U.S. House of Representatives
Committee on Appropriations
Subcommittee on Interior, Environment, and Related Agencies
U.S. Environmental Protection Agency FY 2020 Budget Hearing
April 2, 2019

Questions for the Record – Environmental Protection Agency

Questions from Ms. McCollum

Staffing Plans for the Agency

During the hearing, I told you that I that EPA couldn't shrink anymore if it was going to be able to fulfill its mission to protect public health and the environment. You said you wanted to leave the agency stronger than you found it, particularly when it comes to the workforce.

McCollum Q1: Do you stand by the president's request to reduce the agency workforce to 12,415 FTE?

McCollum Q2: The president requested approximately $25 million dollars to offer incentives to current EPA employees to leave the agency. Do you support the president's request for funds for voluntary early retirements and staff buyouts?

McCollum Q3: Please explain in your own words how you believe reducing the agency workforce by roughly 20% would leave the agency stronger than you found it.

Since the beginning of this Administration, the EPA has seen a precipitous decline in the number personnel at the agency. In fiscal year 2017, EPA pursued an aggressive buyout strategy, and since that time, EPA staffing levels have continued to decline, in spite of agency funding increasing in 2018, and then again in 2019. In fact, the number of staff on-boards has continued to decline in FY 2018 and FY 2019 in spite of direction from the committees to maintain target staffing levels.

McCollum Q4: Please provide the subcommittee EPA target staffing levels for FY 2017, FY 2018, and FY 2019 by program office and region.

McCollum Q5: Please provide FTE on-boards data by month, for headquarters and within each region by program office, beginning from the start of FY 2018.

You testified that EPA staff technical expertise is rivaled only by the Nuclear Regulatory Commission in terms of the level of expertise needed to do the agency's work. It is therefore particularly distressing to see that as staff have left or retired, EPA has had only limited success in replacing that expertise, seriously eroding in EPA's ability to competently protect public health and the environment in the manner that Congress intended and that the American people expect.

McCollum Q6: Please provide the committee information by program office and region for the total number of departures and total number of hires since January 2017. Within each program office, please provide breakdowns by major job classification category.

McCollum Q7: Has EPA conducted a workforce analysis to identify any deficiencies in technical expertise the agency needs in order to do its work? Please provide the committee with those analyses, or if the analyses are in progress, when the agency expects to complete these analyses. If EPA does not have plans to conduct such analyses, please explain why.

McCollum Q8: The number of staff currently at the agency is well below the target FTE level for FY 2019. Has EPA developed a plan to achieve the target FTE level it has set for FY 2019? By when does the agency expect to achieve the target FTE level? If it has no plans to achieve the agency's FTE target, please explain how this is consistent with the directives given to the agency by the Appropriations Committees?

IRIS Assessments

During the hearing, you stated that the reason why formaldehyde was dropped from the IRIS risk assessment was because no office requested that the assessment be done. However, according to GAO, shortly after the IRIS program dropped its risk assessment of formaldehyde, the Office of Pollution Prevention and Toxics (OPPT) acted to designate it as a high priority, and began its own risk assessment for formaldehyde.

McCollum Q9: Why would OPPT begin its own risk assessment to determine if formaldehyde should be regulated under that law, but not request the IRIS program to continue its risk assessment work?

McCollum Q10: The Toxic Substances Control Act (TSCA) has numerous statutory timeframes within it that limits the speed with which the agency might act to regulate a chemical. Why not complete the IRIS assessment while concurrently moving to regulate formaldehyde under TSCA?

On December 19th, 2018, Deputy Assistant Administrator of the Office of Research and Development (ORD) David Dunlap recused himself from work on formaldehyde. During our hearing, you noted that you instigated a new process for prioritizing IRIS risk assessments, where each program office and the head of ORD would need to sign a form indicating for which chemicals ORD would conduct IRIS assessments, and what the purpose, parameters, and timeline for those assessments would be.

McCollum Q11: Was David Dunlap the signing official on behalf of ORD for these of these assessments?

McCollum Q12: Prior to Mr. Dunlap's voluntary recusal on formaldehyde, did he participate in any matters related to the IRIS program's assessment of formaldehyde? If so, how? Please be very specific.

McCollum Q13: Does Mr. Dunlap's recusal on formaldehyde extend to formaldehyde-related matters outside of the IRIS program while at the agency?

In your testimony, you noted that after formaldehyde was dropped from the IRIS program's priority list, one of the reasons the OPPT proposed to add it to its priority list was because of Congressional and public interest in, as you put it, "getting some answers on formaldehyde." Indeed, as part of the FY 2017 budget, Congress provided EPA with $1 million and directed the agency to contract with the National Academies of Sciences to conduct a peer review of the IRIS program's revised draft assessment of formaldehyde.

McCollum Q14: Did EPA obligate funds to conduct this study? If not, why not?

Superfund

EPA has made accelerating the cleanup of contaminated lands a top priority for the agency's work. This is an area of bipartisan interest, because we all agree that people deserve to be protected from toxic substances in the environment, and that the companies responsible for causing the contamination should pay to clean it up.

Unfortunately, there are many sites for which no responsible party can be identified. In those situations, EPA leads cleanup activities from funds appropriated to the Hazardous Substances Superfund account. For those sites, Congress will need to provide funding to ensure that the American people are protected from these risks.

The EPA Superfund Task Force has made a number of recommendations to accelerate the pace of cleanups. Sadly, one area where the Task Force was completely silent was ways to better analyze the program's future liabilities for cleanups. This information is critical in order to give the Congress and the public information about the scale of risks, scale of needs, in particular funding needs, and the expected rate of progress for cleanups.

McCollum Q15: Will EPA commit to working with members of the subcommittee to develop metrics for the Superfund program, and to develop estimates for future liabilities and funding needs for fund-led cleanups?

In 2017, EPA's Office of Inspector General (IG) issued a report (Report No. 17-P-0397) which found that EPA's distribution of personnel did not support regional workloads. In that report, EPA committed to taking a number of corrective actions to address the deficiencies identified by the IG.

McCollum Q16: Please provide a detailed update on EPA's progress on implementing each of the four agreed-upon corrective actions. Please provide the Committee with a copy of the multi-year regional FTE plan that EPA agreed to develop.

PolyMet Mining

During the hearing, you testified that you have encouraged your regional administrators to work more cooperatively with states, and that Region 5 Administrator undertook so-called 'action days' where EPA staff met face to face with state officials on issues such as permits. You mentioned two other instances in Region 5 where such meetings occurred, once with Wisconsin officials, and once on a Concentrated Animal Feeding Operation (CAFO) in Ohio.

McCollum Q17: Please provide additional details regarding these two meetings, including dates, who was present in those meetings, and brief descriptions regarding the topics that were covered.

McCollum Q18: Did former EPA Administrator Scott Pruitt similarly encourage regional administrators to work more cooperatively with states?

McCollum Q19: Have any other regional administrators undertaken activities similar to the Ms. Stepp's 'action days,' namely, as you described, having face-to-face meetings to discuss issues or share concerns with permits, regulations, or oversight, in lieu of sending letters, as has been standard practice in the past? If so, please provide a list of all similar such meetings, including date(s), who was present at those meetings, and brief descriptions regarding the topics that were covered.

EPA has posted on its website two "Messages to EPA Employees" related to transparency, issued while you were Acting Administrator. The first one was released shortly after you were named Acting Administrator, and second one was a follow-up memo from November where you reminded agency staff of their obligations under the Federal Records Act. I saw these memos as a welcome departure from the practices of your predecessor, who many have accused of trying to subvert the FOIA process by minimizing the generation of written records.

McCollum Q20: Has Ms. Stepp or any other regional administrator carried out any 'action days' or similar activities since you issued your November memo?

Questions from Ms. Pingree

EPA Wood Heater Standards

Pingree Q1: Can you provide for the record information and status of the EPA's New Source Performance Standards for New Residential Wood Heaters given that there is a May 2020 effective date for Step 2 of this rule?

EPA State Air Petitions

Administrator Wheeler, in your testimony, you stated during the hearing that the reason EPA rejected Delaware's and Maryland's air petitions was because EPA believes that almost all non-attainment areas in the country will reach attainment by the early 2020s." However, this analysis assumes that certain existing rules and policies that aim to improve air quality would be in place. Meanwhile, the EPA is gutting those same rules and regulations. These rules have been in place for many years, and, in the case of "the Once In Always In" policy, since the 1990s.

Pingree Q2: Did EPA's analysis include the projected effects from the change in the "Once in Always In" policy, rollback of clean car standards and other changes the Administration is proposing?

Pingree Q3: How can we expect states to reach attainment if you are simultaneously gutting the rules that would make this possible (such as MATS, "Once In Always In," NSR Review, and Clean Car Standards) in the first place?

Questions from Mr. Kilmer

Federal Requirements to Recover Puget Sound

When Administrator Wheeler testified before the Interior, Environment and Related Agencies Appropriations Subcommittee on April 2nd, he indicated that the proposed elimination of the Puget Sound Geographic Program, the National Estuary Program, and other State and Tribal Assistance Grants, would have no impact on federally mandated recovery efforts in the Puget Sound because they would rely on state, tribal, and private partners to conduct these federal activities. However, the EPA has clear statutory obligations under the Clean Water Act, the Endangered Species Act, the National Environmental Policy Act, and multiple treaties signed with federally recognized tribes to take certain actions to protect water quality, endangered species and human health that cannot simply be transferred to non-federal partners.

Kilmer Q1: For Fiscal Years 2018 and 2019, how much money did the EPA spend (or is planning to spend) on federally mandated actions within the Puget Sound watershed? In your response, please provide a list of all federal actions taken, indicate which account(s) those funds came from, and which statutory requirement the action fulfilled.

Kilmer Q2: Would the EPA be vulnerable to legal action if these activities were suspended in FY 2020 due to insufficient federal funding?

Questions from Mr. Quigley

Quigley Q1: On March 4th, the first comprehensive, national report was released that concludes, based on industry data, that nearly all (91 percent) coal plants nationwide have severely contaminated groundwater with toxic chemicals like arsenic, cobalt, lithium and radium. There is nothing in the FY 2020 budget that reflects additional water testing, enforcement and assistance to adversely impacted communities, many of which are low-income communities and communities of color. What is EPA doing to protect vulnerable communities near coal plants and to safeguard the nation's drinking water, lakes and streams from this deadly and well-documented contamination from coal ash?

Quigley Q2: In July 2018, EPA weakened the federal coal ash rule, and EPA plans this year to issue at least two additional rules to further weaken federal health protections, which will harm communities near coal ash dumps, particularly low-income communities and communities of color. In light of the widespread evidence of groundwater contamination at almost all coal plants, how can you justify these regulatory rollbacks?

EPA: Staffing

Mr. Wheeler, the more than 30% budget cut to EPA that you are somehow here to defend is irresponsible and unconscionable. It represents a disservice to every single American that has become all too typical of this administration. One of the nonsensical consequences of your proposed cut is the elimination of 1,961 EPA career staff – including 130 scientists and engineers at EPA Region 5 who are responsible for ensuring the clean air, water, and land for six states. What's worse is that the Trump Administration's proposed 90% cut to the Great Lakes Restoration program- despite the fact that Congress has repeatedly rejected slashing GLRI- would cut another 70 region 5 staff.

Quigley Q3: How does cutting roughly 20% of the enforcement staff of EPA's Region 5 office help protect the health and safety of people in Illinois or help EPA achieve its mission?

EPA: Regional Enforcement – Staffing

Mr. Wheeler, the EPA under this Administration is not bringing enforcement cases against polluters at near the rate of the previous 5 Administrations. As a result, there has been widespread criticism that EPA is not conducting enough inspections to ensure that laws are followed.

Quigley Q4: With enforcement already at historic lows, how can this Administration justify a 15% cut to each regional office?

EPA: Staffing

Mr. Wheeler, all EPA Offices have lost engineers and scientists that have not been replaced. For example, Region 5 has lost over 120 engineers and scientists since 2017 to attrition and

retirement. Yet, EPA did not spend $3M it had in FY 2018 to hire replacement staff that the Region had available in the "environmental program and management" account.

Quigley Q5: Why did each Region not spend down the accounts designated for staff salaries and expenses when management knew the Regions were desperately in need of staff in 2018?

Quigley Q6: As of April 2, 2019, Region 5 has not replaced even 20% of the staff the Region lost in FY 2018. What specific steps will you take to speed up the hiring in each Region?

EPA: Willowbrook, IL and EPA's Integrated Risk Information System (IRIS) Program

Mr. Wheeler, I am deeply concerned about ongoing political interference in EPA's Integrated Risk Information System (IRIS) program and how that interference may have exposed people in Illinois to an extremely dangerous toxin that EPA should have caught. EPA has a longstanding policy of using finalized, peer reviewed IRIS values in its Risk and Technology Review rulemaking process. Yet in the case of ethylene oxide, a potent carcinogen, EPA engaged in a highly irregular public comment period after the risk assessment had already undergone public comment, external peer review, internal review, review by other agencies, and review by the Office of the President.

Quigley Q8: Can you explain why EPA requested comment on an already finalized IRIS health risk assessment? Would you characterize this as standard practice?

Quigley Q9: Would you agree that ignoring a finalized IRIS value and reopening the process for public comment after finalization undermines the scientific integrity of the Agency and the protection of the public?

EPA: Willowbrook, IL and EPA's Integrated Risk Information System (IRIS) Program

In 2016, the IRIS process found ethylene oxide to be 30 times more carcinogenic than previously suspected, yet it appears that EPA tried to undermine the IRIS finding for that chemical through this irregular comment period on a rulemaking that depended on the IRIS value.
In the Chicago area, a local medical sterilization plant has been closed by Illinois EPA- not USEPA- as a result of ethylene oxide emissions and the IRIS finding about their danger.

Quigley Q10: Who made the decision to include a request for comment on the 2016 ethylene oxide health risk assessment rulemaking process?

Quigley Q11: Why was this decision made?

EPA: Ethylene Oxide Exposure in Illinois

Administrator Wheeler, in addition to the medical sterilization facility in Willow Brook, Illinois that has been closed down by IEPA, there are two other facilities in Lake County that may be emitting dangerous levels of ethylene oxide. Local and state authorities- let alone US EPA which

continues to ignore its responsibilities to the people of Illinois- cannot act because they lack sufficient data about the other factories.

Quigley Q12: Will you commit to take the problem of ethylene oxide exposure in Illinois seriously and agree to increase EPAs monitoring of potentially problematic facilities in Lake County?

EPA: Lead in School Drinking Water

Last Congress, a report from the Government Accountability Office (GAO) that found that only 43 percent of school districts nationwide tested for lead in their schools' drinking water in 2016 and 2017, and of those that tested, 37 percent found elevated lead levels. The GAO also concluded that despite the Department of Education and EPA's memorandum of understanding to address the exposure of lead in schools, your agency and the Department of Education do not regularly collaborate to support state and school district efforts on lead in drinking water. In addition to introducing the Get the Lead Out of Schools Act, on August 20, 2018, I joined many of my colleagues and wrote to both you and Secretary DeVos to urge you to take immediate action to finalize protective guidance.

Quigley Q13: I received a response from the Department of Education about a month later, but I have still not heard from you or EPA. Why is that?

Quigley Q14: Since the release of this report, what measures have you taken to require all schools and school districts to test for lead in all fixtures, and provide bottled water or lead infiltration devices for any schools exceeding the action level now and in the future?

EPA: Climate Change

Administrator Wheeler, you've said publicly that you believe that mitigating and adapting to climate change should not be a priority of the EPA under your watch. You've said that you don't believe that climate change impacts will be a problem for 50 years or more. Setting aside that we're already seeing the impacts of climate change, from ocean acidulation and glacial melt to severe weather and major ecosystem impacts, it strikes me that if we see a planet-wide economic and environmental disaster looming, we should probably act to do something about it.

Quigley Q15: As Administrator of the Environmental Protection Agency, please explain why your de-prioritization of climate change does not represent a betrayal of your agency's mission and purpose and a complete failure to fulfil the basic requirements of your job?

Questions from Mr. Joyce

Great Lakes Restoration Initiative (GLRI) – Fiscal Year 2020 Request

This Subcommittee – and the Chair and I in particular – recognize the important role that the Great Lakes Restoration Initiative (GLRI) plays in our ability to protect and preserve the Great Lakes ecosystem and the 24 million Americans who depend on it. We have seen firsthand that providing resources to restore the health of this ecosystem directly impacts the health of our economy.

Since 2010, a total of 70 Beneficial Use Impairments (BUIs), at 24 Areas of Concern in the Great Lakes States, have been removed. This is seven times the total number of BUIs removed in the preceding 22 years, including two BUIs in fiscal year 2018 in Northeast Ohio, at the Cuyahoga and Ashtabula rivers.

It is because of continued success stories like this why, year after year, this Subcommittee has consistently – on a bipartisan basis – rejected proposed cuts to the GLRI from both current and previous administrations.

Joyce Q1: In light of the President's comments in Michigan – what is the Administration's desired fiscal year 2020 request for GLRI?

Joyce Q2: Are we likely to see a budget addendum from the Administration noting this change and indicating where the additional $270 million needed to fully fund the GLRI would come from?

Great Lakes Restoration Initiative (GLRI) – Harmful Algal Blooms

Since 2015, as a result of Great Lakes Restoration Initiative (GLRI) funded projects, EPA and its partners have worked collaboratively to prevent over one million pounds of phosphorous from entering the Great Lakes.

Excessive amounts of phosphorus threaten the Great Lakes ecosystem and priority watersheds by contributing to harmful algal blooms. Harmful algal blooms contaminate surface and drinking water supplies, cause human and animal health effects, and can lead to beach closures that result in lost recreational opportunities.

Joyce Q3: Given EPA and its partners use GLRI funds to prevent over 300,000 pounds of phosphorous from entering the Great Lakes each year, can you speak to the importance of robust funding in fiscal year 2020 in order to limit phosphorous levels and bolster our ability to prevent harmful algal blooms?

Joyce Q4: How important is controlling phosphorous levels for improving the water quality of the Great Lakes and for supporting the $7 billion Great Lakes fishing industry?

Joyce Q5: If GLRI is fully funded in fiscal year 2020, how much does the Agency plan to spend on harmful algal bloom work?

Great Lakes Restoration Initiative (GLRI) – Impact on Federal Partners

Although funding for the Great Lakes Restoration Initiative (GLRI) resides within EPA's budget, the Agency is required to use these funds to coordinate with several other federal agencies – like the Department of Commerce, Department of the Interior, and others – to carry out Great Lakes restoration work.

Joyce Q6: In formulating the fiscal year 2020 request – and prior year requests – for GLRI, does the Agency consult with its federal partners to determine how a proposed reduction might impact their GLRI work?

Joyce Q7: Can you speak to the importance of federal collaboration in restoring the Great Lakes ecosystem and provide some examples of GLRI projects you are currently carrying out with other federal agencies?

Great Lakes Restoration Initiative (GLRI): Impact on States, Tribes, and Local Communities

According to the budget request as it currently stands, in fiscal year 2020, Great Lakes Restoration Initiative (GLRI) funding will be used to support State and Tribal monitoring work in the Great Lakes. And, this monitoring work will then be used to "measure and assess the overall results of activities that affect the environmental condition of the Great Lakes."

The reason that the GLRI has been so successful in restoring the Great Lakes basin is because funds are used for on-the-ground, coordinated public-private restoration activities, not simply for monitoring the condition of the Great Lakes.

Joyce Q8: What portion of the GLRI request typically supports on-the-ground restoration versus monitoring efforts?

Consistent with the fiscal year 2019 request, in reducing GLRI funding, the Administration proposes to "return responsibility for local environmental efforts" in the Great Lakes "to States and local entities."

Joyce Q9: I am a proponent of cooperative federalism, but given the environmental and economic significance of the Great Lakes, is it fair to expect the States, Tribes, and local communities to shoulder the burden of caring for the Great Lakes?

Joyce Q10: Do you expect to see setbacks in Great Lakes restoration work should the current $30 million budget request be enacted?

Improvements in Air Quality – NE Ohio

In 2017, approximately 111 million people in the United States lived in counties with pollution levels that did not meet standards for at least one criteria air pollutant, including counties in my district in Northeast Ohio.

One of EPA's proposed fiscal year 2020 objectives is to work with States and Tribes to ensure more Americans are living and working in areas that meet high air quality standards and to reduce the number of nonattainment areas.

Joyce Q11: How will EPA's 2020 budget proposal improve ongoing partnerships with States, Tribes, and local communities to achieve improvements in air quality and reduce public health risks?

Joyce Q12: How will the significant proposed reductions to the State and Local Air Quality Management and Tribal Air Quality Management categorical grants impact this work?

BEACH Grants

EPA's Beaches Environmental Assessment and Coastal Health Act grants – commonly known as BEACH grants – help States, Tribes, and local governments monitor water quality at coastal and Great Lakes beaches and notify the public when the water is unsafe for recreational activities.

This work is especially important because each year Americans take more than 900 million trips to coastal areas, including trips to Lake Erie beaches in my district. Exposure to polluted waters that contain bacteria and/or viruses can pose serious risks to human health.

Joyce Q13: Can you explain the Administration's rationale for terminating the BEACH grants in fiscal year 2020? Especially when we saw an uptick last year in coastal water pollutants like red tide and harmful algal blooms?

Joyce Q14: If EPA takes a step back from its current role and provides no federal assistance, as proposed in fiscal year 2020, do you believe that grantees – like the Ohio Department of Health – will be able to maintain and improve their water monitoring and notification programs to keep Americans safe?

"PFAS Action Plan" – Ongoing Work and Resources

On February 14, 2019, EPA released its "PFAS Action Plan" outlining short-term and long-term steps the Agency plans to take to address PFAS and protect the public health.

Joyce Q15: Can you provide the Committee with an update on the work EPA is doing to move forward with the regulatory process to potentially set a Maximum Contaminant Level for two of the more common and prevalent PFAS?

Joyce Q16: Does the fiscal year 2020 budget request include the necessary funding for EPA to carry out PFAS-related research and regulatory work?

Healthy Schools Grant Program

The fiscal year 2020 budget proposal includes $50 million to establish a new Healthy Schools Grant Program to protect children and teachers from environmental hazards where they live, play, and work each day. Much like any other parent, I want to ensure that our nation's children are going to school in a clean, safe, and healthy environment.

As I understand it, through the Healthy Schools Grant Program, EPA will work with States, Tribes, and local communities to address potential gaps in school environmental health.

Joyce Q17: Can you identify the toxics, pollutants, and other "gaps" in school environmental health that EPA is not currently addressing?

Joyce Q18: How will EPA ensure that this program does not duplicate efforts of other important grant programs like the Lead Testing in Schools grant program and the Radon categorical grants?

Joyce Q19: If the Healthy Schools Grant Program is funded in fiscal year 2020, how do you plan to distribute funding to the States and Tribes?

Joyce Q20: Is the Agency committed to working with Congress to develop a methodology to distribute the grants?

Superfund Program

In my home state of Ohio, we currently have nearly 40 sites on the Superfund National Priority List. For this reason, I, like many of my colleagues, have remained very supportive of EPA's Superfund program over the years to ensure that the Agency has the necessary resources to accelerate the pace of cleanups to return these sites to productive use.

Last January, EPA released its Superfund Redevelopment Focus List outlining the sites across the country with the greatest expected redevelopment and commercial potential.

Joyce Q21: How did EPA go about determining the sites to be included on this list? And, given that none of Ohio's sites were included on the list, how is EPA ensuring that all sites – not just those on the list – are being adequately addressed?

Over the last two years, this Committee has made significant investments in the Superfund Remedial program.

Joyce Q22: Can you explain how those investments have helped EPA accelerate cleanup efforts, move sites off the National Priority List, and spur economic development?

Joyce Q23: How has the Superfund Task Force improved and standardized cleanup guidance and protocols across the regions?

EPA Work to Reduce Nutrient Pollution

In February, EPA signed a Memorandum of Understanding (MOU) with the Water Research Foundation to accelerate progress on reducing excess nutrients in our nation's waterbodies.

Joyce Q24: Given that agriculture is Ohio's number one industry, can you explain how this MOU will allow EPA and the Water Research Foundation to work with farmers to develop affordable programs, tools, and technologies that support watershed and market-based approaches to nutrient management?

Coal Combustion Residuals Permit Programs

Over the last two fiscal years, Congress has provided $14 million for EPA to develop and implement a federal permit program for the regulation of coal combustion residuals (CCR).

Joyce Q25: Please provide an update on these efforts and explain how EPA has spent these funds - and will continue to spend funds - to fully develop a CCR permit program.

Joyce Q26: Are there additional resources that EPA needs that will be beneficial to the agency to help support States in developing their own CCR programs?

Questions from Mr. Simpson

Renewable Fuel Standard - Wood Biomass Exclusion

I asked this question of Administrator Pruitt in 2018. Currently, federal land biomass is not eligible to be counted toward the Renewable Fuels Standard (RFS). Biomass was eligible in the 2005 standard, but the 2007 Energy and Security Independence Act did not allow for federal land biomass to count towards the RFS.

The original Renewal Fuels Standard envisioned advanced biofuels coming from a number of feed-stocks, including forest products waste. Those anticipated levels of biofuel production have not occurred, partly because of the restriction in the original law disallowing the use of wood waste coming off federal timber.

Simpson Q1: Would you support removing this restriction?

Questions from Mr. Stewart

Environmental Protection Agency Director Andrew Wheeler

On the morning of August 5, 2015, the U.S. Environmental Protection Agency (EPA) and its contractors were performing remedial work at the abandoned Gold King Mine in Colorado. Suddenly, they opened a barrier holding back over three million gallons of toxic acid wastes contaminated with arsenic, lead, mercury, cadmium, and copper. The resulting uncontrolled blowout of acid wastes and toxic metals into rivers in Colorado, Utah, New Mexico and the Navajo Nation is one of the largest single inland pollution events in American history.

EPA immediately accepted responsibility and the Bonita Peak Mining District, where the Gold King Mine is located, was designated a national Superfund site. EPA has concentrated its work there but has taken no remedial action outside of the District. Based upon EPA's studies, the contamination will ultimately be deposited in the sediments in Utah. The remedial costs and natural resource damages could exceed $2 billion based upon EPA's actual cost at other similar contaminated sediment sites.

The State of Utah spent two years in settlement discussions with EPA. Faced with the statute of limitations, it was required to file its lawsuit to meet the time limit. The Justice Department then cut-off Utah's discussions with EPA. Utah's lawsuit was consolidated with those by New Mexico, the Navajo Nation, and private plaintiffs and transferred to a multi-district litigation (MDL) proceeding presided over by the Chief U.S. District Judge in New Mexico.

Last week, the Court neared completion of the pleading stage where the motions to dismiss by defendants were largely denied. The Court citied Utah's showing that the EPA has not commenced or planned any remedial action in the state and denied EPA's arguments based upon sovereign immunity. The next step is for EPA to admit or deny Utah's factual allegations in their answers, which poses particular problems for EPA because those allegations are largely quoted from the federal government's own investigative reports on the blowout.

Given the early rejection of EPA's attempts to avoid liability, Utah believes this is a good time to renew settlement discussions with EPA and has asked the Justice Department to cooperate. The Justice Department controls the Judgment Fund which is used to pay tort claims, and EPA controls payments under statutes such as the federal Superfund.

Stewart Q1: The EPA and its contractors are responsible for the August 5, 2015 Gold King Mine disaster that released over three million gallons of toxic waste into rivers in Utah, Colorado, New Mexico, and the Navajo Nation. What are your plans to work on remediation with the state of Utah? I recognize you are currently in a lawsuit with Utah and other parties, but the status of the lawsuit does not preclude your sharing views with me and the Subcommittee on how to work with the state on remediation. I'm specifically interested in your views on the use of compensatory mitigation in this case.

Questions from Mr. Amodei

Recycled Tires Used on Playing Fields

Amodei Q1: I understand a report on Recycled Tires Used on Playing Fields is past due but imminent and realize the study is not yet complete. When this information is released to the public, will it answer the question of any associated exposure risks in artificial turf or playgrounds as the public and industry have been seeking?

Solid Waste Management

The Resource Conservation and Recovery Act (RCRA) subpart D requires triennial EPA review of state solid waste management plans. In 2016 the EPA entered into a consent decree mandating rulemaking or a determination of non-action by spring of this year.

Amodei Q2: What engagement with state regulators did the EPA undertake to make this determination? Specifically has the EPA talked directly to state regulators or national organizations representing states and if so, who specifically was contacted?