finance for poor countries.
>
> "That commitment is not legally binding, but of course we know when America makes a commitment, it usually sticks with that commitment just because of the way we do things," Eule said.
>
> "Strictly from a political aspect, why would you subject yourself to getting hammered like that for four years?" he said.[106]

Republicans are kidding themselves if they think staying in the Agreement will spare this administration political pain, let alone avert more widespread problems arising from it. As a former Trump transition team member observed, dismantling Obama's NDC will require several battles, so you might as well play to win:

> "If you roll back the regulations, you roll back the [nationally determined contribution]," the former official said.
>
> The U.S. pledge to cut emissions between 26 and 28 percent compared with 2005 levels by 2025 was supported by policies like the Clean Power Plan, which faces certain doom in a U.S. EPA [run] by former Oklahoma Attorney General Scott Pruitt (R).
>
> "If you don't meet the commitment, you're going to get it no matter what," the official said, referring to criticism. "You may as well withdraw from Paris."[107]

Litigation Risk

Because the Paris Agreement's emission-reduction commitments are non-binding, it is easy to assume that neither the U.S. government nor any American firm could ever be sued for failure to pursue the Agreement's goal to limit "the increase in the global average temperature to well below 2 °C above pre-industrial levels" (Art. 2.1). However, the U.S. government cannot join a pact affirming the necessity for drastic emission reductions to avert planetary disaster without tacitly confessing that its "inaction" endangers millions of people around the world. That storyline is the setup for decades of climate litigation.

Attorney and law professor Lukas Bergkamp warns:

> The Paris Agreement thus may turn out to be a Trojan horse. ... While the agreement does little to reduce the threats it identifies, it creates risks of a different kind: it threatens our constitutional arrangements, including the separation of powers. In deciding on ratification, countries should consider not only the need for international coordination of climate policy, but also the protection of their constitutions, representative democracy, and the rule of law. Specifically, once they agree to Paris' high collective ambition and ambitious substantive requirements, countries need to be mindful of the risks of the judiciary taking over when it becomes clear that the world will not deliver.[108]

ED_0011318_00007024-00023

This is not mere legal theory. The Netherlands recently found how easily courts can turn ostensibly non-binding promises and declarations into enforceable obligations. Green activist lawyer Roger Cox was lead counsel representing the Urgenda Foundation and Dutch citizens in litigation against the Dutch government. Cox argued that the government's commitment to reduce emissions by 16 percent did not go far enough given positions affirmed by the Conference of the Parties. After considering this argument and arguments opposing it, the Hague District Court ordered the government to cut greenhouse gas emissions by at least 25 percent by 2020.[109] The government has appealed the ruling. Nonetheless, the case is a cautionary tale for President Trump.

Courts can leverage non-binding commitments into legal obligations. In a 2015 paper, Cox explains the theory underpinning his litigation:

> [N]ational governments have made quite explicit statements—in the context of the United Nations Framework Convention on Climate Change (UNFCCC) and its annual climate change conferences—regarding the danger of climate change and what should be done about it. They have consistently done so based on the scientific findings of the UN's Intergovernmental Panel on Climate Change (IPCC).[110]

Consequently, those governments have embraced a "duty of care," which creates climate torts when they fail to take actions deemed necessary to limit global warming to 2°C.

Cox won his lawsuit by invoking decades of official statements affirming the reality of the climate "crisis" and necessity for "climate action." As he explained:

> The court first of all recognized that the stipulations included in the UNFCCC, the Kyoto Protocol and the no-harm principle of international law do not have a binding force… [However] the court found that the stipulations included in the UNFCCC, the Kyoto Protocol and the no-harm principle of international law need to be taken into account when determining the state's duty of care in relation to climate change …[111]

Cox enthuses: "The decision of the Dutch court in *Urgenda v. The State of the Netherlands* creates new angles for using a tort-law as an approach against governmental inaction to address climate change."[112] The lesson for Trump is clear. Words matter and cheap environmental virtue can be costly.

In the United States, Justice Anthony Kennedy has turned to international opinions and other sources for guidance, and Justice Stephen Breyer has defended the propriety of using such sources in U.S. jurisprudence.[113] It is entirely possible the lower courts will provide them another chance to apply that perspective before they retire.

Certainly activist state attorneys general intend to act. Using state open records laws, the Energy and Environment Legal Institute obtained a March 7, 2016 recruiting letter sent by New York Attorney General (AG) Eric Schneiderman and Vermont AG Eric Sorrell, which stated:

> The commitments of the United States and other nations at last year's Paris climate change conference are very significant steps forward, but states must still play a crucial role in ensuring that the promises made in Paris become reality. … That's why we

ED_0011318_00007024-00024

> believe that this is the moment for Attorneys General who share this mission … to discuss ongoing and potential legal actions and to consider mechanisms to support these actions.[114]

Following this pitch, at a March 29, 2016 press conference in Manhattan, Al Gore, Schneiderman, seven other AGs, and legal representatives from 11 states announced the formation of AGs United for Clean Power, a coalition proposing to "investigate" fossil fuel companies and their allies for allegedly "misleading" the public on climate change.[115] Some of the AGs had already initiated investigations of ExxonMobil for its opposition to the climate agenda. Suing to require compliance with the Paris Agreement is hardly a stretch for such committed activists. Indeed, E&E Legal had previously obtained from the New York attorney general's office the draft "Factual Background" sections of a complaint, clearly targeting federal agencies, citing the litany of supposedly aspirational, hortatory agreements building on the UNFCCC.[116]

These AGs have explored numerous fronts. Other emails obtained by E&E Legal reveal that AGs United consulted with Michael Burger, executive director of the Sabin Center for Climate Change Law at the Columbia University law school. In a January 2016 report, Burger and several coauthors argue that the Paris Agreement "provides a strong basis" for invoking a "powerful" but seldom-used provision of the Clean Air Act, Section 115, to compel greenhouse gas emission reductions across all sectors of the U.S. economy.[117]

Section 115 of the Clean Air Act authorizes the EPA to control U.S. emissions contributing to "air pollution" in another country, but only if the agency determines the other country is taking or will take comparable actions to curb emissions contributing to such air pollution. Burger argues that the Paris Agreement, with its quantified NDCs and "enhanced transparency framework," satisfies the requisite "reciprocity determination." Under Section 115, states reduce their "international air pollution" by modifying the state implementation plans they adopted to meet national ambient air quality standards (NAAQS).

All of this is dubious because there are no NAAQS for carbon dioxide and other greenhouse gases, although environmental advocacy groups have toyed with the idea of trying to force their creation.[118] Thus, Section 115 has no lawful application to greenhouse gases until the EPA promulgates NAAQS for greenhouse gas emissions.

Moreover, if a Section 115 petition actually succeeded in turning Obama's NDC into legally binding requirements, the political backlash would be even stronger than that triggered by the Clean Power Plan. As attorney Brian Potts commented in *Politico*:

> But if the Republican reaction to Obama's other environmental regulations is any indication, they would freak out. Even some Democrats would likely be concerned at the federal government's intrusion into powers traditionally reserved for the states. Through the completion of an international climate deal, this plan would effectively allow the president to sidestep Congress and take full control over each [state's] energy sector. It would give the White House enormous power. States' rights activists would rightly scream bloody murder.[119]

ED_0011318_00007024-00025

Nonetheless, litigation groups are poised to demand that the EPA use Section 115 to require domestic emission reductions at least as aggressive as those undertaken by other parties to the Paris Agreement. Withdrawing from the Paris Agreement would not preclude such litigation but would make it less likely to succeed. Even the most activist judges would think twice about citing an Agreement from which the United States had withdrawn.

Finally, as a general matter, staying in the Paris Agreement will increase litigation risk by influencing U.S. domestic politics. Courts do not decide climate-related regulatory and tort cases in a political vacuum. As the saying goes, even judges read the *New York Times*. Retaining the Paris Agreement as an official U.S. commitment can only increase the likelihood that courts will reach decisions in accord with those "commitments."

Withdrawal Options

The Paris Agreement entered into force on November 4, 2016.[120] That date is significant for evaluating withdrawal options.

There are three principal options, which we will call 1) *Paris Only*, 2) *Paris Plus UNFCCC*, and 3) *Advice and Consent*.

Paris Only. Under Article 28 of the Paris Agreement, a party that wishes to withdraw must wait at least three years after the pact's entry into force before submitting a written notification to the depositary, the U.N. Secretary General. Withdrawal takes effect one year after the depositary receives the notification. Thus, the earliest President Trump could cancel America's participation in the Paris treaty via this option would be November 4, 2020, near the end of his term. This approach would ensure almost four years of "diplomatic blowback" pushing him to reverse that decision. As noted, not pursuing any option ensures endless blowback, by design.

Also, were Trump to pursue the Paris Only approach, and lose his reelection bid, his successor could claim to unilaterally rejoin the pact. Even if Trump were to win reelection, the next president might still reactivate the Obama policy in 2025. Thus, this option would not resolve the issue.

Paris Plus UNFCCC. Article 28 further states: "Any Party that withdraws from the Convention [UNFCCC] shall be considered as also having withdrawn from this Agreement." The UNFCCC similarly requires a party to wait three years before submitting a withdrawal notification, and wait another year before withdrawal takes effect. However, the UNFCCC waiting period ended in May 1997, so Trump could immediately submit a notification of withdrawal. America would be out of the UNFCCC and Paris Agreement one year later—by April 2018. The "diplomatic blowback" would be a one-off and, if done soon, would be in the rearview mirror by mid-2018.

Advice and Consent. Gaining approval for treaties is hard, intentionally, and signing but not ratifying treaties is not unusual. President Trump could submit the Paris Agreement to the Senate and ask for its advice and consent. There is no chance two-thirds of Senators would support ratification. Thus, the Paris treaty would join 400-plus other treaties the United States signed but did not ratify.

The Advice and Consent option can be combined with either of the other withdrawal options.

ED_0011318_00007024-00026

We now briefly assess these approaches' comparative benefits and risks.

Paris Only takes four years to complete. It would allow a future president to put America back into the Agreement by same means Obama purported to join—with the stroke of a pen.

Paris Plus UNFCCC takes one year to complete. It would require a future president to obtain the Senate's consent to re-ratify the UNFCCC in order to rejoin the Paris Agreement. As Steven Groves of the Heritage Foundation notes: "[W]ithdrawing will prevent future Administrations from using the existing UNFCCC framework to avoid Senate advice and consent in the treaty process as required by Article II Section 2 of the U.S. Constitution."[121]

Another point in favor of *Paris Plus UNFCCC* is that the scripted "blowback" likely will be indistinguishable whether Trump withdraws from both pacts or just the Paris Agreement. Thus, *Paris Plus UNFCCC* is the quicker and more durable withdrawal option for the same PR pain.

Paris Plus UNCCC is also the superior option due to an unexpected legal complication. It is longstanding U.S. policy that Palestinian statehood is a matter to be negotiated by Israel and the Palestinians, not imposed on Israel by the United Nations. To put teeth into that policy, Congress prohibited the U.S. government from funding any U.N. agency that "accords the Palestine Liberation Organization the same standing as member states" (Public Law 101-246) or "grants full membership as a state in the United Nations to any organization or group that does not have the internationally recognized attributes of statehood" (Public Law 103-236).[122]

On December 18, 2015, the Palestinian Authority submitted its instruments of accession to the UNFCCC, and on March 17, 2016, the "State of Palestine" was accepted as a full member. Under U.S. law, therefore, all U.S. government funding for the UNFCCC should stop. The funding prohibitions dovetail with candidate Trump's promise not only to "cancel" U.S. participation in the Paris Agreement but also "stop all payment of U.S. tax dollars to U.N. global warming programs."

It makes little sense to stay in the UNFCCC once the U.S. terminates funding for the U.N. agency that administers it. In addition, as a party to the treaty, America cannot stop payments to the UNFCCC without going into arrears on financial commitments to the U.N. Thus, withdrawing from the UNFCCC would avoid the conflict between U.S. financial commitments under the treaty and the requirements of U.S. law.

A potential downside of *Paris Plus UNFCCC* is that although the Paris Agreement is highly controversial, the UNFCCC is not. Many people are unaware of its existence. A Republican administration negotiated the UNFCCC. Many Republicans who opposed the Kyoto Protocol have professed support for the UNFCCC. Thus, withdrawing from the UNFCCC is more easily attacked as "extreme" than withdrawing from the far more ambitious Paris Agreement.

However, the UNFCCC, as amended by the Paris Agreement, has been transformed into a very different treaty from the pact the United States ratified in 1992. The Senate gave its consent to the UNFCCC on the condition that any decision by the Conference of the Parties to adopt targets and timetables would be submitted for its advice and consent as well. In the Paris negotiations, the Conference not only announced its decision to adopt targets under agreed timetables, in the

ED_0011318_00007024-00027

form of NDCs, it collaborated with Obama to bypass Senate review. The Conference has abandoned the condition and shared assumptions on which the United States joined the UNFCCC, leaving the administration no real option but to withdraw.

The *Advice and Consent* option would clearly expose the Paris Agreement's lack of political support, allow the Senate to reclaim its constitutional role in the treaty-making process, and clarify for the public the extent of the Obama administration's unauthorized executive lawmaking.

Of course, *Advice and Consent* would require Republican Senators to debate climate policy on the merits, which will entail expending political capital.[123] However, regardless of whether the Senate holds a ratification debate, Trump should formally withdraw from the Paris Agreement under one of the two Article 28 procedures. That is the only way to avoid further legal controversy on whether America is in or out of the treaty. In addition, good relations with the nearly 200 other governments participating in the Paris negotiations suggests that withdrawal is better carried out through the prescribed procedures.

Conclusion

Americans expect their government to honor its commitments, whether deemed binding or not. To paraphrase the GEICO ad, "When you're the United States, you keep your promises; it's what you do." With that in mind, the Constitution provides a process for vetting proposed international agreements with potentially far-reaching consequences.

To claim he properly committed the U.S. to the Paris Agreement, President Obama pretended that way back in 1992, when the Senate consented to ratification of the U.N. Framework Convention on Climate Change, it also authorized unknown future executives to commit the United States to undertakings of far greater cost and risk. However, the Paris Agreement is no mere "update" of the UNFCCC. Given its prescriptiveness, ambition, costs, risks, dependence on subsequent legislation by Congress, and intent to affect state laws, the Paris Agreement—no less than the Kyoto Protocol and in key respects more so—is a whole new treaty. Alternatively, the Paris Agreement amends the UNFCCC into a very different treaty from that which the United States ratified. Either way, it purports to commit the U.S. to treaty-like obligations without Senate approval.

Even if the Senate Foreign Relations Committee report accompanying UNFCCC ratification had never stipulated that the Senate must review any decision by the Conference of the Parties to adopt targets and timetables, such as the mandatory NDCs that are the central feature of the Paris Agreement, it is inconceivable that when the Senate ratified the UNFCCC in 1992 it gave future presidents *carte blanche* to make costly and prescriptive legislative commitments without obtaining the Senate's advice and consent.

If allowed to stand as precedent, Obama's end-run around the treaty making process, along with the implicit assertion that the executive can unilaterally decide whether or not an agreement is subject to Senate review, would undermine one of the Constitution's important checks and balances.

ED_0011318_00007024-00028

Far from being toothless, the Paris Agreement would compel U.S. leaders to continually negotiate domestic energy policy with a coalition of foreign governments, multilateral agencies, and environmental pressure groups, all exaggerating climate change risks, and all demanding urgent action to restrict America and the world's access to affordable, plentiful, reliable carbon-based energy. It is designed to do this in perpetuity, and cannot be remedied by various "tweaks" that have been suggested.

Remaining in the Paris Agreement would undermine President Trump's energy agenda, endanger America's economic future, and grow the administrative state at the expense of representative government. It will enrich autocrats and rent-seekers without making a detectable dent on the alleged climate crisis. Worse, its mid-century emission reduction goal cannot be achieved without putting energy-poor nations on an energy diet.

To safeguard America's economic future and capacity for self-government, President Trump should pull out of the Paris Agreement. There are several options for doing so, which are discussed above. Regardless of which option Trump selects, his administration should make the case for withdrawal based on the following key points:

1. The Paris Agreement is a treaty by virtue of its costs and risks, ambition compared to predecessor climate treaties, dependence on subsequent legislation by Congress, intent to affect state laws, U.S. historic practice with regard to multilateral environmental agreements, and other common-sense criteria.

2. In America's constitutional system, treaties must obtain the advice and consent of the Senate before the United States may lawfully join them. President Obama deemed the Paris Agreement to not be a treaty in order to evade constitutional review, which the Agreement almost certainly would not have survived.

3. Allowing Obama's climate coup to stand will set a dangerous precedent that will undermine one of the Constitution's important checks and balances. It will allow the President to adopt any treaty he and foreign elites want, without Senate ratification, just by deeming it "not a treaty."

4. The Agreement endangers America's capacity for self-government. It empowers one administration to make legislative commitments for decades to come, without congressional authorization, and regardless of the outcome of future elections. It would also make U.S. energy policies increasingly unaccountable to voters, and increasingly beholden to the demands of foreign leaders, U.N. bureaucrats, and international pressure groups.

5. The United States cannot comply with the Paris Agreement and pursue a pro-growth energy agenda. Affordable, plentiful, reliable energy is the lifeblood of modern economic life. Yet, the Paris Agreement's central goal is to make fossil fuels, America's most plentiful and affordable energy source, more expensive across the board. Implementing President Obama's NDC would destroy U.S. manufacturing's energy price edge.

6. The Agreement entails more cost and risk than the country is willing to bear. A majority of states have sued to overturn the Obama EPA's end-run around Congress, the Clean

ED_0011318_00007024-00029

Power Plan, which is also the centerpiece of the U.S. NDC under the Paris Agreement. Yet, the CPP is only a start. All of Obama's adopted and proposed climate policies would only achieve about 55 percent of just the first NDC, and the Paris Agreement requires parties to promise more "ambitious" NDCs every five years.

7. The Agreement has no democratic legitimacy. President Obama kept mum about climate change during the 2012 elections. Only after being reelected did he unveil a climate agenda featuring an EPA-redesigned electric power system and the most "ambitious" climate agreement in history.

8. Withdrawing from the Paris Agreement is a humanitarian imperative. The Agreement will produce no detectable climate benefits. Instead, it will divert trillions of dollars from productive investments that would advance global welfare to political uses. Worse, the Agreement's mid-century emission-reduction goals cannot be achieved without drastically reducing energy-poor countries' current access to affordable energy from fossil fuels.

For all the foregoing reasons, President Trump should stick to his campaign promises to end America's participation in the Paris Climate Agreement and stop payments to the U.N. Green Climate Fund.

NOTES

EMBARGOED
NOT FOR CIRCULATION

ED_0011318_00007024-00030

[1] Andrew Freedman, "Trump backs away from pledge to 'cancel' Paris Agreement," Mashable, November 22, 2016, http://mashable.com/2016/11/22/trump-climate-paris-agreement-nyt-interview/#E._iyMrrqqqE.
[2] The Clean Power Plan is the centerpiece of President Obama's climate policy agenda, his Climate Action Plan. The Power Plan and the Paris Agreement rank among Obama's "legacy" policies. Executive Office of the President, The President's Climate Action Plan, June 2013, https://obamawhitehouse.archives.gov/sites/default/files/image/president27sclimateactionplan.pdf. U.S. Environmental Protection Agency, Clean Power Plan for Existing Power Plants, https://www.epa.gov/cleanpowerplan/clean-power-plan-existing-power-plants. The White House, Office of the Press Secretary, "Remarks by the President on the Paris Agreement," October 5, 2016, https://obamawhitehouse.archives.gov/the-press-office/2016/10/05/remarks-president-paris-agreement.
[3] U.S. Constitution, Article II, Section 2, Clause 2, The Heritage Guide to the Constitution, Treaty Clause, http://www.heritage.org/constitution/#!/articles/2/essays/90/treaty-clause.
[4] U.S. Nationally Determined Contribution, http://www4.unfccc.int/submissions/INDC/Published%20Documents/United%20States%20of%20America/1/U.S.%20Cover%20Note%20INDC%20and%20Accompanying%20Information.pdf. "This target is consistent with a straight line emission reduction pathway from 2020 to deep, economy-wide emission reductions of 80% or more by 2050. The target is part of a longer range, collective effort to transition to a low-carbon global economy as rapidly as possible."
[5] Steven Groves, The Paris Agreement Is a Treaty and Should Be Submitted to the Senate, *Backgrounder* No. 3103, Heritage Foundation, March 15, 2016, http://www.heritage.org/environment/report/the-paris-agreement-treaty-and-should-be-submitted-the-senate.
[6] U.S. Department of State, Foreign Affairs Manual 11—Political Affairs, Circular 175 Procedure, http://www.state.gov/documents/organization/88317.pdf.
[7] The White House, Office of the Press Secretary, "U.S. Leadership and the History Paris Agreement to Combat Climate Change," December 12, 2015, https://obamawhitehouse.archives.gov/the-press-office/2015/12/12/us-leadership-and-historic-paris-agreement-combat-climate-change.
[8] Coral Davenport, "A Climate Accord Based on Global Peer Pressure," *New York Times*, December 14, 2014, https://www.nytimes.com/2014/12/15/world/americas/lima-climate-deal.html?_r=0.
[9] These include the Technology Mechanism, Compliance Related Mechanism, Forum on the Impact of the Implementation of Response Measures, Subsidiary Body for Scientific and Technical Advice, Subsidiary Body for Implementation, Adaptation Committee, Climate Technology Center and Network, and Capacity-Building Initiative for Transparency.
[10] These include the Financial Mechanism, Compliance-Related Mechanism, Subsidiary Body for Implementation, Least Developed Countries Expert Group, Adaptation Committee, Green Climate Fund, Warsaw Mechanism on Loss and Damage, Global Environment Facility, Least Developed Countries Fund, Special Climate Change Fund, and Paris Committee on Capacity-Building.
[11] Coral Davenport, "A Climate Accord Based on Global Peer Pressure."
[12] "Meet the Press," Chuck Todd interview with Secretary of State John Kerry, December 13, 2015, http://www.nbcnews.com/meet-the-press/meet-press-december-13-2015-n479241. Coral Davenport, "Nations Approve Landmark Accord in Paris," *New York Times*, December 12, 2015, http://www.nytimes.com/2015/12/13/world/europe/climate-change-accord-paris.html?_r=0.
[13] Coral Davenport, "Top Trump Advisers Are Split on Paris Agreement on Climate Change," *New York Times*, March 2, 2017, https://www.nytimes.com/2017/03/02/us/politics/climate-change-trump.html?_r=0.
[14] Evan Lehmann, "Ivanka and Jared saved the Paris Agreement—for now," Climatewire, February 24, 2017, http://www.eenews.net/climatewire/2017/02/24/stories/1060050512.
[15] Executive Office of the President, The President's Climate Action Plan, June 2013, https://obamawhitehouse.archives.gov/sites/default/files/image/president27sclimateactionplan.pdf.
[16] The White House, Office of the Press Secretary, "Presidential Executive Order on Promoting Energy Independence and Economic Growth," March 28, 2017, https://www.whitehouse.gov/the-press-office/2017/03/28/presidential-executive-order-promoting-energy-independence-and-economi-1.
[17] Coral Davenport, "Top Trump Advisers Are Split on Paris Agreement on Climate Change."
[18] Daniel W. Drezner, "Benjamin Netanyahu's blinkered view of American politics," *Washington Post*, February 25, 2015, https://www.washingtonpost.com/posteverything/wp/2015/02/25/benjamin-netanyahus-blinkered-view-of-american-politics/?utm_term=.b115a818b5cb.

ED_0011318_00007024-00031

[19] Alex Pashley, "Gina McCarthy: U.S. climate plan will stand test of time," *The Guardian*, December 10, 2015, https://www.theguardian.com/environment/2015/dec/10/gina-mccarthy-us-climate-plan-will-stand-test-of-time.
[20] U.S. State Department, 2016 Second Biennial Report of the United States of America under the United Nations Framework Convention on Climate Change, http://unfccc.int/files/national_reports/biennial_reports_and_iar/submitted_biennial_reports/application/pdf/2016_second_biennial_report_of_the_united_states_.pdf. Stephen D. Eule, "Obama Administration Confirms 'Gap' in Paris Emissions Pledge," U.S. Chamber Institute for 21st Century Energy, http://www.energyxxi.org/obama-administration-confirms-gap-paris-emissions-pledge .
[21] "Sen. Jim Inhofe (R-Okla.), perhaps the most vociferous doubter of man-made warming in the Senate, told E&E News last week that Paris is so ineffectual it doesn't require Congress or the administration to undertake a formal withdrawal. 'It really is hardly worth even addressing,' he said. 'This is not a binding thing.' A presidential statement walking back the U.S. commitment would be enough to dispatch the issue, Inhofe said." Jean Chemnick, "Trump team being pulled in two directions on climate pact," Climatewire, February 7, 2017, http://www.eenews.net/climatewire/2017/02/07/stories/1060049647.
[22] Even if all countries implement their NDCs as promised, and there is no carbon leakage, the total temperature reduction will be 0.048°C by 2100. Bjorn Lomborg, "Impact of Current Climate Proposals," *Global Policy*, Vol. 7, Issue 1 (February 2016), pp. 109–118, http://onlinelibrary.wiley.com/doi/10.1111/1758-5899.12295/full.
[23] See Bjorn Lomborg's expanded figure comparing the amount of social, economic, and environmental benefit per dollar invested in different development policies during 2016-2030. Bjorn Lomborg, "Post-2015 Consensus," *The Economist* Special Online Supplement, http://www.copenhagenconsensus.com/post-2015-consensus/economist.
[24] Stephen D. Eule, "The European Union's 2050 Global Greenhouse Gas Emissions Goal Is Unrealistic," Institute for 21st Century Energy, May 20, 2015, http://www.energyxxi.org/european-unions-2050-global-greenhouse-gas-emissions-goal-unrealistic. "Analysis: The 1.5°C Solution?" Institute for 21st Century Energy, April 20, 2016, http://www.energyxxi.org/analysis-15%C2%B0c-solution.
[25] Andrew Restuccia, "Trump advisers want concessions for coal if U.S. stays in climate pact," *Politico*, March 17, 2017, http://www.politico.com/story/2017/03/trump-climate-pact-coal-concessions-236196.
[26] Marlo Lewis, "Carbon Capture and Storage: Adequately Demonstrated?" GlobalWarming.Org, March 31, 2016, http://www.globalwarming.org/2016/03/31/carbon-capture-and-storage-adequately-demonstrated/.
[27] Competitive Enterprise Institute, "Global Warming Resolution Marks 10th Anniversary," news release, July 25, 2007, https://cei.org/news-releases/global-warming-resolution-marks-10th-anniversary.
[28] Greg Kahn, "The Fate of the Kyoto Protocol under the Bush Administration," *Berkeley Journal of International Law*, Vol. 21, Issue 3, Article 5 (2003), http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1248&context=bjil.
[29] United Nations Framework Convention on Climate Change, Kyoto Protocol—Status of Ratification, http://unfccc.int/kyoto_protocol/status_of_ratification/items/2613.php.
[30] Rupert Darwall, "Will Trump Stand Up to the World on Climate-Change Policy?" National Review Online, February 22, 2017, http://www.nationalreview.com/article/445121/donald-trump-paris-climate-agreement-teachable-moment-europe.
[31] Press Briefing by National Security Advisor Condoleezza Rice on the President's Travel to Europe, June 6, 2001, http://www.presidency.ucsb.edu/ws/?pid=78897.
[32] Andrew Light and David Waskow, "Diplomatic blowback of US climate retreat may hurt Trump," Climate Change News, January 26, 2017, http://www.climatechangenews.com/2017/01/26/diplomatic-blowback-of-us-climate-retreat-may-hurt-trump/. Coral Davenport, "Diplomats Confront New Threat to Paris Climate Pact: Donald Trump," *New York Times*, November 18, 2016, https://www.nytimes.com/2016/11/19/us/politics/trump-climate-change.html. Rupert Darwall, *The Age of Global Warming: A History* (London: Quartet Books Limited, 2013), p. 282.
[33] William Yeatman, "On Climate Change, Obama Duped the American Public," GlobalWarming.Org, December 1, 2015, http://www.globalwarming.org/2015/12/01/on-climate-change-obama-duped-the-american-public/.
[34] The White House, Office of the Press Secretary, Press Call Briefing on the Paris Climate Change Summit, November 24, 2015, https://obamawhitehouse.archives.gov/the-press-office/2015/11/24/press-call-briefing-paris-climate-change-summit.
[35] The Copenhagen Accord was the culmination of a two-year negotiating process launched by the 13th Conference of the Parties in Bali, Indonesia. The United States, the European Union, several small island states, and environmental non-governmental organizations had high hopes of negotiating a treaty with legally binding emission reduction targets. China, Venezuela, and a few other developing countries derailed that expectation by refusing to

ED_0011318_00007024-00032

accept binding climate requirements. Reuters, "British PM blames China for lack of treaty," Climatewire, December 22, 2009, http://www.eenews.net/climatewire/stories/85944/search?keyword=Copenhagen+Accord. Some question whether the Copenhagen Accord even qualifies as an official U.N. agreement, because nations only committed to "take note" of the accord rather than than ratify it. Nathanial Gronewald, "U.N. chief declares accord 'significant achievement,'" Greenwire, December 21, 2009, http://www.eenews.net/greenwire/stories/85937/search?keyword=Copenhagen+Accord.

[36] EPA email, "Final Endangerment Finding for Greenhouse Gases under the Clean Air Act," Draft Deliberative, December 2009.

[37] Coral Davenport, "Obama Pursuing Climate Accord in Lieu of Treaty", *New York Times*, August 26, 2014, https://www.nytimes.com/2014/08/27/us/politics/obama-pursuing-climate-accord-in-lieu-of-treaty.html.

[38] "Climate Deal Must Avoid US Congress Approval, French Minister Says," *The Guardian*, June 1, 2015, http://www.theguardian.com/world/2015/jun/01/un-climate-talks-deal-us-congress.

[39] Patrick Goodenough, "Kerry: Iran Deal Not a Treaty Because 'You Can't Pass a Treaty Anymore,'" CNSNews.Com, July 29, 2015, http://www.cnsnews.com/news/article/patrick-goodenough/kerry-iran-deal-not-treaty-because-you-cant-pass-treaty-anymore.

[40] John B. Bellinger III, "Without White House muscle, treaties left in limbo," *Washington Post*, June 11, 2010, http://www.washingtonpost.com/wp-dyn/content/article/2010/06/10/AR2010061004356.html.

[41] Rodolfo Quenvenco, "United States Ratifies Key Nuclear Security Amendment," International Atomic Energy Agency, July 31, 2015, https://www.iaea.org/newscenter/news/united-states-ratifies-key-nuclear-security-amendment. Andrew McCarthy, "Kerry Claims 'You Can't Pass a Treaty Anymore' Two Days before U.S. Ratifies a Treaty," National Review Online, August 4, 2015, http://www.nationalreview.com/corner/422035/kerry-claims-you-cant-pass-treaty-anymore-two-days-us-ratifies-treaty-andrew-c.

[42] Valerie Richardson, "White House defends Obama evading Senate on climate deal," *Washington Times*, August 29, 2016, http://www.washingtontimes.com/news/2016/aug/29/obama-will-bypass-senate-ratify-paris-climate-acco/.

[43] Individual screenshots are available at E&E Legal's FOIA page under "FOIA'd State Department E-mails Relevant to 'Legal Form' of Paris," https://eelegal.org/rico-related-foia-documents/.

[44] "Paris climate deal will not be a legally binding treaty," *Financial Times*, November 11, 2015, https://www.ft.com/content/79daf872-8894-11e5-90de-f44762bf9896.

[45] Anne-Sylvaine Chassany and Pilita Clark, "France bows to Obama and backs down on climate 'treaty,'" *Financial Times*, November 28, 2015, http://www.cnbc.com/2015/11/28/france-bows-to-obama-and-backs-down-on-climate-treaty.html.

[46] United Nations Climate Change Secretariat, "The Paris Agreement: Next Steps," January 29, 2016, http://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_next_steps_post_adoption.pdf.

[47] Stephen Collinson, "Iran Deal: A treaty or not a treaty, that is the question," CNN, March 12, 2015, http://www.cnn.com/2015/03/12/politics/iran-nuclear-deal-treaty-obama-administration/.

[48] Iran Nuclear Agreement Review Act of 2015 (S.615), 114th Congress, https://www.congress.gov/bill/114th-congress/senate-bill/615.

[49] Ted Barrett, Manu Raju, Deirdre Walsh, and Tom LoBianco, "Senate Democrats protect Obama on Iran vote," CNN, September 10, 2015, http://www.cnn.com/2015/09/10/politics/iran-nuclear-deal-vote-congress/index.html.

[50] Coral Davenport, "U.N. Signals That Climate Deal Has Backing Needed to Enter Force," *New York Times*, September 20, 2016, https://www.nytimes.com/2016/09/21/world/americas/united-nations-climate-change.html.

[51] Library of Congress, *The Federalist Papers*, *Federalist* No. 75, http://thomas.loc.gov/home/histdox/fed_75.html.

[52] Ibid.

[53] U.S. Nationally Determined Contribution, http://www4.unfccc.int/submissions/INDC/Published%20Documents/United%20States%20of%20America/1/U.S.%20Cover%20Note%20INDC%20and%20Accompanying%20Information.pdf.

[54] Library of Congress, *The Federalist Papers*, *Federalist* No. 63, https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-63.

[55] Green Climate Fund executive director Hela Cheikhrouhou thinks climate finance should reach $450 billion annually by 2020. Alyster Doyle, "New UN climate fund to take risks to promote green tech," Reuters, June 5, 2015, http://www.reuters.com/article/climatechange-funds-idUSL5N0YR23F20150605.

[56] Working Minds, Quotations from George Bernard Shaw, http://www.working-minds.com/GBSquotes.htm

[57] Bjorn Lomborg, "Post-2015 Consensus."

ED_0011318_00007024-00033

[58] Author's Analysis, http://data.myworld2015.org/. The Paris Agreement's popularity among governments is not hard to explain. Developing country governments expect to gain trillions dollars in "climate finance" wealth transfers. Industrial governments expect to increase their control over energy markets and investments.
[59] Allan Gerson, *The Kirkpatrick Mission: Diplomacy without Apology: America at the United Nations, 1981-85* (New York: The Free Press, 1991).
[60] Alex Pashley, "Gina McCarthy: U.S. climate plan will stand test of time," *The Guardian*, December 10, 2015, https://www.theguardian.com/environment/2015/dec/10/gina-mccarthy-us-climate-plan-will-stand-test-of-time.
[61] Much of the following discussion is drawn from Marlo Lewis Jr., "The Paris Agreement Is a Treaty Requiring Senate Review," *On Point* No. 213, Competitive Enterprise Institute, February 24, 2016, https://cei.org/content/paris-climate-agreement-treaty-requiring-senate-review, and Steven Groves, "The Paris Agreement Is a Treaty and Should Be Reviewed by the Senate."
[62] Confidential Presidential Review Directive, Global Climate Change Policy Decision Paper, Document No. C05343580, Unclassified January 7, 2015, http://nsarchive.gwu.edu/NSAEBB/NSAEBB537-Clinton-White-House-Frustrated-in-Attempts-to-Forge-US-Global-Leadership-on-Climate-Change-in-1990s/documents/Document%201.pdf.
[63] Hearing of the Senate Committee on Foreign Relations, Subcommittee on Near East and Asia-International Climate Change Negotiations Panel I, November 13, 2007, https://votesmart.org/public-statement/304816/hearing-of-the-senate-committee-on-foreign-relations-subcommittee-on-near-east-and-asia-international-climate-change-negotiations-panel-i#.WKM-oxiZNBw.
[64] Andrew Revkin, "Bush Climate Plan: Amid Nays, Some Maybes," *New York Times*, June 4, 2007, http://www.nytimes.com/2007/06/04/washington/04climate.html?_r=0. Amber Phillips, "Congress's long history of doing nothing on climate change, in six acts," *Washington Post*, December 1, 2015, https://www.washingtonpost.com/news/the-fix/wp/2015/12/01/congresss-long-history-of-inaction-on-climate-change-in-6-parts/?utm_term=.a954bdca5256.
[65] Andrew Restuccia, "The one word that almost sank the climate talks," *Politico*, December 12, 2015, http://www.politico.com/story/2015/12/paris-climate-talks-tic-toc-216721.
[66] Joshua Keating, "The One Word that Almost Scuttled the Climate Deal," Slate, December 14, 2015, http://www.slate.com/blogs/the_slatest/2015/12/14/climate_deal_came_down_to_the_difference_between_shall_and_should.html.
[67] Suzanne Goldenberg, "How US negotiators ensured landmark Paris climate deal was Republican-proof," *The Guardian*, December 13, 2015, https://www.theguardian.com/us-news/2015/dec/13/climate-change-paris-deal-cop21-obama-administration-congress-republicans-environment.
[68] United Nations Framework Convention on Climate Change, Conference of the Parties 21st Session, Paris, November 30-December 11, 2015, Agenda item 4(b), Durban Platform for Enhanced Action (decision 1/CP.17), Adoption of a protocol, another legal instrument, or an agreed outcome with legal force under the Convention applicable to all Parties, https://unfccc.int/resource/docs/2015/cop21/eng/l09.pdf.
[69] The U.S INDC translates into a Kyoto Protocol target of 12-19 percent below 1990 levels. The U.S. Kyoto Protocol target was 5 percent below 1990 levels. Climate Action Tracker, http://climateactiontracker.org/countries/usa.html.
[70] Center for American Progress, "Paris Climate Agreement May Not Require Congressional Approval, CAP Report Says," news release, July 7, 2015, https://www.americanprogress.org/press/release/2015/07/07/116921/release-paris-climate-agreement-may-not-require-congressional-approval-cap-report-says/.
[71] Coral Davenport, "Nations Approve Landmark Climate Accord in Paris."
[72] Marrakesh Declaration, XV.5(a), http://unfccc.int/cop7/documents/accords_draft.pdf.
[73] Hannah Chang, "A 'Legally Binding' Climate Agreement: What Does It Mean? Why Does It Matter?" Earth Institute, Columbia University, February 23, 2010, http://blogs.ei.columbia.edu/2010/02/23/a-%E2%80%9Clegally-binding%E2%80%9D-climate-agreement-what-does-it-mean-why-does-it-matter/.
[74] National Public Radio, "A User's Guide to the Climate Change Talks," December 4, 2011, http://www.npr.org/2011/12/04/143095299/whats-at-stake-in-south-africa-climate-talks.
[75] S. Exec. Rept. 102-55, 102d Cong., 2d Sess. (1992), at 14
[76] USA First NDC Submission, UNFCCC, http://www4.unfccc.int/ndcregistry/PublishedDocuments/United%20States%20of%20America%20First/U.S.A.%20First%20NDC%20Submission.pdf.
[77] S. Exec. Rept. 102-55, 102d Cong., 2d Sess. (1992).

ED_0011318_00007024-00034

[78] United Nations Framework Convention on Climate Change, Art. 4.2(a), also cited in 12.2(a) and (b).
[79] U.S. Constitution, Article I, Section 1: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."
[80] Tim Haines, "John Kerry Explains Why Iran Deal Is Not Legally a Treaty: 'You Can't Pass a Treaty Anymore," Real Clear Politics, July 29, 2015, http://www.realclearpolitics.com/video/2015/07/29/john_kerry_explains_why_iran_deal_is_not_a_treaty_you_cant_pass_a_treaty_anymore.html.
[81] Dave Boyer, "Obama, Chinese president, ratify climate-change agreement," *Washington Times*, September 3, 2016, http://www.washingtontimes.com/news/2016/sep/3/obama-xi-ratify-climate-change-agreement/.
[82] U.S. Department of State, Texts of Agreements to Which the United States Is a Party, https://www.state.gov/s/l/treaty/tias/.
[83] Marlo Lewis, "Precedent on Environmental Pacts: Treaty or 'Executive Agreement'?" Competitive Enterprise Institute Blog, September 8, 2016, https://cei.org/blog/precedent-environmental-pacts-treaty-or-executive-agreement.
[84] Lavanya Rajamani, "The Durban Platform for Enhanced Action and the Future of the Climate Regime," *International & Comparative Law Quarterly*, Vol. 61, Issue 2 (April 2012), pp. 501-518, https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/div-classtitlethe-durban-platform-for-enhanced-action-and-the-future-of-the-climate-regimediv/79336B9BA7749EFF3034687167567ADA.
[85] Like many modern trade deals, the North American Free Trade Agreement was negotiated as legislative-executive agreement subject to approval by both chambers of Congress. James M. Smith, Daniel T. Shedd, Brandon J. Murrill, "Why Certain Trade Agreements Are Approved as Congressional-Executive Agreements Rather than as Treaties," Congressional Research Service, April 2013, https://fas.org/sgp/crs/misc/97-896.pdf.
[86] Steven Groves, "The Paris Agreement Is a Treaty and Should Be Submitted to the Senate."
[87] European Commission, Climate Action: Kyoto 2nd Commitment Period (2013-2020), https://ec.europa.eu/clima/policies/strategies/progress/kyoto_2_en.
[88] Declaration of Todd Stern, *State of West Virginia et al. v. United States Environmental Protection Agency et al.*, USCA Case #15-1363, December 3, 2015, http://www.globalwarming.org/wp-content/uploads/2015/12/TS-BS.pdf.
[89] On February 9, 2016, the Supreme Court granted the application of 29 states to put a stay on the Clean Power Plan, halting enforcement of the rule during litigation on the merits—a process that could take years. Administration officials have been at pains to reassure the European Union, India, and China that the EPA will win the case and the United States can fulfill its INDC even without the CPP. Coral Davenport, "Supreme Court's Blow to Emissions Efforts May Imperil Paris Climate Accord," *New York Times*, February 10, 2016, http://www.nytimes.com/2016/02/11/us/politics/carbon-emissions-paris-climate-accord.html?_r=0. Nonetheless, judging from climate activists' denunciation of Justice Roberts, they will undoubtedly invoke the Paris Agreement as a reason courts must rule in favor of the EPA and uphold the CPP. See, for example, Joe Romm, "Will Justice Roberts Destroy His Reputation and a Livable Climate at the Same Time?" Think Progress, February 9, 2016, http://thinkprogress.org/climate/2016/02/09/3747972/john-roberts-climate/.
[90] *State of West Virginia, State of Texas, et al. v. U.S. Environmental Protection Agency, et al.* Application by 29 States and State Agencies for Immediate Stay of Final Agency Action During Pendency of Petitions for Review, January 26, 2016, http://www.globalwarming.org/wp-content/uploads/2016/02/Final-States-SCOTUS- Stay-App-ACTUAL-M0116774xCECC6.pdf. Peter S. Glaser and Carroll W. McGuffey, III, "Regulating Greenhouse Gases under the Clean Air Act: Is the Bubble about to Burst?" *George Washington University Journal of Energy & Environmental Law*, Vol. 6, No. 3 (Winter 2016), https://gwujeel.files.wordpress.com/2016/02/glaser_jeel_vol6_issue3.pdf. Mario Loyola, "EPA's Unprecedented Power Grab," *National Affairs*, spring 2015, http://www.nationalaffairs.com/doclib/20150319_Loyola.pdf.
[91] U.S. Constitution, Article I, Section 9: "No money shall be drawn from the treasury, but in consequence of appropriations made by law."
[92] The White House, "FACT SHEET: President Obama's 21st Century Clean Transportation System," February 4, 2016, https://www.whitehouse.gov/the-press-office/2016/02/04/fact-sheet-president-obamas-21st-century-clean-transportation-system.
[93] Camille von Kaenel, "Obama Proposes $10-per-barrel Oil Tax to Fund Green Transit," *Scientific American*, February 5, 2016, http://www.scientificamerican.com/article/obama-proposes-10-per-barrel-oil-tax-to-fund-green-transit.

ED_0011318_00007024-00035

[94] U.S. Constitution, Article I, Section 7: "All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills."

[95] "As a matter of historical practice, some types of international agreements have traditionally been entered into as treaties in all or nearly every instance, including compacts concerning mutual defense, extradition and mutual legal assistance, human rights, arms control and reduction, environmental protection, taxation, and the final resolution of boundary disputes." Michael John Garcia, "International Law and Agreements: Their Effect upon U.S. Law," Congressional Research Service, February 18, 2015, https://fas.org/sgp/crs/misc/RL32528.pdf. EPA, "Selected Multilateral Environmental Instruments in Force for the U.S.," https://www.epa.gov/international-cooperation/selected-multilateral-environmental-instruments-force-us.

[96] S. Exec. Rept. 102-55, 102d Cong., 2d Sess. (1992).

[97] Dean Scott and Anthony Adragna, "Senate Republicans Mull Options for Review of U.S. Participation in Paris Climate Talks," Bloomberg Energy and Climate Report, May 19, 2015, http://www.bna.com/senate-republicans-mull-n17179926673/.

[98] United Nations Framework Convention on Climate Change, Adoption of the Paris Agreement, December 12, 2015, https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf.

[99] Framework Convention on Climate Change, Report of the Conference of the Parties on its seventeenth session, held in Durban from 28 November to 11 December 2011, 15 March 2012, http://unfccc.int/resource/docs/2011/cop17/eng/09a01.pdf#page=2

[100] Press Call Briefing on the Paris Climate Change Summit, November 24, 2015, https://obamawhitehouse.archives.gov/the-press-office/2015/11/24/press-call-briefing-paris-climate-change-summit.

[101] The U.N. Framework Convention on Climate Change was ratified by the U.S. Senate on 10/7/1992, at page 17149-17151 of the Congressional Record.

[102] Our analysis here follows that of Myron Ebell, "UN Framework Convention on Climate Change Secretariat Announces Steps for Signing and Ratifying the Paris Climate Treaty. The Next Step Is Up To the Senate," GlobalWarming.Org, January 29, 2016, http://www.globalwarming.org/2016/01/29/un-framework-convention-on-climate-change-secretariat-announces-steps-for-signing-and-ratifying-the-paris-climate-treaty-the-next-step-is-up-to-the-senate/.

[103] UNFCC, Adoption of a protocol, another legal instrument, or an agreed outcome with legal force under the Convention applicable to all Parties, January 29, 2016.

[104] UNFCCC—Paris Agreement, Status of Ratification, accessed March 27, 2017, http://unfccc.int/paris_agreement/items/9444.php.

[105] Jean Chemnick, "Trump team being pulled in 2 directions on climate pact," E&E News, February 7, 2017, http://www.eenews.net/special_reports/global_climate_debate/stories/1060049647.

[106] Ibid.

[107] Ibid.

[108] Lucas Bergkamp, "The hidden trigger of Paris: why the climate battle will now be taken to the courts," Energy Post, January 6, 2016, http://www.energypost.eu/hidden-trigger-paris-climate-battle-will-now-taken-courts/?utm_source=CP+Daily&utm_campaign=74e0e3a469-CPdaily06012016&utm_medium=email&utm_term=0_a9d8834f72-74e0e3a469-96965953. (Citing: Michael Burger, "Failure To Take Climate Action Is Not Only Morally Wrong, It's Illegal," Climate Law Blog, Sabin Center for Climate Change Law, Columbia University, November 30, 2015, http://blogs.law.columbia.edu/climatechange/2015/11/30/failure-to-take-climate-action-is-not-only-morally-wrong-its-illegal, and Sif Thorgeirsson and Ciara Dowd, "Post Paris climate talks, how to take charge through climate litigation," Business & Human Rights Resource Centre, http://business-humanrights.org/en/post-paris-climate-talks-how-to-take-charge-through-climate-litigation#.)

[109] Hague District Court, *Urgenda Foundation v. The State of the Netherlands*, June 24, 2015, https://elaw.org/nl.urgenda.15.

[110] Roger Cox, CIGI Papers No. 79, November 2015, "A Climate Change Litigation Precedent *Urgenda Foundation v. The State of The Netherlands*, p. 2, https://www.cigionline.org/sites/default/files/cigi_paper_79web.pdf.

[111] Ibid., p. 9.

[112] Ibid., p. 4.

[113] Robert J. Delahunty and John Yoo, "Against Foreign Law," *Harvard Journal of Law & Public Policy*, Vol. 29, No. 1, http://www.law.harvard.edu/students/orgs/jlpp/Vol29_No1_Delahunty_Yoo.pdf. Stephen C. McCaffrey, "There's a Whole World Out There: Justice Kennedy's Use of International Sources," *McGeorge Law Review*, Vol. 44 (2013), http://www.mcgeorge.edu/Documents/Publications/07_McCaffrey_ver01_6-25-12_FINAL.pdf

ED_0011318_00007024-00036

[114] The two-page letter is available at https://eelegal.org/wp-content/uploads/2017/04/NY-OAG-filing-Exhibit-1-recruiting-ltr.png, https://eelegal.org/wp-content/uploads/2017/04/NY-OAG-filing-Exhibit-1-recruiting-ltr-II.png.
[115] "Al Gore and Eric Schneiderman Launch AGs United for Clean Power Coalition," Climate Reality Project Blog, March 30, 2016, https://www.climaterealityproject.org/blog/al-gore-and-new-york-attorney-general-eric-schneiderman-launch-ags-united-clean-power-coalition.
[116] Stephen Dinan, "Green-trigue: N.Y. legal memo may give Obama path to make climate deal binding," *Washington Times*, August 28, 2014, http://www.washingtontimes.com/news/2014/aug/28/new-york-legal-brief-may-be-blueprint-for-obama-cl/?page=all. Kimberley Strassel, "Don't Wimp Out on Climate", *Wall Street Journal*, February 17, 2017, https://www.wsj.com/articles/dont-wimp-out-on-climate-1487290672.
[117] Michael Burger et al., Legal Pathways to Reducing Greenhouse Gas Emissions under Section 115 of the Clean Air Act, Institute for Policy Integrity, Columbia Law School, The Emmet Institute, January 2016, http://wordpress.ei.columbia.edu/climate-change-law/files/2016/06/Burger-et-al.-2016-01-Executive-Summary-Section-115-CAA.pdf.
[118] Center for Biological Diversity and 350.org, Petition to Establish National Pollution Limits for Greenhouse Gases Pursuant to the Clean Air Act before the Administrator of the Environmental Protection Agency, December 2, 2009, http://www.biologicaldiversity.org/programs/climate_law_institute/global_warming_litigation/clean_air_act/pdfs/Petition_GHG_pollution_cap_12-2-2009.pdf.
[119] Brian H. Potts, "Obama's Hidden Climate Leverage," *Politico*, February 1, 2016, http://www.politico.com/agenda/agenda/story/paris-climate-deal-epa-obama-000034.
[120] UNFCCC, Paris Agreement – Status of Ratification.
[121] Steven Groves, Brett Schaeffer, and Nicolas Loris, "The United States Should Withdraw from the United Nations Framework Convention on Climate Change," *Backgrounder* No. 3130, Heritage Foundation, June 9, 2016, http://www.heritage.org/environment/report/the-us-should-withdraw-the-united-nations-framework-convention-climate-change.
[122] U.S. Senate Committee on Environment and Public Works, "Inhofe, Senators to Secy. Kerry: U.S. Law Prohibits Sending U.S. Funds to U.N. Climate Convention," news release, April 18, 2016, https://www.epw.senate.gov/public/index.cfm/2016/4/inhofe_letter_sec.kerry.
[123] Marlo Lewis, Jr., "Time for a Sensible Sense of Congress Resolution on Climate Change," *OnPoint* No. 201, Competitive Enterprise Institute, June 17, 2015, https://cei.org/content/time-sensible-sense-congress-resolution-climate-change.

EMBARGOED NOT FOR CIRCULATION

ED_0011318_00007024-00037

About the Authors

Christopher C. Horner serves as a Senior Fellow at the Competitive Enterprise Institute. An attorney in Washington, D.C., Horner has represented CEI, scientists, and members of the U.S. House of Representatives and U.S. Senate on matters of environmental policy at the federal court level and before the U.S. Supreme Court (including scientists in the *Massachusetts. v. EPA* case in 2007).

Horner is regularly mentioned and published by *The Washington Times*, *National Review Online*, *Daily Caller*, *Investor's Business Daily*, Washington Free Beacon, and *Washington Examiner*. He has been cited on several recent occasions in *The Wall Street Journal*'s editorial pages. He has also written for *Human Events*, *PJ Media*, United Press International, *Energy Tribune*, Spain's *Actualidad Economica*, and Brussels' *EU Reporter*. Horner has discussed legal, policy, and political issues hundreds of times on television and radio programs in the United States, Europe, Canada, and Australia.

Horner is the author of four books including three on global warming and environmental policy, law and politics, including two best-sellers, *The Politically Incorrect Guide to Global Warming and Environmentalism* (2007) and *Red Hot Lies: How Global Warming Alarmists Use Threats, Fraud and Deception to Keep You Misinformed* (2008). The former spent six months on *The New York Times* bestseller list and earned him an appearance on "The Daily Show" with Jon Stewart.

Horner has testified before the Senate Foreign Relations and Environment and Public Works committees. He has worked on legal and policy issues with various public policy organizations around the globe. He has given lectures at universities in the U.S., Europe, and Central America, as well as numerous addresses in the European Parliament and before policy makers in multiple European capitals on a variety of topics relating to energy and environmental issues.

Horner serves on The Federalist Society's International and National Security Law Practice Group's Executive Committee. He is also a senior legal fellow at the Energy and Environment Legal Institute. He received his *Juris Doctorate* from Washington University in St. Louis, where he received the Judge Samuel Breckenridge Award for Advocacy.

Marlo Lewis, Jr. is a Senior Fellow at the Competitive Enterprise Institute, writing on global warming, energy policy, and public policy issues.

Lewis has been published in *The Washington Times*, *Forbes*, *National Review*, *Investors' Business Daily*, *Engage*, *Environmental Law Institute Forum*, *The Hill*, *Fox News*, *Real Clear Policy*, *Public Utility Fortnightly*, *University of Richmond Law Review*, *Interpretation: A Journal of Political Philosophy*, and other publications. He has appeared on various television and radio programs, including on Oprah Winfrey's show, where he provided counterpoint to Al Gore's *An Inconvenient Truth*. He produced, wrote, and narrated the documentary film, *Policy Peril: Why Global Warming Policies Are More Dangerous than Global Warming Itself*.

EMBARGOED NOT FOR CIRCULATION

Lewis has testified before the Senate Environment and Public Works Committee, the House Permanent Select Committee on Intelligence and House Select Committee on Energy Independence and Global Warming, and House Government Reform Subcommittees on the Census and Regulatory Affairs.

Prior to joining CEI in 2002, he served as Director of External Relations at the Reason Foundation in Los Angeles. During the 106th Congress, Lewis served as staff director of the House Government Reform Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs. He has also served as research director for Citizens against Government Waste. Earlier, he was a staff consultant to the House Foreign Affairs Subcommittee on International Economic Policy and Trade, a special assistant at the State Department Bureau of Inter-American Affairs and Bureau of International Organization Affairs, and a Visiting Assistant Professor of Political Science at Claremont McKenna College.

He holds a Ph.D. in Government from Harvard University and a B.A. in Political Science from Claremont McKenna College.

EMBARGOED
NOT FOR CIRCULATION

Message

From: Kenny, Shannon [Kenny.Shannon@epa.gov]
Sent: 4/7/2017 7:31:33 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Germann, Sandy [Germann.Sandy@epa.gov]
CC: Dalbey, Matthew [Dalbey.Matthew@epa.gov]; Scheraga, Joel [Scheraga.Joel@epa.gov]; Shaw, Nena [Shaw.Nena@epa.gov]; Kime, Robin [Kime.Robin@epa.gov]
Subject: FW: EPA reassigns HQ climate adaptation employees

This new POLITICO story is mostly correct, though I wish the "EPA official" cited would have corrected the misstatements in earlier BNA story.

From: POLITICO Pro Energy Whiteboard [mailto:politicoemail@politicopro.com]
Sent: Friday, April 07, 2017 2:24 PM
To: Kenny, Shannon <Kenny.Shannon@epa.gov>
Subject: EPA reassigns HQ climate adaptation employees

By Alex Guillén

04/07/2017 02:18 PM EDT

EPA will shut down a climate adaptation office at its Washington headquarters and assign the four employees there to other work, an agency official confirmed to POLITICO.

Adaptation, the work of preparing for climate change effects such as sea level rise and more extreme weather, should be conducted at regional and local levels, the EPA official said. The move will also help focus agency spending on the "core" EPA mission the president has identified as "clean air and clean water," the official added.

The employees' new assignments have not yet been decided.

The climate adaptation office, part of the Office of Policy, is run by EPA veteran career staffer Joel Scheraga. He oversaw the creation of EPA's 2014 adaptation implementation plan and helped write Barack Obama's 2013 climate action plan, which led to the creation of the Clean Power Plan and other regulations. Scheraga was not immediately available for comment.

Bloomberg BNA first reported the shift today. The EPA official could not confirm or deny parts of BNA's report that dozens of employees in smart growth and policy innovation programs had also been reassigned.

To view online:
https://www.politicopro.com/energy/whiteboard/2017/04/epa-reassigns-hq-climate-adaptation-employees-086113

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

Yes, very | Somewhat | Neutral | Not really | Not at all

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

This email was sent by: **POLITICO, LLC**
1000 Wilson Blvd. Arlington, VA, 22209, USA

Message

From: Kenny, Shannon [Kenny.Shannon@epa.gov]
Sent: 3/27/2017 6:38:37 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: FW: David K

Hi, just checking in to see if you had any reaction to or interest in this proposed assignment for David K from Al. Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Shannon

From: Kenny, Shannon [mailto:Kenny.Shannon@epa.gov]
Sent: Monday, March 20, 2017 9:42 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: David K

Here's a suggested assignment for David K from Al. Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Sent from my iPhone

Message

From: Kenny, Shannon [Kenny.Shannon@epa.gov]
Sent: 3/20/2017 2:35:35 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: RE: David K

Will work on this today. Will give you ideas for Sandra before your meeting with her as well.

Just a reminder that David K also currently holds the DAA title.

From: Dravis, Samantha
Sent: Monday, March 20, 2017 10:17 AM
To: Kenny, Shannon <Kenny.Shannon@epa.gov>
Subject: RE: David K

Need a similar assignment for George but longer term?

From: Kenny, Shannon
Sent: Monday, March 20, 2017 9:42 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: David K

Here's a suggested assignment for David K from Al. Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Sent from my iPhone

Message

From: Kenny, Shannon [Kenny.Shannon@epa.gov]
Sent: 3/20/2017 1:41:42 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: David K

Here's a suggested assignment for David K from Al. Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Sent from my iPhone

Message

From: Munoz, Charles [munoz.charles@epa.gov]
Sent: 4/14/2017 2:56:37 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
CC: Ford, Hayley [ford.hayley@epa.gov]
Subject: RE: Cabinet Affairs

Yep, Liz is getting that for us now actually.

Charles Munoz
White House Liaison
Environmental Protection Agency
Ex. 6 - Personal Privacy

From: Dravis, Samantha
Sent: Friday, April 14, 2017 10:56 AM
To: Munoz, Charles <munoz.charles@epa.gov>
Cc: Ford, Hayley <ford.hayley@epa.gov>
Subject: RE: Cabinet Affairs

Ask comms for the top 5 accomplishments of EPA that they gave to WH Comms.

From: Munoz, Charles
Sent: Friday, April 14, 2017 10:56 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Ford, Hayley <ford.hayley@epa.gov>
Subject: RE: Cabinet Affairs

This is great, thank you.

Charles Munoz
White House Liaison
Environmental Protection Agency
Ex. 6 - Personal Privacy

From: Dravis, Samantha
Sent: Friday, April 14, 2017 10:55 AM
To: Munoz, Charles <munoz.charles@epa.gov>
Cc: Ford, Hayley <ford.hayley@epa.gov>
Subject: RE: Cabinet Affairs

We are proceeding on WOTUS and CPP repeal per the two Presidential Executive Orders. Our teams have had calls with OMB and the White House about the plan forward.

We recently issued an administrative stay in the ELG Rule, the "Effluent Limitations Guidelines." This was a crippling, costly and burdensome rule – staying the rule will save money and jobs.

We are working with Commerce on the response to the Manufacturing Permit Streamlining Presidential Memorandum.

From: Munoz, Charles
Sent: Friday, April 14, 2017 10:46 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Ford, Hayley <ford.hayley@epa.gov>
Subject: RE: Cabinet Affairs

The Senior Advisor or whoever is in charge of the call will compile it. I'll reach out to the relevant folks to get some bullet points on anything they want Cabinet Affairs to know about.

Can you get me some policy points? I'm thinking anything that is about to pop up or recently has so they aren't caught by surprise by anything.

Charles Munoz
White House Liaison
Environmental Protection Agency
Ex. 6 - Personal Privacy

From: Dravis, Samantha
Sent: Friday, April 14, 2017 10:40 AM
To: Munoz, Charles <munoz.charles@epa.gov>
Cc: Ford, Hayley <ford.hayley@epa.gov>
Subject: RE: Cabinet Affairs

Right. So I think that what we need is a weekly coms readout, a policy readout, and any pressing legal issues and then what he is doing travel-wise.

We currently do not have a daily report on that stuff. So I need to think about what the best way is to compile all this. Do we have a sense of how other agencies are managing it?

From: Munoz, Charles
Sent: Friday, April 14, 2017 10:36 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Ford, Hayley <ford.hayley@epa.gov>
Subject: RE: Cabinet Affairs

We're more than willing to take it over to help out. I have the call-in information, we're just missing what to say. Is there a report compiled we can read off of for the call?

Charles Munoz
White House Liaison
Environmental Protection Agency
Ex. 6 - Personal Privacy

From: Dravis, Samantha
Sent: Friday, April 14, 2017 10:33 AM
To: Munoz, Charles <munoz.charles@epa.gov>
Subject: RE: Cabinet Affairs

Yes, but I keep having conflicts. I am really sorry. I wonder if this is something Hayley could take over?

I can provide her with the info she needs.

From: Munoz, Charles
Sent: Friday, April 14, 2017 10:33 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Subject: Cabinet Affairs

Do you have a few minutes this morning to go over what you report to them? I was told you were handling it but wanted to confirm a few things. Let me know if/when you're free.

Thanks,

Charles Munoz
White House Liaison
Environmental Protection Agency
Ex. 6 - Personal Privacy

Message

From: U.S. EPA Media Relations [noreply-subscriptions@epa.gov]
Sent: 4/13/2017 5:46:19 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: EPA Launches Back-to-Basics Agenda at Pennsylvania Coal Mine

EPA HEADQUARTERS
NEWS RELEASE
WWW.EPA.GOV/NEWSROOM

CONTACT:
press@epa.gov

FOR IMMEDIATE RELEASE
April 13, 2017

EPA Launches *Back-to-Basics* Agenda at Pennsylvania Coal Mine

SYCAMORE, Pa. – U.S. Environmental Protection Agency Administrator Scott Pruitt visited the Harvey Mine in Sycamore, Pa., today, to meet with coal miners and announce EPA's *Back-to-Basics* agenda. The agenda reinforces Administrator Pruitt's commitment to refocusing EPA on its intended mission, returning power to the states, and creating an environment where jobs can grow.

"What better way to launch EPA's *Back-to-Basics* agenda than visiting the hard-working coal miners who help power America. The coal industry was nearly devastated by years of regulatory overreach, but with new direction from President Trump, we are helping to turn things around for these miners and for many other hard working Americans," **said Administrator Pruitt.** "*Back-to-Basics* means returning EPA to its core mission: protecting the environment by engaging with state, local, and tribal partners to create sensible regulations that enhance economic growth."

Administrator Pruitt spoke with coal miners about the President's recent Energy Independence Executive Order, which directs EPA and other federal agencies to review the Clean Power Plan and revise regulatory barriers that impede energy independence, including unnecessary burdens on coal miners and coal-fired electric utilities.

"We welcome Administrator Pruitt to Southwestern Pennsylvania and are very encouraged by the new Administration's commonsense approach in balancing the need for environmental protection, energy development and economic growth," **said Jimmy Brock, CEO of CNX Coal Resources.**

"The Pennsylvania Coal Alliance looks forward to new direction from the EPA. We are hopeful that Administrator Pruitt will work with to stop the systematic regulatory approach to dismantle industry, and work with us to continue responsible mining and contribute billions to Pennsylvania's economy," **said Rachel Gleason, Executive Director of PA Coal Alliance.**

"Administrator Pruitt's appearance should give confidence to coal communities across the country that the days when our government stands in opposition to them are over and that the appreciation they deserve for securing the nation's energy supply for our manufacturing industries and families is finally at hand," **said Hal Quinn, President and CEO of the National Mining Association**.

In his speech to Pennsylvania miners, Administrator Pruitt explained that EPA's *Back-to-Basics* agenda means returning EPA to its core mission and focusing on greater value and results. EPA will be partnering with states and tribes to ensure a thoughtful approach is used to maximize resources to protect America's air, land, and water.

EPA'S *BACK-TO-BASICS* AGENDA

Protecting the environment; engaging with state, local and tribal partners; and creating sensible regulations that enhance economic growth.

- Following the President's Energy Independence Executive Order, Administrator Pruitt signed four notices to review and, if appropriate, to revise or rescind major, economically significant, burdensome rules the last Administration issued. This includes the so-called Clean Power Plan that threatens over 125,000 U.S. jobs.
- EPA is restoring states' important role in the regulation of local waters by reviewing the WOTUS ("waters of the U.S.") rule.
- EPA is clearing the backlog of new chemicals that were waiting approval from EPA, so they can go to market, and companies can innovate and create jobs.
- EPA is helping states achieve high air quality targets, clean up toxic waste sites and improve America's water infrastructure.
- EPA rescinded an unjustified, premature evaluation of greenhouse gas and fuel economy standards for model year 2022-2025 vehicles, and is working with the U.S. Department of Transportation (DOT) to conduct a collaborative and robust review of the standards.
- The agency is reviewing the Oil and Gas Methane New Source Performance Standards for new and modified sources, to determine whether it is duplicative.
- EPA is allocating funds for vital environmental projects that go directly to the health of our citizens, such as providing $100 million to upgrade drinking water infrastructure in Flint, Michigan.
- EPA is stopping the methane Information Collection Request (ICR) by telling businesses they no longer have this additional bureaucratic burden, with the cost to American businesses attempting to comply exceeding $42 million.
- Launched the EPA Regulatory Reform Task Force to undergo extensive reviews of the misaligned regulatory actions.

R057

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: Bolen, Brittany [bolen.brittany@epa.gov]
Sent: 4/12/2017 9:39:55 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: task force

EPA

Public is asked to help pick rules for chopping block

Arianna Skibell, E&E News reporter

Published: Wednesday, April 12, 2017

U.S. EPA's regulatory task force is looking for suggestions on what rules should be repealed, replaced or modified.

A *Federal Register* notice posted yesterday asks the agency's program offices to collect public comments on — among other things — rules that eliminate jobs, are outdated or ineffective, impose costs that outweigh benefits, or implement now-repealed executive orders.

"We are supporting the restoration of America's economy through extensive reviews of the misaligned regulatory actions from the past administration," Administrator Scott Pruitt said in a statement.

"The previous administration abused the regulatory process to advance an ideological agenda that expanded the reach of the federal government, often dismissing the technological and economic concerns raised by the regulated community and duplicating long-standing regulations by states and localities."

The comment period ends May 15.

The notice marks the task force's first public effort to begin paring EPA rules. President Trump directed the establishment of the panel through a February executive order that tells agencies to set up deregulatory bodies and designate a rule-reform officer (*Greenwire*, Feb. 24).

The EPA task force is led by attorney and Clean Power Plan foe Samantha Dravis. Among other panel members are EPA Chief of Staff Ryan Jackson, Deputy Chief of Staff for Policy Byron Brown and the deputy associate administrator for the policy office, Brittany Bolen (*Greenwire*, April 4).

The agency also launched a website dedicated to deregulatory efforts that lists Trump's relevant executive orders and related information.

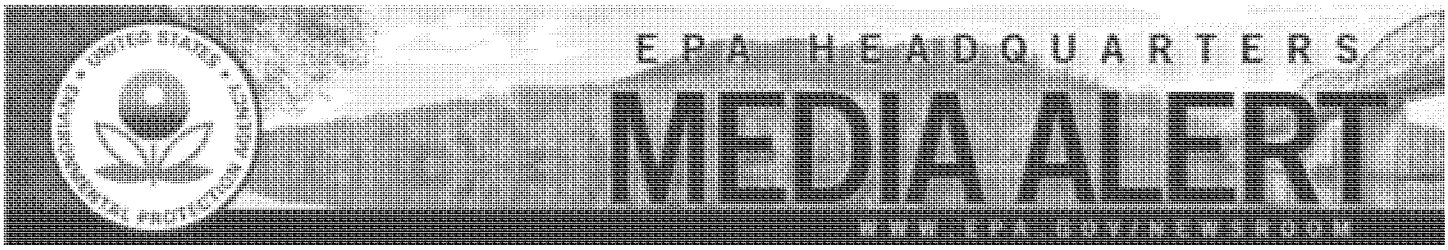
The website lists four public meetings hosted by EPA offices to obtain additional feedback. The offices of Land and Emergency Management, Small and Disadvantaged Business Utilization, Water, and International and Tribal Affairs will all hold stakeholder meetings in the coming months.

Twitter: @AriannaSkibell Email: askibell@eenews.net

Brittany Bolen
Deputy Associate Administrator, Office of Policy
U.S. Environmental Protection Agency
(202) 564-3291
Bolen.Brittany@epa.gov

Message

From: U.S. EPA Media Relations [noreply-subscriptions@epa.gov]
Sent: 4/12/2017 4:09:07 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
Subject: EPA Administrator to Visit Pennsylvania Coal Mine-- Launch Back-to-Basics Agenda



CONTACT:
press@epa.gov

FOR PLANNING PURPOSES ONLY
April 12, 2017

EPA Administrator to Visit Pennsylvania Coal Mine-- Launch *Back-to-Basics* Agenda

SYCAMORE, Pa. – U.S. Environmental Protection Agency Administrator Scott Pruitt will speak with coal miners at the Harvey Mine in Sycamore, Pennsylvania on Thursday, April 13, to kick off EPA's *Back-to-Basics* agenda. The *Back-to-Basics* agenda refocuses the EPA on protecting the environment, promoting economic and job growth, and returning power to the states.

Administrator Pruitt will speak with coal miners about the President's recent Energy Independence Executive Order, which directs EPA and other federal agencies to review the Clean Power Plan and revise regulatory barriers that impede energy independence, including unnecessary burdens on coal miners and coal-fired electric utilities.

Members of the media who plan to attend this event must RSVP by emailing pressrsvp@epa.gov no later than 5:00 p.m. EDT on Wednesday, April 12.

WHO: Administrator Pruitt and coal miners at the Harvey Mine – Patterson Creek Portal

WHAT: EPA kicks off *Back-to-Basics* agenda

WHEN: Thursday, April 13, 2017 at 12:00 p.m. EDT

WHERE: Harvey Mine – Patterson Creek Portal, 685 Patterson Creek Road, Sycamore, PA 15364

NOTE: Credentialed members of the media who have RSVP'd will be required to check in at the Harvey Mine security gate no later than 11:30 a.m. on Thursday, April 13. A photo ID is required.

R056

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: McGartland, Al [McGartland.Al@epa.gov]
Sent: 4/12/2017 12:45:03 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]
CC: Bolen, Brittany [bolen.brittany@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]
Subject: Re: Electric power research institute (EPRI) workshop

Probably David Evans and Alex marten. They are experts in electric utility modeling.

Sent from my iPhone

> On Apr 12, 2017, at 8:32 AM, Dravis, Samantha <dravis.samantha@epa.gov> wrote:
>
> Great. Can you just give us an update afterward? Who are you planning to send?
>
> Sent from my iPhone
>
>> On Apr 12, 2017, at 8:20 AM, McGartland, Al <McGartland.Al@epa.gov> wrote:
>>
>> EPRI is an industry-funded research arm of the electric power industry. They are having a workshop may 10 that should be helpful to us as we think through what happens when we remove the Clean Power Plan from the books.
>>
>> Provided you all are ok with it we will probably send a few people. (It's in DC). We know several of their economists well.
>>
>> Sent from my iPhone

Message

From: Germann, Sandy [Germann.Sandy@epa.gov]
Sent: 4/7/2017 7:44:51 PM
To: Kenny, Shannon [Kenny.Shannon@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]
CC: Dalbey, Matthew [Dalbey.Matthew@epa.gov]; Scheraga, Joel [Scheraga.Joel@epa.gov]; Shaw, Nena [Shaw.Nena@epa.gov]; Kime, Robin [Kime.Robin@epa.gov]
Subject: The Hill: EPA shutting down climate adaptation program

References BNA story and report of 40 reassignments. Says regional work will continue.

EPA shutting down climate adaptation program

BY TIMOTHY CAMA - 04/07/17 02:24 PM EDT 109

16

© Getty Images

The Environmental Protection Agency (EPA) is shutting down a program at its headquarters that helps states and localities adapt to the effects of climate change, such as rising sea levels.

An EPA official said a team of staffers within the EPA's policy office who had worked on the adaptation responsibilities are being reassigned. But the official stressed that regional offices will continue their climate adaptation efforts.

It's part of the EPA's shift away from climate change programs, which President Trump previewed last month in his first budget request.

Trump proposed eliminating major climate programs as part of a 31 percent cut to the EPA's budget, though those changes would not be effective until later this year, if Congress approved them.

Mick Mulvaney, director of the White House's Office of Management and Budget, told reporters last month that Trump does not believe climate is a worthwhile cause for federal spending.

"I think the president was fairly straightforward — we're not spending money on that anymore; we consider that to be a waste of your money to go out and do that," he said.

Bloomberg BNA first reported the news about shutting down the EPA's adaptation programs Friday. BNA also reported that teams working on sustainable development growth and innovation in local policy are being shuttered, with a total of 40 people being reassigned, but the EPA official did not confirm that.

The official said regional offices in areas especially susceptible to the effects of climate change, like the South, have always taken the lead on adaptation and will continue to do so.

"It was redundant. A lot of the regions are already doing a lot of this work," the official said.

"This is not something that should be controlled from inside Washington, D.C. This is something that the regions themselves know how to deal with, and have been dealing with the entire time."

Sandy Germann
US EPA Office of Policy
Ex. 6 - Personal Privacy
germann.sandy@epa.gov

From: Kenny, Shannon
Sent: Friday, April 07, 2017 3:32 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Germann, Sandy <Germann.Sandy@epa.gov>
Cc: Dalbey, Matthew <Dalbey.Matthew@epa.gov>; Scheraga, Joel <Scheraga.Joel@epa.gov>; Shaw, Nena <Shaw.Nena@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>
Subject: FW: EPA reassigns HQ climate adaptation employees

This new POLITICO story is mostly correct, though I wish the "EPA official" cited would have corrected the misstatements in earlier BNA story.

From: POLITICO Pro Energy Whiteboard [mailto:politicoemail@politicopro.com]
Sent: Friday, April 07, 2017 2:24 PM
To: Kenny, Shannon <Kenny.Shannon@epa.gov>
Subject: EPA reassigns HQ climate adaptation employees

By Alex Guillén

04/07/2017 02:18 PM EDT

EPA will shut down a climate adaptation office at its Washington headquarters and assign the four employees there to other work, an agency official confirmed to POLITICO.

Adaptation, the work of preparing for climate change effects such as sea level rise and more extreme weather, should be conducted at regional and local levels, the EPA official said. The move will also help focus agency spending on the "core" EPA mission the president has identified as "clean air and clean water," the official added.

The employees' new assignments have not yet been decided.

The climate adaptation office, part of the Office of Policy, is run by EPA veteran career staffer Joel Scheraga. He oversaw the creation of EPA's 2014 adaptation implementation plan and helped write Barack Obama's 2013 climate action plan, which led to the creation of the Clean Power Plan and other regulations. Scheraga was not immediately available for comment.

Bloomberg BNA first reported the shift today. The EPA official could not confirm or deny parts of BNA's report that dozens of employees in smart growth and policy innovation programs had also been reassigned.

To view online:
https://www.politicopro.com/energy/whiteboard/2017/04/epa-reassigns-hq-climate-adaptation-employees-086113

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

Yes, very | Somewhat | Neutral | Not really | Not at all

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

This email was sent by: **POLITICO, LLC**
1000 Wilson Blvd. Arlington, VA, 22209, USA

Appointment

From: Schwab, Justin [schwab.justin@epa.gov]
Sent: 4/4/2017 10:01:25 PM
To: Dravis, Samantha [dravis.samantha@epa.gov]

Subject: Accepted: Call with OMB - WOTUS and CPP
Location: Samantha's Office - 3505

Start: 4/4/2017 7:00:00 PM
End: 4/4/2017 7:45:00 PM

Recurrence: (none)

Message

From: Fotouhi, David [fotouhi.david@epa.gov]
Sent: 4/4/2017 12:27:35 AM
To: Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Bennett, Tate [Bennett.Tate@epa.gov]; Dravis, Samantha [dravis.samantha@epa.gov]
CC: Schwab, Justin [schwab.justin@epa.gov]
Subject: RE: Letter

Thanks again for sharing the draft with us. Justin and I have a few comments for your consideration:

Ex. 5 - Attorney Client

Let us know if you have any questions or would like to discuss further.

Best,

David

David Fotouhi

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

From: Gunasekara, Mandy
Sent: Monday, April 3, 2017 7:35 PM
To: Bennett, Tate <Bennett.Tate@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Cc: Fotouhi, David <fotouhi.david@epa.gov>
Subject: RE: Letter

Shoot – sorry. I forgot to send it. I made some edits and got hung up thinking we were being inconsistent.
Feedback/edits are welcome!
Mandy

From: Bennett, Tate
Sent: Monday, April 3, 2017 7:12 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Cc: Fotouhi, David <fotouhi.david@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: Fwd: Letter

Mandy- Justin was looking for the McAuliffe letter just now and I wasn't sure if you wanted to go with the stylistic edits I put in there (substantively, I just added a reference to the EO). Attached is the version with my edits, but happy to forward your previous version too. No big deal if you want to drop them.

Sent from my iPhone

Begin forwarded message:

> **From:** "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
> **Date:** April 3, 2017 at 10:37:48 AM EDT
> **To:** "Bennett, Tate" <Bennett.Tate@epa.gov>
> **Subject: Letter**
>
> Draft attached.