Message

From: E&E News [ealerts@eenews.net]
Sent: 9/19/2018 5:32:27 PM
To: Brazauskas, Joseph [brazauskas.joseph@epa.gov]
Subject: September 19 -- Greenwire is ready

Greenwire -- The Leader in Energy and Environment News

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GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Wed., September 19, 2018

READ FULL EDITION

1. AIR POLLUTION:
'It's déjà vu all over again' at Trump EPA

EPA air chief Bill Wehrum draws inspiration from his days in the George W. Bush administration.

TOP STORIES

2. WHITE HOUSE:
Trump in N.C. talks 'epic' flooding, checks on golf course

3. FEDERAL AGENCIES:
Where are Trump's watchdogs?

4. CLIMATE:
'Locked-in' technologies seen undermining emission curbs

POLITICS

5. EPA:
Wheeler to recuse himself from Pebble mine — sources

6. COAL:
Black lung victims report 'unacceptable' working conditions

7. EPA:
IG to look at hurricane funding

FLORENCE

8. INFRASTRUCTURE:
More dams breach in the Carolinas

9. FLOODING:

2 mental health patients drown when van is swept away

NATURAL RESOURCES

10. NATIONAL PARKS:

Zinke's Grand Canyon trip to highlight maintenance backlog

11. OCEANS:

Cape Cod shark attacks lead to calls for better cell service

12. INVASIVE SPECIES:

Canadian crabs with bad attitude threaten Maine ecosystem

13. FORESTS:

Greenpeace criticizes popular brands for tree destruction

LAW

14. CLEAN WATER RULE:

Judge allows Iowa to join states halting WOTUS

15. FEMA:

Man accused of stealing hurricane victims' IDs in $8M scam

16. HURRICANE MARIA:

Puerto Rico sues insurance companies over unresolved claims

ENERGY

17. TRADE:

Panel maker SunPower wins tariff exemption

18. PIPELINES:

Line 3 protesters block Minn. bridge, perform water ceremony

STATES

19. TEXAS:

GOP scores upset to replace convicted state senator

20. MICHIGAN:

Drone to survey lake in search for toxic chemicals

21. WASHINGTON:

State marksman kills wolf from pack that attacked cattle

22. NORTH DAKOTA:

Produced water spill affects farmland

INTERNATIONAL

23. MEXICO:

Hotel project halted at important sea turtle nesting beach

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Message

From: Blake, Wendy [Blake.Wendy@epa.gov]
Sent: 9/19/2018 3:02:25 PM
To: Brazauskas, Joseph [brazauskas.joseph@epa.gov]
Subject: FW: GLO Reg Review for tomorrow is attached
Attachments: 9 19 GLO reg review.docx

Wendy L. Blake
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From: Blake, Wendy
Sent: Tuesday, September 18, 2018 5:36 PM
To: OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>; OGC GLO <OGC_GLO@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>; Walker, Denise <Walker.Denise@epa.gov>; Jefferson, Tricia <Jefferson.Tricia@epa.gov>; Buchsbaum, Seth <buchsbaum.seth@epa.gov>
Subject: GLO Reg Review for tomorrow is attached

GLO - We will be starting with information law matters tomorrow. Employment law will start at 11:45 am.

Wendy

Wendy L. Blake
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GENERAL LAW OFFICE - FRONT OFFICE WEEKLY AGENDA

Weekly Agenda

Reg Review: September 19, 2018, at 11:00 am Room 4045

I. OA/AA/DAA/ MEETINGS

II. ACTION ITEMS FROM PRIOR MEETING

A. GLO

- ANP follow-up (awaiting OEX input)
- Metric for litigation (awaiting OEX input)

B. Front Office

- Draft FOIA Memo (with Matt as of 8/29)
- Identify contact for AA for OLC – related to Nat. Security issue (Elise)
- Follow-up with DOJ following career staff improper request discussion (Joe)
- System for front office review of front office documents responsive to FOIA litigation (Joe)
- Employment Delegation Memo. follow-up (with Matt)
- Executive Order follow-up (Elise)
- PARS FOIA follow-up (Elise)

III. HOT TOPICS AGENDA ITEM

- Employment issues – potential follow-up from reg. review
- PSD status update and next steps
- NARA calendar response – status update
- Line-By Lines
- NOTE: We have a separate meeting on 9/20 with Matt to discuss preparation for the next FOIA meeting with the Acting Administrator. As such, we will not address this issue at this week's Hot Topics

IV. HOT ISSUES AGENDA ITEMS

V. REG. REVIEW PRIORITY PRACTICE GROUP ISSUES/CASES

A. Information Law Practice Group

- Attorney Fee's Matters – request for settlement authority: *PEER v. EPA*, No 18-cv-271 (D.D.C.) (Jefferson) and *SELC v. EPA*, No. 3:17-00061 (W.D. Va.) (Buchsbaum)

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- *UAI v. EPA* – Update on next steps on Settlement (Miller)

- Follow-up for next FOIA meeting with the Acting Administator (Youngblood, Blake, Walker, Epp)

- Relativity Update (Stilp)

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B. Information Technology and Intellectual Property Law Practice Group

- Lifting of Tobacco Litigation litigation hold and next steps re: boxes in Federal Records Center (Stilp/Blake)

C. National Security and IG Act

D. Employment Law Practice Group

- PSD Update (Downs)

- Case Updates (Schneider, Meighan, Cosey Wulffen)

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E. NEW CASES

Waterkeeper Alliance and Sierra Club v. EPA, Case No. 1:18-cv-02135 (09/14/18)

VI. UPCOMING LITIGATION DEADLINES

09/19	Status Report ***Am. Oversight v. EPA***, Case No. 18-cv-389 (D.D.C.) (Judge: Honorable Amit Mehta) American Oversight filed a FOIA lawsuit alleging that EPA failed to respond to four different FOIA requests within the statutory time period. The first FOIA request (HQ-2018-004640) sought records waiver requests submitted by Administrator Pruitt for first class travel and any decisions. This FOIA request is assigned to the Office of the Comptroller. The second FOIA request (HQ-2018-005157) sought records sufficient to identify all non-coach travel by Pasquale "Nino" Perrotta and any waiver requests for first class travel and waiver decisions. The third FOIA request (HQ-2018-005159) sought communications between Pasquale "Nino" Perrotta and a list of 15 individuals and companies including Edwin Steinmetz, Edwin Steinmetz Associates, etc. The second and third FOIA requests are assigned to OCEFT. The fourth FOIA request (HQ-2018-005595) sought all records relating to the procurement of any vehicle to transport the Administrator. The fourth FOIA request is assigned to OARM. **Upcoming Deadline**: Status Report is due on **September 19**. **Attorneys**: Mark Stilp, Jeremy Simon (AUSA)
09/19	Document Production ***Washington v. EPA***, Case No. C18-00645-RSM (W.D. Wash.) (Judge: Honorable Ricardo S. Martinez). This FOIA litigation concerns one FOIA request submitted by the State of Washington requesting records of EPA communications to members of EPA Federal Advisory Committees related to Administrator Pruitt's October 31, 2017 directive titled "Strengthening and Improving Membership on EPA Federal Advisory Committees." The FOIA request is particularly focused on communications inquiring as to whether advisory committee members have, administer, or work on EPA grants, and requesting that advisory committee members resign, refrain from seeking re-appointment or recuse themselves from pending matters. The FOIA request is currently assigned to OARM. The complaint alleges that EPA has failed to respond to the FOIA request, and that EPA failed to conduct a search to locate records.

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	Upcoming deadline: Document Production is due **September 19**. **Attorneys**: Scott Albright, Paul Logan (R8 ORC), Michelle Lambert (AUSA).
09/19	Joint Status Report ***Cause of Action Inst. v. EPA,*** Case No. 1:17-cv-2549 (D.D.C.) (Judge: Honorable Emmit Sullivan) This case concerns EPA's failed to respond to two FOIA requests, EPA-HQ-2017-010970 (submitted August 30, 2017) and EPA-HQ-2017-011341 (submitted September 11, 2017). Both requests sought specific records generated during EPA's efforts to investigate the use of the Signal mobile application by EPA employees. The requests are assigned to the Office of Environmental Information. **Upcoming deadline:** A Joint Status Report is due on **September 19.** **Attorney(s):** Lynn Kelly, Jeremy Simon (AUSA)
09/19	Joint Status Report ***Clark v EPA***, No. 1:18-cv-75 (D.D.C.) (District Court Judge: Dabney L. Friedrich) This FOIA litigation concerns FOIA request EPA-HQ-2017-008007, which asked for emails between Ryan Jackson and twenty named individuals from January 19, 2017 through June 2, 2017. The office to which this FOIA request is assigned, OEX, contacted the requester and informed him that the request was improper because it did not include a subject matter. The requester declined to clarify. OEX gave the requester an additional chance to clarify, but the requester declined and on November 15, 2017 OEX denied the request. The requester appealed the denial but filed this lawsuit before OGC could issue a determination. **Upcoming Deadline**: A Joint Status Report is due **September 19**. **Attorneys**: Matt Schwarz, Scott Sroka (AUSA)
09/20	Document Production ***PEER v. EPA***, No. 18-cv-46 (D.D.C.), (Judge: Honorable Reggie B. Walton) Plaintiff PEER brought this FOIA litigation alleging that EPA failed to respond to a FOIA request (HQ-2017-008813). The request sought communications, extant studies, and other documents related to EPA's decision to end contributions for gym fees. The FOIA request is assigned to the Office of Administration and Resources Management. **Upcoming deadline:** The final production of documents is due **September 20**. **Attorneys:** Ed Sweeney, Damon Taafe (AUSA)
09/20	Case Management Conference

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***Sierra Club v. EPA*,** Case No. 18-cv-722 (N.D. Cal) (Magistrate Judge: Jacqueline Corley)

The FOIA request at issue (EPA-HQ-2018-001207) has five parts, related to FOIA processing. The first four parts broadly request documents from January 20, 2017 through the date of the search concerning the Agency's handling, processing and disposition of FOIA requests and seeks records from the Agency's FOIA office, FOIA Officers, FOIA Coordinators, legal offices, and Inspector General's office. The fifth part requests records "to or from the designated Chief FOIA Officer at EPA, or any other FOIA Officer, concerning instituting a process for review of FOIA responses by the Office of Executive Secretariat of the EPA Administrator's Office prior to their release." Sierra Club submitted the FOIA request on October 31, 2017. EPA has negotiated a narrowed search and is making rolling productions based on identified custodians to Plaintiff.

Upcoming deadline: Case Management Conference is scheduled for **September 20**.

Attorneys: Jennifer Hammitt, Claire Cormier (AUSA)

9/21 ***California v. EPA***,No. 1:17-cv-1626 (DDC) (Judge: James E. Boasberg)

This FOIA litigation concerns a 32-part FOIA request submitted by the State of California seeking a variety of records concerning Administrator Pruitt's ethics-related forms and recusals, communications with the Oklahoma state bar, communications with Oklahoma Attorney General's office, and Agency policies related to ethics and recusals. The National FOIA Office logged in the FOIA request twice and provided two different tracking numbers. However, there is only one request at issue. The complaint alleges that EPA has not responded to the request. The request is currently assigned to the Office of General Counsel.

Upcoming Deadline: Joint Status Report due on **September 21, 2018**

Attorneys: Joan Kaminer, Brian Fields, AUSA

09/21 Joint Status Report

***EcoRights v. EPA*,** Case No. 18-cv-394 (N.D. Cal.) (Magistrate Judge: Honorable Donna Ryu)

On August 3, 2018, EcoRights filed an amended complaint alleging failure to sufficiently respond to four FOIA requests related to various FOIA requests regarding Agency communications, Agency administration, and similar matters. This amended complaint also included a Pattern and Practice claim for failure to timely respond to FOIA requests. EPA had previously filed a motion for summary judgment on one of the requests, which has been vacated, and a Supplemental Declaration filed. The remaining four requests are at various levels of response.

Upcoming Deadline: A Joint Status Report is due **September 5**.

Attorneys: Matt Schwarz, Steven Saltiel (AUSA)

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09/24 Interim Production

Sierra Club v. EPA, Case No. 18-cv-2372 (N.D. Cal.) (Judge: Honorable Elizabeth D. Laporte)

This FOIA litigation concerns four FOIA requests submitted by Sierra Club. The first three FOIA requests were consolidated under requestion number HQ-2017-008660 and requested (1) communications between various OPA custodians and external parties and (2) communications between those custodians and Administrator Priutt on a list of subject matters. This request is assigned to OPA. The complaint alleges that EPA failed to respond to both FOIA requests.

Upcoming deadline: EPA's third interim production is due by court order on **September 24**.

Attorneys: Seth Buchsbaum, Rebecca Falk (AUSA)

09/25 Joint Status Report

PEER V. EPA, Case No. 1:18-cv-271 (D.D.C.) (Judge: Honorable Amy Berman Jackson)

This failure to respond FOIA request (HQ-2018-002473) has five parts and seeks records concerning statements Administrator Pruitt made in a December 4, 2017 letter to Senator Whitehouse. The first three parts of the request seek various records focused on EPA's policy on third-party event participation of Office of Research and Development employees. The fourth part, purportedly quoting the December 4, 2017 letter, requests "Documents which summarize or enumerate research ORD is or is slated, to undertake as 'outlined in our Strategic Research Action Plans reflecting Congressional appropriations.' The fifth, and last part, paraphrased a sentence from the December 4, 2017 letter and seeks, "Any records reflecting any internal communications from Mr. Pruitt concerning 'EPA's Scientific Integrity Policy' including any documents reflecting steps Mr. Pruitt is taking to uphold that policy." The FOIA request is assigned to the Office of Executive Secretariat, Office of Administrator. EPA completed its production of documents responsive to the request on June 29, 2018. Plaintiff is seeking settlement and attorney costs and fees.

Upcoming deadline: Joint Status Report due **September 25**.

Attorneys: Tricia Jefferson, April Seabrook (AUSA)

09/25 Case Management Report

Sierra Club v. EPA, Case 3:18-cv-3472 (N.D. Cal.) (Magistrate Judge: Honorable Elizabeth D. Laporte)

This FOIA litigation concerns four FOIA requests submitted by Sierra Club. Three of the four requests were filed in July 2017 and ask for external communications of former EPA Administrator Scott Pruitt's executive assistant and specified senior EPA staff. The fourth FOIA request was filed in May 2018 and seeks external communications of additional EPA staff, including Acting EPA Administrator Andrew Wheeler. Plaintiff is also

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challenging EPA's denial of two of Plaintiff's four fee waiver requests. Three of the requests are currently assigned to OEX; one request is currently assigned to OCIR.

Upcoming deadline: The Agency's portion of the case management report is due **September 25**.

Attorneys: Casey Pickell, Lynn Kelly, Adrienne Zack (AUSA)

09/26 Joint Status Report

Sierra Club v. EPA, Case No. 17-cv-1906 (D.D.C.) (Judge: Honorable Colleen Kollar-Kotelly)

This FOIA litigation concerns four FOIA request submitted by Sierra Club requesting records of (1) Scott Pruitt; (2) Ryan Jackson and Samantha Dravis; (3) Milan Hupp and Sydney Hupp; and (4) Mandy Gunasekara. Requested records include external communications, calendars, communication logs, and deleted, yet recoverable, records. The requests are currently assigned to the Office of the Administrator. The complaint alleges that EPA has failed to respond to the FOIA requests. EPA completed processing the requests on August 15, 2018.

Upcoming deadline: A Joint Status Report is due **September 26**.

Attorneys: Lynn Kelly, Casey Pickell, Benton Peterson (AUS

09/26 Answer

Natural Resources Defense Council, Inc. v. EPA, Case No. 18-cv-7489 (S.D.N.Y) (Judge: Honorable Vernon Broderick)

Plaintiff Natural Resources Defense Council (NRDC) brought this FOIA litigation alleging that EPA failed to respond to a FOIA request (HQ-2018-000940). The request sought records relating to the decision to remove tetrachlorvinphos (TCVP) from the 2018 registration schedule and all communications with outside parties concerning TCVP. This request is assigned to OCSPP.

Upcoming deadline: The Answer is due **September 26.**

Attorneys: Tali Zemel, Jennifer Simon (AUSA)

09/27 Joint Status Report

PEER v. EPA, Case No. 18-cv-46 (D.D.C.), (Judge: Honorable Reggie B. Walton)

Plaintiff PEER brought this FOIA litigation alleging that EPA failed to respond to a FOIA request (HQ-2017-008813). The request sought communications, extant studies, and other documents related to EPA's decision to end contributions for gym fees. The FOIA request is assigned to the Office of Administration and Resources Management.

Upcoming deadline: a joint status report is due **September 27**.

Attorneys: Ed Sweeney, Damon Taafe (AUSA).

09/28	Joint Status Report ***Nat. Res. Def. Council v. EPA***, Case No. 18-cv-175 (S.D.N.Y.) (Judge: Honorable Analisa Torres) Plaintiff NRDC filed suit on January 9, 2018 after EPA failed to respond to a FOIA request submitted on August 3, 2017. The FOIA request asked for records relating to: "(1) the process, planning, or criteria used to decide which states would be visited by Administrator Scott Pruitt on his 'State Action Tour,' and (2) the process, planning, or criteria used to decide which non-EPA persons, organizations, or entities to invite to attend any meeting with EPA officials during the 'State Action Tour.'" The complaint describes the "State Action Tour" by citing EPA news releases from July 2017 that provided details of Administrator Pruitt's meetings with various state and local officials (including those in Utah and Colorado) to discuss issues such as EPA's proposal to rescind the 2015 "Waters of the United States" rule. The parties have resolved all substantive issues in this case and are currently discussing Plaintiff's request for attorneys' fees. **Upcoming deadline**: Joint Status Report is due **September 28**. **Attorneys**: Scott Albright, Michael Byars (AUSA)
09/28	***UAI v. EPA***, 1:15cv1333(D.D.C.) (District Court Judge: Honorable Amy Berman Jackson This lawsuit pertains to a FOIA request that sought records relating to the design phase of EPAct/V2/E-89 Tier 2 Gasoline Fuel Effects Study, known as the "EPAct study." On September 25, 2017 the Court issued a Memorandum Opinion denying EPA's Motion for Summary Judgement on EPA's search and granting on withholdings. The litigation was remanded to EPA to conduct a supplemental search and provide a more detailed declaration. **Upcoming Deadline:** Motion for Summary Judgment due **September 28** (Pending settlement negotiations) **Attorney(s)**: Joan Kaminer AUSA: Kenneth Adebonojo
09/28	Joint Status Report ***Envtl. Integrity Project v. EPA,*** Case No. 1:18-cv-796 (D.D.C.) (Judge: Honorable Trevor N. McFadden) This case concerns a FOIA request (HQ-2018-004127) that sought various records concerning approximately 33 meetings purportedly attended by Administrator Pruitt to discuss the proposed repeal and changes to the "Waters of the US" rule. The request is assigned to the Office of Executive Secretariat. **Upcoming Deadline:** Joint status report is due on **September 28**. **Attorneys:** Quoc Nguyen, April Seabrook (AUSA).
09/28	Joint Status Report

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	Envtl. Integrity Project v. EPA, Case No. 17-cv-2140 (D.D.C.) (Judge: Honorable Timothy J. Kelly) This FOIA litigation concerns two FOIA requests submitted by Environmental Integrity Project. The first FOIA request (HQ-2017-010504) sought Administrator Pruitt's schedule of meetings with outside parties from May 19, 2017 to August 14, 2017 and Administrator Pruitt's travel vouchers from June 13, 2017 to August 14, 2017. This request is assigned to the Office of the Administrator, Office of Executive Secretariat. The second FOIA request (HQ-2017-010603) sought travel vouchers for employees accompanying Administrator Pruitt on travel between February 21, 2017 through June 4, 2017 and June 13, 2017 through August 17, 2017. This request is assigned to the Office of Comptroller, Office of Chief Financial Officer. The complaint alleges that EPA failed to respond to both FOIA requests. **Upcoming deadline**: A joint status report is due **September 28**. **Attorneys**: Ed Sweeney, Jeremy Simon (AUSA)
09/28	Document Production ***Cause of Action Inst. v. EPA,*** Case No. 1:17-cv-2549 (D.D.C.) (Judge: Honorable Emmit Sullivan) This case concerns EPA's failed to respond to two FOIA requests, EPA-HQ-2017-010970 (submitted August 30, 2017) and EPA-HQ-2017-011341 (submitted September 11, 2017). Both requests sought specific records generated during EPA's efforts to investigate the use of the Signal mobile application by EPA employees. The requests are assigned to the Office of Environmental Information. **Upcoming deadline:** EPA's final Production is due on or before **September 28.** **Attorneys:** Lynn Kelly, Jeremy Simon (AUSA)
9/28	Fourth Interim Production ***Farmworker Justice and EarthJustice v. EPA,*** Case No. 3:18-cv-02293 (N.D. Cal) (Judge: Magistrate Judge Sallie Kim) This FOIA litigation concerns a FOIA request that seeks notes from EPA staff present at two sessions during a November 1-2, 2017 meeting identified as the Pesticide Program Dialogue Committee meeting. The FOIA request also seeks records concerning calendar entries and meetings between either the Administrator, Ryan Jackson, Charlotte Bertrand, Nancy Beck, Wendy Cleland-Hamnett, Michael Dourson, Richard Keigwin, or Kevin Keaney and the American Farm Bureau Federation, NASDA (initials used for brevity), AAPCO, CropLife, NCAE, NAAA, Oregonians for Food and Shelter, "State-based Farm Bureau associations," or "State departments of agriculture." **Upcoming Deadline:** Production due **September 28, 2018.** **Attorneys:** Quoc Nguyen, Julie Reagin (AUSA)
9/30	Document Production ***Center for Biological Diversity v USFWS and EPA,*** 1:18-cv-342 (D.D.C, Judge Amy Berman Jackson))

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	Center for Biological Diversity filed a FOIA lawsuit alleging that EPA and US Fish and Wildlife separately failed to respond to FOIA requests by the statutory deadline. The EPA FOIA request at issue (EPA-HQ-2017-008866) seeks "all records mentioning, including and/or final biological evaluation of" chlorpyrifos, diazinon, carbaryl, and methomyl. The FOIA request is assigned to Office of Pesticide Programs, Office of Chemical Safety and Pollution Prevention. EPA must process 600 documents per month. **Upcoming deadline:** EPA's fourth production of documents is due **September 30**. **Attorneys:** Casey Pickell, Scott Sroka (AUSA)
10/01	Motion for Summary Judgment & Vaughn Index *Nat. Res. Def. Counsel v. EPA*, Case No. 17-5928 (S.D.N.Y.) (Judge: Honorable Jesse M. Furman) This FOIA litigation concerns a multi-part FOIA request submitted by Plaintiff seeking records concerning the following: (1) Nancy Beck's recusal or participation in TSCA rulemakings; (2) steps, if any, EPA took to shield Nancy Beck from TSCA rulemakings; (3) Executive Order 13770 and Nancy Beck; (4) the authority for Nancy Beck's appointment; (5) Nancy Beck's civil service status; and (6) number of employees hired as 42 U.S.C. § 300j-10 and date hired. Plaintiff alleges that EPA only produced two records and did not complete its response within the statutory time frame. Upcoming Deadline: EPA's Motion for Summary Judgment and Vaughn Index are due October 1. Attorneys: Casey Pickell, Quoc Nguyen, Tomoko Onazowa (AUSA)
10/01	Document Production ***Envtl. Def. Fund v. EPA***, Case No. 1:17-cv-2220 (D.D.C.) (Judge: Honorable Amit P. Mehta) On October 26, 2017, the Environmental Defense Fund (EDF) filed a Freedom of Information Act (FOIA) lawsuit in the District of Columbia alleging that EPA has failed to timely respond to three FOIA requests submitted to EPA in January, March, and June of 2017. The three FOIA requests at issue request records on three distinct topics: (1) conflicts of interest for Administrator Pruitt, (2) direction to EPA staff on communicating with the public about science, and (3) Administrator Pruitt's calendar. EPA had provided a partial response to two of the three requests at the time the complaint was filed, but has not completed the response to any requests within the statutory time-frame. The requests are assigned to OGC and/or OEX. **Upcoming Deadline:** A production of documents due **October 1**. **Attorneys:** Joan Kaminer, Joshua Kolsky (AUSA)
10/01	Document Production ***Am. Oversight v. EPA*,** No. 1:17-cv-1261 (D.D.C.) (Judge: Honorable Christopher R. Cooper) This FOIA litigation concerns two requests from American Oversight. The first seeks records on or after February 17, 2017 of the calendars and call logs of the Administrator and other political and SES appointees in the Office of the Administrator (EPA-HQ-2017-005777). The second FOIA request seeks records on or after February 17, 2017 of communications between the

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Administrator and other staff in the Office of the Administrator and Office of Air and Radiation, on the one hand, and Carl Icahn and his associates, agents, and affiliated businesses, on the other (EPA-HQ-2017-005774).

This production will involve a subset of the line-by-line records in Joan's EDF case.

Upcoming Deadline: a production of documents is due **October 1**.

Attorneys: Daniel Schramm; Jeremy Simon (AUSA)

10/01 ***Farmworker Justice and EarthJustice v. EPA,*** Case No. 3:18-cv-02293 (N.D. Cal) (Judge: Magistrate Judge Sallie Kim)

This FOIA litigation concerns a FOIA request that seeks notes from EPA staff present at two sessions during a November 1-2, 2017 meeting identified as the Pesticide Program Dialogue Committee meeting. The FOIA request also seeks records concerning calendar entries and meetings between either the Administrator, Ryan Jackson, Charlotte Bertrand, Nancy Beck, Wendy Cleland-Hamnett, Michael Dourson, Richard Keigwin, or Kevin Keaney and the American Farm Bureau Federation, NASDA (initials used for brevity), AAPCO, CropLife, NCAE, NAAA, Oregonians for Food and Shelter, "State-based Farm Bureau associations," or "State departments of agriculture."

Upcoming Deadline: Case management conference is set for **October 1, 2018.**

Attorneys: Quoc Nguyen, Julie Reagin (AUSA)

10/01 **Rule 16 Joint Report**

Center For Biological Diversity v. Environmental Protection Agency, 4:18-cv-276 (D. Ariz.) (Judge: Honorable James Soto)

The Agency received notice of a new FOIA case filed by the Center for Biological Diversity. The lawsuit, filed in the District of Arizona, alleges that the Agency failed to respond to a December 6. 2017 FOIA request for calendars, schedules, and communications for Mandy Gunaskera. The FOIA request is number EPA-HQ-2018-002296.

Upcoming Deadline: Rule 16 Joint Report due **October 1, 2018**;
Case Management Conference scheduled for October 5, 2018.

Attorneys: Mark Stilp; AUSA Katherine V. Foss

10/03 **Joint Status Report**

Center for Biological Diversity v USFWS and EPA, 1:18-cv-00342 (D.D.C, Judge Amy Berman Jackson))

Center for Biological Diversity filed a FOIA lawsuit alleging that EPA and US Fish and Wildlife separately failed to respond to FOIA requests by the statutory deadline. The EPA FOIA request at issue (EPA-HQ-2017-008866) seeks "all records mentioning, including and/or final biological evaluation of" chlorpyrifos, diazinon, carbaryl, and methomyl. The FOIA request is assigned to Office of Pesticide Programs, Office of Chemical Safety and Pollution Prevention.

- Attorney: Casey Pickell; AUSA Scott Sroka
- JSR due **October 3**

10/04	Document Production ***Sierra Club v. EPA***, Case No. 3:18-cv-2592 (N.D. Cal.) (Magistrate Judge: Honorable Laurel Beeler) This case concerns two FOIA requests seeking information about the work of Michael Dourson and Susan Bodine while they were at EPA and awaiting Senate confirmation: EPA-HQ-2018-001171 and EPA-HQ-2018-001172. Discussions with the plaintiffs have narrowed the request to 1705 potentially responsive documents, from an initial total of 10,700+. We have committed to Plaintiffs that we will review and respond (produce, withhold, or determine not responsive) 500 documents per month until we have completed the response. This series of productions is likely to substantially resolve the matter, but plaintiff may seek some follow-up. Case management statement is now due by 11/29/18; case management conference has been continued to 12/6/18; court has exempted parties from Rule 26 requirements. Attorneys: Michael Boydston (R8 ORC), Scott Albright (OGC POC), Pamela Johann (AUSA)
10/09	***PEER v. EPA***, Case No. 17-00652 (D.D.C) (Judge: Honorable Beryl Howell) Public Employees for Environmental Responsibility (PEER) filed a lawsuit under the FOIA based on a two-part request. Part 1 asked for any information "relied upon" by Administrator Pruitt when he made a statement on the show "Squawk Box" that stated that he did not believe that humans were the primary cause of climate change. Part 2 asked for any EPA studies, reports, or documents that concluded that humans were not the primary cause of climate change. EPA moved for summary judgment, arguing that the requests were improper under the FOIA and that Part 2 was unreasonably burdensome. On June 1, the Court denied EPA's motion. Consistent with the Court's order, EPA is producing any briefing materials prepared for the "Squawk Box" appearance and any other documents that may be located from inquiries with the Administrator's office as to Part 1. For Part 2, EPA is conducting a limited email search and is continuing to negotiate / work internally to determine the potential scope of any other searches. **Upcoming deadline**: Final production for Part 2 documents (review of emails) due **October 9**. **Attorneys:** Jennifer Hammitt, Daniel Schaefer AUSA
10/10	***Am. Oversight v. EPA***, 1:18-cv-364 (D.D.C.) (Judge: Honorable Timothy J. Kelly) American Oversight filed a FOIA lawsuit challenging EPA's determination that three FOIA requests were improper requests. American Oversight included a Count alleging that EPA has a pattern and practice of denying FOIA requests that identify custodians and date ranges on the grounds that those requests do not provide keywords, search terms or particular subject matter. The three FOIA requests were submitted on June 23, 2017 and sought all emails between June 1, 2017 and June 15, 2017 between: (1) Administrator Pruitt and Ryan Jackson, John Reeder or Mike Flynn (Request #1, HQ-2017-008848); (2) Administrator Pruitt, Ryan Jackson, John Reeder, Mike Flynn and any email address not containing a .gov domain name (Request #2, HQ-2017-008850); and Administrator Pruitt and Ryan Jackson, John Reeder or Mike Flynn and any email address containing a house.gov or senate.gov domain name (Request #3, HQ-2017-008852). The Office of Executive

	Secretariat was the lead office for the three requests. The Complaint alleges that OEX denied the three requests on July 28, 2017, administrative appeals were filed on September 7, 2017, and the appeals were pending more than twenty working days. **Upcoming Deadline:** Joint Status Report due **October 10** **Attorneys**: Joan Kaminer, Peter Wechsler, DOJ Civil Divison
10/12	***Environmental Integrity Project, et al. v. EPA*** (D.D.C.) (Judge: Honorable Trevor N. McFadden) This case concerns a FOIA request (HQ-2018-004127) that sought various records concerning approximately 33 meetings purportedly attended by Administrator Pruitt to discuss the proposed repeal and changes to the "Waters of the US" rule. The request is assigned to the Office of Executive Secretariat. **Upcoming Deadline:** An interim production is due by **October 12.** **Attorneys:** Quoc Nguyen, April Seabrook (AUSA).
10/15	Second Interim Production (2 of 8 monthly productions) ***Campaign for Accountability v. EPA,*** Case No. 18-783 (D.D.C) (Judge: Honorable Randolph D. Moss) Campaign for Accountability, represented by American Oversight, filed suit regarding two FOIA requests related to the Tar Creek superfund site (R6) and communications with the Oklahoma AG's office. The first request was to Region 6 and the IG's office; it has been removed from the suit. The remaining request is for communications with the Administrator's Office that included the words "Tar Creek," "LICRAT," and others, and for communications with ok.oag.gov. The search for responsive documents is underway, and is to be completed by 7/31. **Upcoming deadline**: Interim Production (500 reviewed) due **October 15** **Attorney:** Jennifer Hammitt, Wyneva Johnson (AUSA; replace Alex Shoaibi)
10/15	**Am. Oversight v. EPA**, Case No. 1:17-cv-2559 (D.D.C.) (Judge: Honorable Colleen Kollar-Kotelly) This FOIA litigation concerns FOIA request EPA-HQ-2018-001290, seeking records related to actual or projected expenditures for renovations of any part of the office suites for any individuals acting in Senate-confirmed (PAS) positions, as well as related communications. **Upcoming deadline**: Interim Production is due **October 15** **Attorney**: Joan Kaminer, Marsha Yee (AUSA)
10/15	***Waterkeeper All. v. EPA***, Case No. 1:17-cv-7400 (S.D.N.Y.) ("Waterkeeper I") (Judge: Honorable Valerie E. Caproni) This FOIA litigation pertains to FOIA request HQ-2017-005671 submitted by Waterkeeper Alliance, Inc., Sierra Club, Clean Water Action, and Environmental Integrity Project on April 3, 2017, that sought "all records created, stored, or received since November 8, 2016 concerning the

	ELG rule." The Plaintiffs allege that EPA has not responded to the FOIA request. Since the filing of this lawsuit, EPA has completed production of documents and is now working with Plaintiffs to narrow the substantive issues. **Upcoming deadline**: Joint Status Report due **October 15**. **Attorneys**: Patrick Johnson, Marirose Pratt, Matt Schwarz (POC), Anthony ("Tony") Sun (AUSA)
10/15	***Waterkeeper All. v. EPA***, Case No. 1:17-cv-9184 (S.D.N.Y.) ("Waterkeeper II") (Judge: Honorable Valerie E. Caproni) This FOIA litigation pertains to FOIA request HQ-2017-010217 submitted by Waterkeeper Alliance, Inc., Sierra Club, Clean Water Action, and Environmental Integrity Project on August 4, 2017, that sought records related to reconsideration of, and postponement of compliance deadlines within, the EPA's Steam Electric Effluent Limitations Guidelines ("ELGs") Rule. The Plaintiffs allege that EPA has not responded to the FOIA request. Since the filing of this lawsuit, EPA has completed production of documents and is now working with Plaintiffs to narrow the substantive issues. **Upcoming deadline**: Joint Status Report due on **October 15**. **Attorneys**: Patrick Johnson, Marirose Pratt, Matt Schwarz (POC), Anthony ("Tony") Sun (AUSA)
10/15	Joint Status Report ***Envtl. Integrity Project v. EPA***, 1:17-cv-2610 (D.D.C.) (Judge: Honorable Rudolph Contreras). Environmental Integrity Project (EIP) alleges that EPA failed to fully respond to EIP's September 7, 2017 FOIA request that sought records related to EPA's decision to designate as "inactive" a rulemaking that would require certain oil and gas facilities to disclose their releases of toxic chemicals to the national Toxics Release Inventory. The request was initially assigned to the Office of Chemical Safety and Pollution Prevention (OCSPP). OCSPP issued an interim response on November 28, 2017, and transferred the request to the Office of the Executive Secretariat (OEX). OEX is currently the lead office for the request. Answer filed January 31, 2018. **Upcoming deadline:** Joint Status report due on **September 14**. **Attorneys:** Mark Stilp, Mark Nebeker (AUSA)
10/17	Joint Status & Proposed Briefing Schedule ***Government Accountability Project et al v. EPA***, Case No. 1:17-cv-789 (D.D.C.) (Judge: Honorable Timothy J. Kelly) The Government Accountability Project and an individual named Zack Kopplin sued alleging that EPA failed to respond to two FOIA requests. The first FOIA request (HQ-2017-005723) sought "emails referencing the phrase 'gag order.'" This request was assigned to the Office of Public Affairs. The second FOIA request (HQ-2017-009008) sought from January 20, 2017, (1) "Any and all documents that reference "red team" and

	"blue team" in the same document and (2) any documents referencing "critiquing climate change" or "critique climate change." This FOIA request was assigned to the Office of Executive Secretariat. **Upcoming deadline:** Joint Status & Proposed Briefing Schedule is due September 17. **Attorneys:** Mark Stilp, Scott Sroka (AUSA)
10/23	**Interim Production** *Sierra Club v. EPA*, Case No. 18-cv-02372 (N.D. Cal.) (Judge: Elizabeth D. Laporte) This FOIA litigation concerns four FOIA requests submitted by Sierra Club. The first three FOIA requests were consolidated under requestion number HQ-2017-008660 and requested (1) communications between various OPA custodians and external parties and (2) communications between those custodians and Administrator Priutt on a list of subject matters. This request is assigned to OPA. The complaint alleges that EPA failed to respond to both FOIA requests. Upcoming deadline: EPA's second interim production is due by court order on **October 23**. Attorneys: Seth Buchsbaum, Rebecca Falk (AUSA)
10/24	***EcoRights v. EPA*,** Case No. 18-cv-394 (N.D. Cal.) (Magistrate Judge: Honorable Donna Ryu) On August 3, 2018, EcoRights filed an amended complaint alleging failure to sufficiently respond to four FOIA requests related to various FOIA requests regarding Agency communications, Agency administration, and similar matters. This amended complaint also included a Pattern and Practice claim for failure to timely respond to FOIA requests. EPA had previously filed a motion for summary judgment on one of the requests, which has been vacated, and a Supplemental Declaration filed. The remaining four requests are at various levels of response. **Upcoming Deadline:** A Settlement Conference Statement is due **October 24**. **Attorneys:** Matt Schwarz, Steven Saltiel (AUSA)
10/29	***Surgey v. EPA***, 1:18-cv-00654 (D.D.C, Judge Timothy J. Kelly) Nicholas Surgey, a reporter represented by Public Citizen, filed this suit alleging a failure to respond to EPA-HQ-2018-003188 which sought records associated with former administrator Pruitt's travel to and attendance at the 2018 Rose Bowl. The request is assigned to OEX. Most responsive records are from OCEFT and involve the PSD. Productions were made on June 25, 2018 and July 7, 2018. Records were redacted and withheld under 6, 7(c), 7(e), and 7(f). The Vaughn, Declarations, and MSJ were filed September 10. Plaintiff's combined cross MSJ and opposition are due October 8. **Upcoming deadline:** Reply and Cross-Opposition due **October 29.** **Attorneys:** Peter Bermes, Scott Sroka (AUSA)

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10/31	***EcoRights v. EPA,*** Case No. 18-cv-394 (N.D. Cal.) (Magistrate Judge: Honorable Donna Ryu) On August 3, 2018, EcoRights filed an amended complaint alleging failure to sufficiently respond to four FOIA requests related to various FOIA requests regarding Agency communications, Agency administration, and similar matters. This amended complaint also included a Pattern and Practice claim for failure to timely respond to FOIA requests. EPA had previously filed a motion for summary judgment on one of the requests, which has been vacated, and a Supplemental Declaration filed. The remaining four requests are at various levels of response. **Upcoming Deadline:** A Settlement Conference before Magistrate Thomas S. Hixson is scheduled for October 31. **Attorneys:** Matt Schwarz, Steven Saltiel (AUSA)
10/31	**Interim Production** ***Farmworker Justice and EarthJustice v. EPA,*** Case No. 3:18-cv-02293 (N.D. Cal) (Judge: Magistrate Judge Sallie Kim) This FOIA litigation concerns a FOIA request that seeks notes from EPA staff present at two sessions during a November 1-2, 2017 meeting identified as the Pesticide Program Dialogue Committee meeting. The FOIA request also seeks records concerning calendar entries and meetings between either the Administrator, Ryan Jackson, Charlotte Bertrand, Nancy Beck, Wendy Cleland-Hamnett, Michael Dourson, Richard Keigwin, or Kevin Keaney and the American Farm Bureau Federation, NASDA (initials used for brevity), AAPCO, CropLife, NCAE, NAAA, Oregonians for Food and Shelter, "State-based Farm Bureau associations," or "State departments of agriculture." **Upcoming Deadline:** Production due **October 31, 2018.** **Attorneys:** Quoc Nguyen, Julie Reagin (AUSA)
10/31	Document Production ***Center for Biological Diversity v USFWS and EPA,*** 1:18-cv-00342 (D.D.C, Judge Amy Berman Jackson)) Center for Biological Diversity filed a FOIA lawsuit alleging that EPA and US Fish and Wildlife separately failed to respond to FOIA requests by the statutory deadline. The EPA FOIA request at issue (EPA-HQ-2017-008866) seeks "all records mentioning, including and/or final biological evaluation of" chlorpyrifos, diazinon, carbaryl, and methomyl. The FOIA request is assigned to Office of Pesticide Programs, Office of Chemical Safety and Pollution Prevention. EPA must process 600 documents per month. • Fifth production due **September 30**
11/01	***Environmental Defense Fund v. EPA***, Case No. 1:17-cv-2220 (D.D.C.) (Judge: Honorable Amit P. Mehta)

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On October 26, 2017, the Environmental Defense Fund (EDF) filed a Freedom of Information Act (FOIA) lawsuit in the District of Columbia alleging that EPA has failed to timely respond to three FOIA requests submitted to EPA in January, March, and June of 2017. The three FOIA requests at issue request records on three distinct topics: (1) conflicts of interest for Administrator Pruitt, (2) direction to EPA staff on communicating with the public about science, and (3) Administrator Pruitt's calendar. EPA had provided a partial response to two of the three requests at the time the complaint was filed, but has not completed the response to any requests within the statutory time-frame. The requests are assigned to OGC and/or OEX.

Upcoming Deadline: Production due **November 1**

Attorney: Joan Kaminer, Joshua Kolsky (AUSA)

11/01 Joint Status Report

***Campaign for Accountability v. EPA*,** Case No. 18-783 (D.D.C) (Judge: Honorable Randolph D. Moss)

Campaign for Accountability, represented by American Oversight, filed suit regarding two FOIA requests related to the Tar Creek superfund site (R6) and communications with the Oklahoma AG's office. The first request was to Region 6 and the IG's office; it has been removed from the suit. The remaining request is for communications with the Administrator's Office that included the words "Tar Creek," "LICRAT," and others, and for communications with ok.oag.gov. The search for responsive documents is underway, and is to be completed by 7/31.

Upcoming deadline: Joint Status Report due **November 1**

Attorney: Jennifer Hammitt, Wyneva Johnson (AUSA; replace Alex Shoaibi)

11/9 **Third and Final Production**

Sierra Club v. EPA, Case No. 3:18-cv-2592 (N.D. Cal.) (Magistrate Judge Laurel Beeler)

This case concerns two FOIA requests seeking information about the work of Michael Dourson and Susan Bodine while they were at EPA and awaiting Senate confirmation: EPA-HQ-2018-001171 and EPA-HQ-2018-001172.

Discussions with the plaintiffs have narrowed the request to 1705 potentially responsive documents, from an initial total of 10,700+. We have committed to Plaintiffs that we will review and respond (produce, withhold, or determine not responsive) 500 documents per month until we have completed the response. This series of productions is likely to substantially resolve the matter, but plaintiff may seek some follow-up.

Case management statement is now due by 11/29/18; case management conference has been continued to 12/6/18; court has exempted parties from Rule 26 requirements.

Attorneys: Michael Boydston (ORC, Region 8), Scott Albright (OGC POC); Pamela Johann (AUSA)

11/13 ***Sierra Club v. EPA*,** Case No. 18-cv-00722 (N.D. Cal) (Mag. Judge Jacquline Corley)

The FOIA request at issue (EPA-HQ-2018-001207) has five parts, related to FOIA processing. The first four parts broadly request documents from January 20, 2017 through the date of the search concerning the Agency's handling, processing and disposition of FOIA requests and seeks

	records from the Agency's FOIA office, FOIA Officers, FOIA Coordinators, legal offices, and Inspector General's office. The fifth part requests records "to or from the designated Chief FOIA Officer at EPA, or any other FOIA Officer, concerning instituting a process for review of FOIA responses by the Office of Executive Secretariat of the EPA Administrator's Office prior to their release." Sierra Club submitted the FOIA request on October 31, 2017. EPA has negotiated a narrowed search and is making rolling productions based on identified custodians to Plaintiff. **Upcoming deadline**: Production of documents from Elizabeth White due **November 13.** **Attorneys**: Jennifer Hammitt, Claire Cormier (AUSA)
11/15	Third Interim Production (3 of 8 monthly productions) ***Campaign for Accountability v. EPA*,** Case No. 18-783 (D.D.C) (Judge: Honorable Randolph D. Moss) Campaign for Accountability, represented by American Oversight, filed suit regarding two FOIA requests related to the Tar Creek superfund site (R6) and communications with the Oklahoma AG's office. The first request was to Region 6 and the IG's office; it has been removed from the suit. The remaining request is for communications with the Administrator's Office that included the words "Tar Creek," "LICRAT," and others, and for communications with ok.oag.gov. The search for responsive documents is underway, and is to be completed by 7/31. **Upcoming deadline**: Interim Production (500 reviewed) due **November 15** **Attorney:** Jennifer Hammitt, Wyneva Johnson (AUSA; replace Alex Shoaibi)
11/15	**Am. Oversight v. EPA**, Case No. 1:17-cv-2559 (D.D.C.) (Judge: Honorable Colleen Kollar-Kotelly) This FOIA litigation concerns FOIA request EPA-HQ-2018-001290, seeking records related to actual or projected expenditures for renovations of any part of the office suites for any individuals acting in Senate-confirmed (PAS) positions, as well as related communications. **Upcoming deadline**: Interim Production is due **November 15** **Attorney**: Joan Kaminer, Marsha Yee (AUSA)
11/16	Document Production ***Washington v. EPA***, Case No. C18-00645-RSM (W.D. Wash.) (Judge: Honorable Ricardo S. Martinez). This FOIA litigation concerns one FOIA request submitted by the State of Washington requesting records of EPA communications to members of EPA Federal Advisory Committees related to Administrator Pruitt's October 31, 2017 directive titled "Strengthening and Improving Membership on EPA Federal Advisory Committees." The FOIA request is particularly focused on communications inquiring as to whether advisory committee members have, administer, or work on EPA grants, and requesting that advisory committee members resign, refrain from seeking re-appointment or recuse themselves from pending matters. The FOIA request is currently assigned to OARM. The complaint alleges

	that EPA has failed to respond to the FOIA request, and that EPA failed to conduct a search to locate records. **Upcoming deadline**: Final Document Production is due **November 16**. **Attorneys**: Scott Albright, Paul Logan (R8 ORC), Michelle Lambert (AUSA).
11/19	Opposition-Reply Brief ***NRDC v. EPA***, Case No. 17-05928 (S.D.N.Y.) (Judge: Honorable Jesse M. Furman) This FOIA litigation concerns a multi-part FOIA request submitted by Plaintiff seeking records concerning the following: (1) Nancy Beck's recusal or participation in TSCA rulemakings; (2) steps, if any, EPA took to shield Nancy Beck from TSCA rulemakings; (3) Executive Order 13770 and Nancy Beck; (4) the authority for Nancy Beck's appointment; (5) Nancy Beck's civil service status; and (6) number of employees hired as 42 U.S.C. § 300j-10 and date hired. Plaintiff alleges that EPA only produced two records and did not complete its response within the statutory time frame. **Upcoming Deadline:** EPA's Opposition to NRDC's cross motion and Reply is due **November 19.** **Attorneys:** Casey Pickell, Quoc Nguyen, Tomoko Onazowa (AUSA)
11/23	**Interim Production** *Sierra Club v. EPA*, Case No. 18-cv-02372 (N.D. Cal.) (Judge: Elizabeth D. Laporte) This FOIA litigation concerns four FOIA requests submitted by Sierra Club. The first three FOIA requests were consolidated under requestion number HQ-2017-008660 and requested (1) communications between various OPA custodians and external parties and (2) communications between those custodians and Administrator Priutt on a list of subject matters. This request is assigned to OPA. The complaint alleges that EPA failed to respond to both FOIA requests. Upcoming deadline: EPA's second interim production is due by court order on **November 23**. Attorneys: Seth Buchsbaum, Rebecca Falk (AUSA)
11/30	**Interim Production** ***Farmworker Justice and EarthJustice v. EPA,*** Case No. 3:18-cv-02293 (N.D. Cal) (Judge: Magistrate Judge Sallie Kim) This FOIA litigation concerns a FOIA request that seeks notes from EPA staff present at two sessions during a November 1-2, 2017 meeting identified as the Pesticide Program Dialogue Committee meeting. The FOIA request also seeks records concerning calendar entries and meetings between either the Administrator, Ryan Jackson, Charlotte Bertrand, Nancy Beck, Wendy Cleland-Hamnett, Michael Dourson, Richard Keigwin, or Kevin Keaney and the American Farm Bureau Federation, NASDA (initials used for brevity), AAPCO, CropLife, NCAE, NAAA, Oregonians for Food and Shelter, "State-based Farm Bureau associations," or "State departments of agriculture." **Upcoming Deadline:** Production due **November 30, 2018.** **Attorneys:** Quoc Nguyen, Julie Reagin (AUSA)
12/15	Fourth Interim Production (4 of 8 monthly productions)

Campaign for Accountability v. EPA, Case No. 18-783 (D.D.C) (Judge: Honorable Randolph D. Moss)

Campaign for Accountability, represented by American Oversight, filed suit regarding two FOIA requests related to the Tar Creek superfund site (R6) and communications with the Oklahoma AG's office. The first request was to Region 6 and the IG's office; it has been removed from the suit. The remaining request is for communications with the Administrator's Office that included the words "Tar Creek," "LICRAT," and others, and for communications with ok.oag.gov. The search for responsive documents is underway, and is to be completed by 7/31.

Upcoming deadline: Interim Production (500 reviewed) due **December 15**

Attorney: Jennifer Hammitt, Wyneva Johnson (AUSA; replace Alex Shoaibi)

01/15 Fifth Interim Production (5 of 8 monthly productions)

Campaign for Accountability v. EPA, Case No. 18-783 (D.D.C) (Judge: Honorable Randolph D. Moss)

Campaign for Accountability, represented by American Oversight, filed suit regarding two FOIA requests related to the Tar Creek superfund site (R6) and communications with the Oklahoma AG's office. The first request was to Region 6 and the IG's office; it has been removed from the suit. The remaining request is for communications with the Administrator's Office that included the words "Tar Creek," "LICRAT," and others, and for communications with ok.oag.gov. The search for responsive documents is underway, and is to be completed by 7/31.

Upcoming deadline: Interim Production (500 reviewed) due **January 15**

Attorney: Jennifer Hammitt, Wyneva Johnson (AUSA; replace Alex Shoaibi)

02/15 Sixth Interim Production (6 of 8 monthly productions)

Campaign for Accountability v. EPA, Case No. 18-783 (D.D.C) (Judge: Honorable Randolph D. Moss)

Campaign for Accountability, represented by American Oversight, filed suit regarding two FOIA requests related to the Tar Creek superfund site (R6) and communications with the Oklahoma AG's office. The first request was to Region 6 and the IG's office; it has been removed from the suit. The remaining request is for communications with the Administrator's Office that included the words "Tar Creek," "LICRAT," and others, and for communications with ok.oag.gov. The search for responsive documents is underway, and is to be completed by 7/31.

Upcoming deadline: Interim Production (500 reviewed) due **February 15**

Attorney: Jennifer Hammitt, Wyneva Johnson (AUSA; replace Alex Shoaibi)

03/15 Seventh Interim Production (7 of 8 monthly productions)

Campaign for Accountability v. EPA, Case No. 18-783 (D.D.C) (Judge: Honorable Randolph D. Moss)

Campaign for Accountability, represented by American Oversight, filed suit regarding two FOIA requests related to the Tar Creek superfund site (R6) and communications with

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	the Oklahoma AG's office. The first request was to Region 6 and the IG's office; it has been removed from the suit. The remaining request is for communications with the Administrator's Office that included the words "Tar Creek," "LICRAT," and others, and for communications with ok.oag.gov. The search for responsive documents is underway, and is to be completed by 7/31. **Upcoming deadline**: Interim Production (500 reviewed) due **March 15** **Attorney:** Jennifer Hammitt, Wyneva Johnson (AUSA; replace Alex Shoaibi)
04/15	Final Production (8 of 8 monthly productions) ***Campaign for Accountability v. EPA*,** Case No. 18-783 (D.D.C) (Judge: Honorable Randolph D. Moss) Campaign for Accountability, represented by American Oversight, filed suit regarding two FOIA requests related to the Tar Creek superfund site (R6) and communications with the Oklahoma AG's office. The first request was to Region 6 and the IG's office; it has been removed from the suit. The remaining request is for communications with the Administrator's Office that included the words "Tar Creek," "LICRAT," and others, and for communications with ok.oag.gov. The search for responsive documents is underway, and is to be completed by 7/31. **Upcoming deadline**: Final Production (500+ Reviewed) due **April 15, 2019** **Attorney:** Jennifer Hammitt, Wyneva Johnson (AUSA; replace Alex Shoaibi)

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Message

From: Mills, Derek [Mills.Derek@epa.gov]
Sent: 9/18/2018 9:51:32 PM
To: Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Blake, Wendy [Blake.Wendy@epa.gov]; Youngblood, Charlotte [Youngblood.Charlotte@epa.gov]
CC: Packard, Elise [Packard.Elise@epa.gov]; Redden, Kenneth [Redden.Kenneth@epa.gov]
Subject: RE: SEPW TA request-Geospatial Data Act of 2017 (S. 2128/H.R. 4395)
Attachments: GDA COMPROMISE FINAL TEXT.PDF; CRS Section-by-Section 9.13.18.pdf; GDA (S2128-HR4395) One-Pager & Stakeholder Support 8.27.18.docx

Ex. 5 Attorney Client (AC)

Elise & Ken, please see email chain below and related attachments.

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

From: Brazauskas, Joseph
Sent: Tuesday, September 18, 2018 5:43 PM
To: Mills, Derek <Mills.Derek@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Youngblood, Charlotte <Youngblood.Charlotte@epa.gov>
Subject: RE: SEPW TA request-Geospatial Data Act of 2017 (S. 2128/H.R. 4395)

Slightly familiar with this bill, Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Joseph A. Brazauskas
Associate Deputy General Counsel
U.S. Environmental Protection Agency
(202) 564-5189

From: Mills, Derek
Sent: Tuesday, September 18, 2018 5:31 PM
To: Blake, Wendy <Blake.Wendy@epa.gov>; Youngblood, Charlotte <Youngblood.Charlotte@epa.gov>
Cc: Brazauskas, Joseph <brazauskas.joseph@epa.gov>
Subject: FW: SEPW TA request-Geospatial Data Act of 2017 (S. 2128/H.R. 4395)
Importance: High

Wendy & Charlotte,

I am forwarding to you because I think Ex. 5 Deliberative Process (DP), but I am not certain. Please let me know if you think Ex. 5 Deliberative Process (DP)

Upon a quick read, it seems Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP)" PDF. Since this is a request for TA, we may need Ex. 5 Deliberative Process (DP) Ex. 5 Deliberative Process (DP). Please let me know what you think. I'll note the deadline of 11:00am Thursday. Thanks!

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

From: Janifer, Pamela
Sent: Tuesday, September 18, 2018 4:11 PM
To: Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov>; Martin, JohnC <Martin.JohnC@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Grogard, Megan <Grogard.Megan@epa.gov>; Mills, Derek <Mills.Derek@epa.gov>
Cc: Jones-Parra, Lisa <Jones-Parra.Lisa@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Emmerson, Caroline <Emmerson.Caroline@epa.gov>
Subject: SEPW TA request-Geospatial Data Act of 2017 (S. 2128/H.R. 4395)

EPA has been requested by SEPW Committee to provide technical assistance comments. Please review the attached bill. We're looking to determine if there are any unintended consequences of adding EPA as a covered agency.

This bill is being characterized as:
The Geospatial Data Act (GDA) is a **bipartisan, good-governance bill** that will advance the U.S. as a world leader in the use of geospatial data—a national asset, which executive departments, agencies, and partners are increasingly using to meet their mission needs. Although the federal government is one of the world's largest purchasers and creators of geospatial data, there are troubling questions concerning where agencies are investing in this data and how they coordinate to manage these expensive assets.

If your office has any comments or concerns about this legislation, please provide before 11:00am, Thursday, September 20, 2018.

Thank you.

Pamela Janifer
Office of Congressional Affairs
U.S. Environmental Protection Agency • 1200 Pennsylvania Avenue, N.W. • Mailcode: 1301A • Washington, DC 20460
202.564.6969 – Office • 202.501.1550 - Fax

Geospatial Data Act of 2017 (S. 2128/H.R. 4395)

Cosponsors (as of 8/27/18): *Warner, Boozman, Wyden, Heller, Klobuchar, Capito, Merkley, Gardner, Udall, Ernst, Tester, Hassan, Inhofe, King*

Summary:

The Geospatial Data Act (GDA) is a bipartisan, good-governance bill that will advance the U.S. as a world leader in the use of geospatial data—a national asset, which executive departments, agencies, and partners are increasingly using to meet their mission needs. Although the federal government is one of the world's largest purchasers and creators of geospatial data, there are troubling questions concerning where agencies are investing in this data and how they coordinate to manage these expensive assets.

The critical component of the GDA brings Congressional oversight to federal agencies ignoring existing executive guidance regarding data management and accounting. In doing so, the GDA would establish management standards to foster transparency, openness, and accountability, while ensuring that waste is minimized and impact is maximized.

In the absence of authoritative, common standards, poor geospatial data management practices are leading to inefficient, duplicative efforts, mismanaged accounting of expensive geospatial asset acquisitions, and missed opportunities to utilize these valuable resources. In fact, the Government Accountability Office (GAO) reported in December 2013 that federal agencies are not prioritizing accounting of their assets, and a lack of coordination is resulting in widespread, duplicative spending that is wasting untold billions of dollars. Duplicative spending becomes an even greater concern when considering that annual geospatial spending estimates reach the billions of dollars *prior* to the inclusion of the billions already spent on earth-observing satellites and the volumes of data they produce.

With the GDA, improved geospatial data utilization holds endless possibilities for transforming the private sector, as well as government at the federal, state, and local level. If agencies effectively collaborate with their tremendous resources, they will be able to better develop emergency preparedness plans, aid disaster relief efforts, bolster mapping capabilities/accuracy, and improve maintenance and upkeep of national infrastructure, while spurring innovation and the creation of apps/technologies that let individuals find parking spots, restaurants, and even homes for sale based on physical location.

Past efforts to monitor federal geospatial spending, accounting, and usage are failing, and new strategies and solutions are need to improve the status quo. The GDA directs the implementation of common, enforceable standards will facilitate the development, sharing, and best use of geospatial data, which will save taxpayer money, improve capabilities, and save lives.

Stakeholder Support:

American Association of Geographers (AAG), American Geosciences Institute (AGI), Association of College and Research Libraries (ACRL), Association of Research Libraries (ARL), The Atlantic Group, LLC, Blue Raster, LLC, Boundless Spatial, Inc., Cartegraph Systems, Inc., Cartography and Geographic Information Society (CaGIS), Centre for Spatial Law and Policy, Cityworks – Azteca Systems, LLC, Davey Resource Group, Inc., Demand Progress, Dewberry, DigitalGlobe, Esri, GeoComm, Inc., GIS Certification Institute (GISCI), GISinc, Geographic and Land Information Society (GLIS), Geospatial Information & Technology Association (GITA), Google LLC , InfoGeographics, Inc., International Association of Assessing Officers (IAAO), MAPPS, MDA Information Systems, LLC, MidAmerica GIS Consortium (MAGIC), National Association of Counties (NACo), National Association of Regional Councils (NARC), National Association of State Chief Information Officers (NASCIO), National League of Cities (NLC), National States Geographic Information Council (NSGIC), National Society of Professional Surveyors (NSPS), National Tribal Geographic Information Support Center (NTGISC), Open the Government, 1Spatial, Inc., SharedGeo, Sidwell Company, Society for Conservation GIS (SCGIS), Sunlight Foundation, Surdex Corporation, Tableau Software, Tesla Government, Inc., United States Geospatial Intelligence Foundation (USGIF), University Consortium for Geographic Information Science (UCGIS), Urban and Regional Information Systems Association (URISA), Women in GIS (WiGIS)

Office of Senator Orrin G. Hatch
Staff Contact: Romel Nicholas (202) 224-3316, (4-3316)

Message

From: Flores, Daniel [Daniel.Flores@mail.house.gov]
Sent: 9/18/2018 8:59:38 PM
To: Brazauskas, Joseph [brazauskas.joseph@epa.gov]
Subject: RE: test

Thanks. Brittany's over to 9/28 at 2:00. I could do 1:30, 3:15 or 3:30. Any of those work for you?

All the best,

Daniel

Daniel M. Flores
Chief Counsel
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
Committee on the Judiciary
United States House of Representatives
(202) 226-8685 (ph)
EOP / Ex. 6 *cell)*
(202) 225-3746 (fax)
Daniel.Flores@mail.house.gov

From: Brazauskas, Joseph <brazauskas.joseph@epa.gov>
Sent: Tuesday, September 18, 2018 2:28 PM
To: Flores, Daniel <Daniel.Flores@mail.house.gov>
Subject: Re: test

Yes, no problem Daniel, what are some good days and times next week?

Sent from my iPhone

On Sep 18, 2018, at 11:09 AM, Flores, Daniel <Daniel.Flores@mail.house.gov> wrote:

> Joe, fyi, Brittany has asked again to reschedule my meeting with her for another day, which will have to be sometime next week. How we about if we put our meeting over until next week as well?
>
> All the best,
>
> Daniel
>
> Sent from my iPhone
>
> On Sep 17, 2018, at 1:12 PM, Brazauskas, Joseph <brazauskas.joseph@epa.gov> wrote:
>
>> test
>>
>> **Joseph A. Brazauskas**
>> Associate Deputy General Counsel
>> U.S. Environmental Protection Agency
>> (202) 564-5189

Message

From: Jones, Enesta [Jones.Enesta@epa.gov]
Sent: 8/30/2018 6:53:24 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily Clips, 8/30/18

*****Note: We hope that you are enjoying the Daily Clips. If you would like to be removed from the distribution at any time, or have someone added from your team, please send your request directly to AO OPA Media Relations. Thank you.**

ACE Proposal

E&E: Manufacturers ask EPA to give them the coal treatment

E&E: New power plant rule sounds a lot like dead climate bill

E&E: Wheeler rejects premature-death worries from rule redo

POLITICO Pro: Replacement carbon rule proposal to be published Friday

The Oklahoman Editorial Board: Trump clean air plan far better than Obama's

WAMU's 1A on NPR: Deregulation Nation: Coal-Fired Power Plants

Wash Examiner: EPA plan makes it possible to reduce emissions without failed Obama-era regulations

Administration

Axios: 1 big thing: the limits of city and state moves and A revealing day about coal's future under Trump

Bloomberg Environment: Trump's Cabinet Holds Events With House Republicans in Tight Races

Boston Globe: In the deep blue of New England, a Trump appointee gains respect for protecting the environment

E&E: Trump proposes pay freeze

Wash Examiner: Daily on Energy: First Energy sends a message to Trump in string of coal plant closures

Agency

The Hill: Washington's fall agenda: EPA to focus on new power plant, water rules

Air

Chicago Tribune: Residents outraged by EPA pollution report call for Willowbrook Sterigenics plant to close

Chemicals

Bloomberg Environment: Chemours Chemicals to Get New EPA Safety Levels in Coming Weeks (1)

Bloomberg Environment: EPA's New Chemical Delays Hurting Business, Industry Says

Bloomberg Environment: Bayer's Weed-Killing Future Targeted in Appeal of EPA Approvals

Inside EPA: EPA Official Raises Concern Over PFAS MCL As States Back Standard

M.Live.com: Michigan cut from EPA national PFAS forum tour

POLITICO Pro: House to hold first hearing on PFAS

POLITICO Pro: Trump to tap former ECOS chief for EPA chemicals job

Wash Post: Trump set to tap centrist to head EPA's chemical safety office

Former Administrator Pruitt

The Hill: Pruitt aide wrote memo to absolve him in controversy over raises

POLITICO Pro: EPA watchdog to issue Pruitt security report next week

Fuels

Agri-Pulse: Perdue: Trump wants to announce E15 fix next week

Bloomberg Environment: California Car Emissions Rise as Trump's Cuts to Standards Loom

E&E: Bundled comments back clean car rollback. Sender unknown

Inside EPA: Administration, California officials meet over vehicle GHG rollback plan

Lead in Drinking Water

NBC News: Detroit schools to use bottled water due to lead, copper concerns

MATS

Bloomberg Environment: No Boost to Coal-fired Generation If EPA Tweaks Mercury Rule

CNN: EPA prepares second overhaul of power plant rules

E&E: Trump EPA to reconsider Obama-era mercury rule

E&E: In EPA's review of mercury rule, some see lifeline for coal

NYT: E.P.A. to Reconsider Obama-Era Curbs on Mercury Emissions by Power Plants

POLITICO Pro: EPA to revisit Obama mercury rule with eye on use of co-benefits

The Hill: EPA to reconsider 2011 power plant pollution rule

Pesticides

PBS NewsHour: The EPA isn't taking its own advice on a pesticide that causes brain damage in children

POLITICO Pro: Dicamba drift causing 'unmanageable workload' for state pesticide officials

Reuters: EPA should revoke Monsanto weed killer approval, groups tell U.S. court

SAB

Inside EPA: SAB Unveils Draft Advice On Biomass CO2 Amid Uncertain EPA Policy

ACE Proposal

E&E
Manufacturers ask EPA to give them the coal treatment
https://www.eenews.net/greenwire/2018/08/30/stories/1060095483
Maxine Joselow, **E&E News reporter**
Published: Thursday, August 30, 2018

After the Trump administration offered the coal sector relief from permitting requirements in its proposed Clean Power Plan replacement, the manufacturing sector is hoping for similar treatment.

At issue is a provision in the Affordable Clean Energy (ACE) rule that would greenlight landmark changes to EPA's New Source Review permitting program under the Clean Air Act.

NSR puts companies on the hook for upgrading pollution controls if they propose major modifications to their facilities. Industry has long complained the program sets unrealistic standards for new facilities and makes upgrades to existing ones prohibitively expensive.

The ACE rule calls for changing the emission measurements used to trigger NSR (*Greenwire*, Aug. 21). In the past, a plant would be subject to an NSR permit if a proposed modification increased its annual emissions output. ACE would allow plants to avoid NSR, provided the improvements reduce a facility's hourly emissions rate.

EPA's changes would apply only to coal-fired power plants. But Ross Eisenberg, vice president of energy and resources policy at the National Association of Manufacturers, said he hopes they'll spur similar changes for the manufacturing sector.

"When we poll our membership on regulatory concerns, NSR comes up at the top of all the environmental and energy issues in terms of things they need addressed," Eisenberg said. "And it's not utilities. It's aerospace. It's iron and steel and brick. It's chemical facilities and refineries."

He added, "So we definitely think that in the ACE proposal, it had to be addressed. We're glad EPA is addressing it. And if it works here, we certainly think it would be translatable to manufacturing."

NAM has heard from several member companies that NSR has discouraged them from making further efficiency upgrades, Eisenberg said.

"The manufacturers of technologies that make natural gas turbines more efficient aren't making upgrades so that they won't trigger NSR," he said. "That's a problem, particularly if you want to do something about climate and reducing greenhouse gas emissions."

The manufacturing sector has reduced its emissions 10 percent over the last decade, Eisenberg said. Its emissions are now less than they were in 1990 — a different story compared with the broader U.S. economy.

Legally vulnerable

The idea of reforming NSR is not new. EPA air chief Bill Wehrum advocated a similar proposal during a previous stint with the agency during the George W. Bush administration. It was ultimately struck down by the U.S. Court of Appeals for the District of Columbia Circuit.

In the text of the ACE proposed rule, the Trump administration appears to acknowledge that the NSR portion is legally vulnerable (*Climatewire*, Aug. 23).

"EPA intends that the NSR revisions, if finalized, would be severable from the other provisions on judicial review," the agency wrote.

"If and when the loophole is struck down, the administration is arguing that ACE itself should not fall in court," said John Walke, clean air director with the Natural Resources Defense Council, who was involved in much of the major Bush-era NSR litigation.

"Bill Wehrum and the Trump EPA are fighting adverse court rulings that Wehrum helped create in the Bush administration, as well as four decades of consistent EPA history," Walke said. "It's an uphill legal fight the same way a 90-degree angle is uphill."

He added, "The NAM clamoring gives lie to any notion in the ACE proposal that this is fundamentally about more efficient power plants. Instead, this proposal is just the first step to seeing if they can get away with violating the Clean Air Act here in order to extend that loophole broadly to all of the nation's industrial polluters."

Legislation

It's possible that NSR reform for the manufacturing sector would require legislation, not regulation.

Sen. Rand Paul (R-Ky.) earlier this year introduced S. 2760, which would "amend the Clean Air Act to exclude energy efficiency, pollution control and reliability projects from the definition of a modification." Rep. Morgan Griffith (R-Va.) introduced a companion bill in the House.

Eisenberg testified in support of the measure at a House hearing in May. But the proposal has since failed to gain traction.

E&E

New power plant rule sounds a lot like dead climate bill

https://www.eenews.net/stories/1060095431

Robin Bravender, **E&E News reporter Published: Wednesday, August 29, 2018**

The Trump administration's proposal for replacing President Obama's signature climate change rule has an appealing name with a catchy acronym: the Affordable Clean Energy rule, or ACE.

That sounds a lot like "ACES," or the "American Clean Energy and Security Act" — the sweeping climate bill that passed the House in 2009 before fizzling in the Senate.

It's unclear whether the similar acronyms are intentional or accidental; EPA's press office didn't respond to a request for comment about the process for naming the draft rule. But the similarity of the acronyms wasn't lost on House Democratic staffers who worked on the cap-and-trade measure.

They found the title of the Trump EPA's regulation ironic, given that it's expected to allow far more greenhouse gas emissions than the Obama-era rule would have and is much narrower in scope than the House climate bill.

"People have noticed it," said Greg Dotson, who was the lead environmental and energy staffer for then-Rep. Henry Waxman (D-Calif.) when the climate bill passed the House. The legislation was widely known as the Waxman-Markey bill after its co-sponsors, including Massachusetts Democratic Rep. Ed Markey, who's now a senator.

Dotson, who now teaches climate law at the University of Oregon, said associating a similar name "with a policy that actually is designed to slow down the deployment of clean energy and have more pollution is fairly cynical."

Another former House aide who worked on the Waxman-Markey bill had a similar reaction.

"ACES was trying to do so much to protect our country from climate, and this is going so much in the opposite direction," the former staffer said.

Naming the ACES bill was a fairly simple process, Dotson recalled.

"The members made the decision, and they wanted information that would capture what the bill actually did but would also be something that people could be drawn to, and clean energy is just a very popular concept," he said. "There's any number of public polling results available that show that people like the idea of renewable energy, they like the idea of energy efficiency."

Dotson added, "In the case of ACES, that's what the bill actually did. So I think they were on solid ground with that name."

Dotson and others said the similarities between the ACES and ACE names are likely unintentional.

"My experience has been over the years that EPA is a very thoughtful agency in how it does things." But, he added, it "seems as though based upon other regulatory actions that a lot of things have been happening at the agency without a great deal of thought." Dotson said the administration was likely "trying to pick a name that's going to be popular."

Joe Goffman, a former Senate Democratic staffer and one of the architects of Obama's Clean Power Plan, said it "seems to me that the last thing the authors of ACE would want to do is remind people of Waxman-Markey. The latter was a supremely serious effort at making climate policy. ACE, in contrast, all but makes a mockery of climate policy."

Andrew Wheeler, EPA's acting administrator, has a history of fighting climate legislation in the Senate during his tenure in the 2000s as a top aide to Senate Environment and Public Works Chairman Jim Inhofe (R-Okla.). He worked behind the scenes to push Democratic members away from the legislation he argued was bad for the economy (*Climatewire*, Oct. 6, 2017).

He had left Capitol Hill and was an energy lobbyist in private practice when the ACES bill passed the House and companion legislation died in the Senate.

In a presentation Wheeler delivered to clients about the policy and politics of the climate bill, he noted that the legislation was bipartisan and had "areas for compromise." The PowerPoint, which he provided to the Senate Environment and Public Works Committee during his confirmation process, also includes a handwritten note that the bill's renewable energy standard was "getting almost as much attention as the climate piece."

It was after political obstacles killed ACES that the Obama EPA released regulations to curb greenhouse gases under the Clean Air Act, although the administration had expressed a preference for legislation over EPA rules.

It's unclear how much of a hand Wheeler had in naming the proposal to replace the Clean Power Plan. Much of the groundwork was likely done before he was confirmed as deputy administrator in April and took over as acting chief in early July.

Still, EPA's messaging surrounding the rollout and his comments about the draft rule echo his argument — and that of many critics of the Clean Power Plan and the Waxman-Markey bill — that those efforts would be too expensive.

"The ACE Rule replaced the prior administration's overly prescriptive and burdensome Clean Power Plan (CPP) and instead empowers states, promotes energy independence, and facilitates economic growth and job creation," EPA said in a statement when it announced the proposal earlier this month.

"The ACE Rule would restore the rule of law and empower states to reduce greenhouse gas emissions and provide modern, reliable, and affordable energy for all Americans," Wheeler added.

Reporter Corbin Hiar contributed.

Wheeler rejects premature-death worries from rule redo
https://www.eenews.net/greenwire/stories/1060095409/search?keyword=EPA
Niina Heikkinen, **E&E News reporter**
Published: Wednesday, August 29, 2018

Acting EPA Administrator Andrew Wheeler is dismissing concerns that the agency's replacement for the Clean Power Plan will increase the risk of premature death in the United States.

EPA's regulatory analysis for its recently released Affordable Clean Energy (ACE) rule found that the proposal could lead to up to 1,400 premature deaths from incremental increases in fine particle pollution in 2030.

Speaking in Columbus, Ohio, yesterday, Wheeler contended that the proposal is not a step backward in environmental protection and that the agency is maintaining rules specifically aimed at controlling particulate matter, nitrogen oxides and sulfur dioxide.

"This regulation and the Obama regulation both were supposed to just address CO2 and energy efficiency. The Obama administration calculated what are called co-benefits. All of those, particulate matter, NOx, SO2, those are all regulated under other regulations. We are not touching any of those regulations," Wheeler said.

He pointed to EPA's recent air quality trends report that found the country's air is 73 percent cleaner than it was in the 1970s immediately after the passage of the Clean Air Act.

"All the regulations that got us to that 73 percent cleaner are still in effect. They will still be in effect tomorrow; they will still be in effect next year. We're not doing anything to relax or remove the health-based environmental regulations," he said.

But both researchers and former EPA officials have warned that the agency's existing rules do not fully prevent emissions of harmful pollutants from power plants.

For example, extensive public health research has shown that fine particle pollution at levels below what is regulated by the National Ambient Air Quality Standards is linked to higher risk of premature death.

The scholars and former officials also say that considering co-benefits of implementing a rule has long been standard practice (*Climatewire*, Aug. 6).

Joseph Goffman, a former EPA official and architect of the Clean Power Plan, said on NPR's "1A" program this morning that the agency's proposal would also undercut public health protections in local airsheds through proposed revisions to permitting requirements under the New Source Review program. Goffman and other critics have warned that the changes would allow older, polluting power plants to further extend their life spans.

In addition to its finding on the higher risk of premature death from fine particle pollution and ozone exposure, EPA's analysis on ACE cited a number of health-related risks associated with the proposed rule.

As many as 120,000 people in 2030 could experience exacerbated asthma. The plan could also lead to a collective loss of up to 48,000 work days from fine particle pollution and as many as 140,000 school absences from high ozone levels.

Echoing the talking points of his predecessor, Scott Pruitt, Wheeler said the replacement plan would no longer be "picking winners and losers." Wheeler described the plan as allowing states to regulate carbon emissions on a "plant-by-plant" basis.

"What we've done is looked at the Clean Air Act and the laws Congress gave us, and we put forward a proposal that is legal and will be upheld by the courts," Wheeler said.

POLITICO Pro
Replacement carbon rule proposal to be published Friday
https://subscriber.politicopro.com/energy/whiteboard/2018/08/replacement-carbon-rule-proposal-to-be-published-friday-1841659
By ALEX GUILLÉN
EPA's new proposed carbon rule for coal plants will run in Friday's Federal Register, kicking off a 60-day comment period.

The proposal, known as the Affordable Clean Energy or ACE rule, requires states to choose from a list of heat-rate improvement technologies to potentially implement at coal plants within their borders, a much more narrow regulation than the Obama administration's Clean Power Plan. The Trump rule also would make a significant change to the New Source Review permitting program that could allow more coal plants to avoid that process when installing efficiency upgrades.

EPA said it plans to hold a public hearing at a date and location to be announced later.

WHAT'S NEXT: Comments will be due by Oct. 30, although EPA is likely to face calls to extend the comment period.

The Oklahoman Editorial Board
Trump clean air plan far better than Obama's
https://newsok.com/article/5606308/trump-clean-air-plan-far-better-than-obamas
Published: Wed, August 29, 2018 12:00 AM

THE Environmental Protection Agency recently unveiled the Trump administration's proposed replacement for the Obama administration's Clean Power Plan. This has prompted predictable howling from extreme environmental groups, but for non-zealots there is much to like about the new plan, including for those who want emissions reduced.

The CPP was designed to reduce emissions by effectively forcing closure of many power plants. This was done through a dubious reinterpretation of the federal Clean Air Act. The plan's flaws were numerous, including the

fact that not enough replacement power is available to make up for shuttered plants, new transmission lines cannot be installed fast enough to move new sources of replacement power, and prices were expected to skyrocket. The plan was challenged in court by 27 states, 24 trade associations, 37 electric co-operatives, and three labor unions. The CPP was put on hold via a Supreme Court order, and few expected it to survive legal scrutiny.

The Trump administration is taking a different approach with its Affordable Clean Energy Rule. The EPA estimates the ACE Rule will reduce compliance costs by $400 million annually while driving down carbon dioxide emissions. The reduction in carbon dioxide emissions is predicted to be the equivalent of taking 5.3 million cars off the road. Once states have fully implemented the ACE Rule, the EPA estimates U.S. power sector CO2 emissions could be 33 percent below 2005 levels.

Why is this bad, again? That the plan would achieve such emission reductions without the economic devastation of the Clean Power Plan makes the ACE Rule far superior.

Dan Byers, vice president of policy for the U.S. Chamber of Commerce's Global Energy Institute, notes one major improvement of the ACE Rule is it doesn't force closure of relatively new power plants. The CPP, in a break with longstanding interpretation of federal law, effectively forced closure of power plants that otherwise could remain viable producers of electricity for decades. Byers writes the CPP would have prohibited states "from instituting flexible compliance measures based on the remaining useful life of a power plant."

He also points out that the ACE Rule would put states "truly in the driver's seat" in determining how to comply with the rule's standards, providing genuine regulatory flexibility that was given only lip service in the Clean Power Plan.

Critics have decried the ACE Rule as a sop to coal production, but the Bipartisan Policy Center says it is "not entirely clear how the new rule would affect coal-fired power plants." The center also gently pushes back against claims the CPP is already responsible for reduced emissions as states prepared for its implementation. While the center found that all but eight states had made progress toward their emissions goals under the CPP, and 13 states had already met their goals as of 2016, those drops in emissions "are driven in large part by falling natural gas prices and more economical renewable energy rather than regulations."

The ACE Rule offers the chance for environmental progress without trampling on businesses, state governments or consumers. That's a welcome adjustment not only in tactics, but attitude.

WAMU's 1A on NPR: Deregulation Nation: Coal-Fired Power Plants
How a rollback of rules will impact the economy and the environment.
Wed, Aug 29 2018 • 10 a.m. (ET)

To hear AA for OAR Bill Wehrum's interview: https://the1a.org/audio/#/shows/2018-08-29/deregulation-of-coal-fired-power-plants/115371/@00:00

Opinion
Wash Examiner
EPA plan makes it possible to reduce emissions without failed Obama-era regulations
https://www.washingtonexaminer.com/opinion/epa-plan-makes-it-possible-to-reduce-emissions-without-failed-obama-era-regulations
by Mark J. Perry **| August 30, 2018 11:52 AM**

A diverse, reliable mix of fuels is essential to achieving President Trump's goal of America being a global energy superpower. By recognizing the value of energy supplies that deliver power around-the-clock, the Trump administration and the Environmental Protection Agency are doing what they can to ensure that coal plants undergird the electric grid.

Instead of waging a vengeful war on coal by picking energy winners and losers, as had been done in the Obama years, the EPA intends to set greenhouse gas guidelines for power plants that are consistent with the Clean Air Act and ensure that states play their proper role. Under this plan, the United States will be able to achieve a reduction in energy-related carbon dioxide emissions without the unworkable Paris climate-change agreement or the failed and overreaching regulations of the previous administration.

Simply put, the era of heavy-handed federal regulation is over. States will play their proper role under the Clean Air Act and will be the ones to establish standards of performance for existing power plants in line with EPA's emission guidelines.

One key element of the plan would update EPA's New Source Review permitting program to encourage electricity companies to invest in the latest, most efficient pollution-control technologies. This change would protect states against increased permitting burdens and wasteful compliance costs so they can focus their state plans on improving environmental outcomes instead of bureaucratic red tape.

In this regard, new innovations in energy technology and cooperation between the states and federal government are crucial in delivering energy solutions to consumers. By easing regulatory burdens, ending distortions in the market that divert productive coal capacity to less reliable energy sources, and allowing states to play their proper role under the Clean Air Act, Americans will benefit from far more environmental progress at a lower cost than any package of regulations and harmful mandates could ever hope to create.

By contrast, the Obama administration's environmental agenda amounted to overreach. Instead of simplifying and equalizing regulatory treatment across all fuels, the Obama Power Plan attempted to bestow favors upon certain sectors of the energy sector at the expense of others. Unlawful and exorbitantly costly, its plan would have placed an enormous burden on the nation's economy for insignificant environmental gain.

Fortunately, the Supreme Court intervened and issued an historic stay before the discredited plan could be implemented. The plan, according to an analysis by NERA, would have cost up to $292 billion and caused double-digit electricity price increases in 40 states. Sixteen states would have faced wholesale power price

increases of at least 25 percent. And rising energy prices would have hurt low and middle-class Americans the most.

Energy is the lifeblood of our nation's economy, and the remarkable growth over the past decade could not have been attained if the Obama administration had been allowed to remake the power system while usurping states' regulatory authority over their power grids. The lesson from this and other experiences is that government meddling in power markets cannot be allowed to brush aside features of the system that benefit consumers.

Mark J. Perry (@Mark_J_Perry) is a contributor to the Washington Examiner's Beltway Confidential blog. He is a scholar at the American Enterprise Institute and a professor of economics and finance at the University of Michigan's Flint campus.

Administration

Axios
1 big thing: the limits of city and state moves and A revealing day about coal's future under Trump
By Ben Geman
https://www.axios.com/newsletters/axios-generate-1be67a32-1af5-4af4-948a-061acdba0ded.html

1 big thing: the limits of city and state moves

A major climate storyline in the Trump era has been the way that cities, regional governments and companies worldwide have been pressing ahead with low-carbon efforts.

Driving the news: Two U.S. developments this week illustrate the trend...

- California is on the cusp of enacting legislation to ensure all of the state's electricity comes from carbon-free sources by 2045.
- Facebook announced a carbon emissions-cutting target and new renewable energy goals.

Yes, but: A new report provides a glass half-full (or maybe empty) global perspective on that trend.

- It concludes that local and regional governments, as well as corporations, can play a major role in cutting carbon emissions enough to prevent runaway global warming — but working together is crucial to making that happen.

Why it matters: It's the most comprehensive global analysis yet of these efforts. A Yale University interdisciplinary project called Data Driven Yale released the report along with the NewClimate Institute and a Dutch national institute called the PBL Netherlands Environmental Assessment Agency.

What they found: The existing individual pledges would lead to emissions in 2030 that are about 3%–4% below where they would be under current national policies alone.

- But *far steeper* reductions are possible if they work in concert via the many "international cooperative initiatives" (ICIs) that bring together some combination of countries, cities, state and regional governments, and businesses and civil society groups. These groups typically come together around more ambitious and long-term goals than individual members.

- Working through those ICIs could lead to emissions in 2030 that are one third lower than what's on tap under current national policies alone.
- The impact would be even greater if countries actually meet their Paris agreement pledges (called "nationally determined contributions").
- "Combined, ICIs and fully-implemented NDCs would bring global emissions in 2030 into a range that is consistent with the long-term temperature goal of the Paris Agreement," the report states.

The big picture: The effect of sub-national and corporate efforts is important at a time when...

- The White House is scuttling Obama-era national policies and moving to abandon the Paris agreement.
- Combined national pledges under Paris won't come close to stopping long-term temperatures from rising far above 1.5–2 degrees Celsius, the goal of the 2015 deal.
- Countries' national policies are collectively not even on track to meet those existing Paris commitments.

Our thought bubble: Put all that together, and it's clear that the burst of regional government and corporate actions are important, but insufficient. A lot of things have to break the right way to prevent blowing far past the Paris goals, and that's a very tall order.

A revealing day about coal's future under Trump

Two events just hours apart yesterday underscore the hurdles facing White House efforts to help the coal-fired power industry.

The first was the revelation that the EPA is eyeing a revision of 2012 regulations that imposed first-ever federal limits on mercury and other toxic air pollution from coal-fired power plants.

- The move is among several efforts to pare back Obama-era mandates on coal plants.
- It arrives a little over a week after EPA rolled out sweeping plans to replace separate carbon emissions rules with a more modest substitute and allow plant upgrades without triggering new Clean Air Act permitting requirements.
- Amy has got much more on this in the Axios stream.

Later in the day, the power company FirstEnergy Solutions Corp. (FES) said it plans to shut down two coal plants in Ohio and one in Pennsylvania in the 2021–2022 period. The Cleveland Plain Dealer has more on the announcement here.

My thought bubble:

- The FES announcement illustrates why changing EPA regulations will only have a limited effect on the trajectory of coal's decline in power markets.
- "FES is closing the plants due to a market environment that fails to *adequately compensate generators for the resiliency and fuel-security attributes* that the plants provide," the company said (emphasis added).
- Those buzzwords are a nod to brewing proposals via other agencies for aggressive, direct federal intervention in power markets to guarantee returns for financially struggling plants.
- The White House is reviewing plans along those lines, citing risks of threats including cyberattacks that could hit gas pipelines and other parts of the power system.

The bottom line: The Trump administration has made aiding the coal sector a top priority, but it has limited levers to pull that will fundamentally change power market trends favoring other fuel sources.

Bloomberg Environment

Trump's Cabinet Holds Events With House Republicans in Tight Races

https://bnanews.bna.com/environment-and-energy/trumps-cabinet-holds-events-with-house-republicans-in-tight-races?context=landing&limit=10&tab=news

By Tiffany Stecker

Posted Aug. 30, 2018, 7:10 AM

- At least five Trump appointees have visited Republicans in "toss-up" races
- Visits coincide with start of early voting

President Donald Trump's Cabinet members and top political appointees are flying around the country to conduct events with House Republicans in tough re-election races.

None of the events were explicitly political. But they demonstrate one of the advantages that incumbent lawmakers have when their party holds the White House—bringing top officials to their home districts to reinforce the idea that the lawmakers are addressing their policy concerns.

At least five members of the administration held events this week with Republicans who are in races rated as "toss-ups" or leaning Democratic or Republican by the three major political ratings organizations.

The late-August push of appearances marks the beginning of a renewed momentum ahead of the election, Sherri Greenberg, a professor at the University of Texas at Austin's Lyndon B. Johnson School of Public Affairs, told Bloomberg Environment.

"As far as I'm concerned, we're already in September, and that's the slippery slope with early voting," she said.

Perry Talks Energy in Texas

Energy Secretary Rick Perry visited Rep. Pete Sessions in his Dallas-area district Aug. 27 to discuss American energy policy. The eight-term congressman is running against Democrat Collin Allred in a district that voted for Hillary Clinton in the 2016 presidential election.

"Secretary Perry and I were able to sit down with local leaders to have a productive and free-flowing discussion on regulations impacting the energy industry and how emerging markets, like China and India, will impact the U.S.," Sessions said in a statement.

Housing and Urban Development Secretary Ben Carson met with Rep. Keith Rothfus, who is facing Democratic Rep. Conor Lamb in November, to tour a public housing complex in Ambridge, Pa. Lamb is widely seen as the front-runner in that matchup.

NASA Administrator Jim Bridenstine attended a roundtable with Republican Rep. Steve Knight of California on aeronautics and space exploration.

And Environmental Protection Agency acting Administrator Andrew Wheeler touted the EPA's new plan to limit carbon emissions from power plants alongside Kentucky Rep. Andy Barr and Ohio Rep.-elect Troy Balderson in districts where President Barack Obama's environmental policies were deeply unpopular.

Balderson, whose district is rated as "leans Republican" by the Cook Political Report, won by a mere 1,680 votes against Democrat Danny O'Connor in the special Aug. 7 election to replace Rep. Pat Tiberi (R-Ohio). The two will again face each other in November.

Tariffs a Test

Agriculture Secretary Sonny Perdue, who must defend the White House's stance on tariffs that could harm agricultural trade, is attending events with four vulnerable candidates: New York Rep. Claudia Tenney and three GOP politicians in Iowa: Gov. Kim Reynolds, Rep. Rod Blum, and Rep. David Young.

Trump's decision to impose tariffs on goods from major trading partners of the U.S. sparked retaliatory measures from Canada and China. Agricultural exports stand to suffer from these measures, despite an initial $4.7 billion direct aid from the government.

"I think this tariff issue is the real test because it's going to hit the pocketbook of farmers," Barbara Trish, a political scientist at Grinnell College in Iowa, told Bloomberg Environment.

Hatch Act Bounds

The Hatch Act prohibits government officials from overtly endorsing a political candidate or raising money for a campaign, Paul S. Ryan, vice president of policy and litigation at the nonprofit Common Cause, told Bloomberg Environment. But an official can—in addition to holding policy-related functions with a lawmaker—make a contribution and attend campaign events.

"They're typically people who have been partisans for many years," Ryan said of political appointees. "It's no surprise that they continue to be involved although they are constrained by the Hatch Act."

Trump's cachet was apparent in Florida's Aug. 28 Republican gubernatorial primary, in which the president's close ally Rep. Ron DeSantis finished 20 percentage points ahead the better-funded candidate Adam Putnam.

Boston Globe: In the deep blue of New England, a Trump appointee gains respect for protecting the environment

By David Abel **GLOBE STAFF AUGUST 30, 2018**

She's among the few high-profile representatives of the Trump administration in deep blue New England, appointed by Scott Pruitt, the scandal-ridden former chief of the Environmental Protection Agency who was akin to Public Enemy No. 1 among local environmental groups.

She won't say whether global warming is primarily caused by human activity — as nearly all climate scientists assert — and supported Pruitt's efforts to dismantle scientific advisory boards, restrict the type of studies that can be used to craft public policy, and end the Obama administration's signature plan to reduce carbon emissions.

Despite it all, Alexandra Dunn, a proud Republican who leads the EPA's New England office, has won widespread accolades from the region's environmental leaders, who have described her as "empathetic," "apolitical," and "smart," and an advocate for science-based environmental policies.

Many local environmental activists had braced for a regional administrator who would be more beholden to industry and were stunned when Pruitt appointed Dunn in November.

"There was a sigh of collective relief," said Elizabeth Turnbull Henry, president of the Environmental League of Massachusetts.

Unlike Pruitt, who sought to roll back dozens of regulations governing clean air and water, and the acting administrator, Andrew Wheeler, a former lobbyist for the coal industry, Dunn "does not appear bent on destroying the agency she was tasked to lead," she added.

Some local advocates worried there could be a backlash from Washington if they offered too much praise.

"I'm leery of calling any public attention to her successes, lest it cause her trouble," said Jack Clarke, director of public policy at Mass Audubon, the largest and oldest conservation group in New England.

Even Dunn's predecessor during the Obama administration, Curt Spalding, gave her high marks.

"I feared the next person wouldn't honor and respect the people working there," said Spalding, who now teaches at Brown University. "But now, strangely and fortuitously, we have a highly respected person filling that position who appears to be staying the course."

In her nine months as administrator, Dunn has walked a fine line, careful not to cross her superiors in Washington while working with environmental groups and local officials to clean up toxic waste sites, protect the region's air and water, and address the impact of climate change.

In a recent interview near her office in downtown Boston, Dunn cited several accomplishments since she assumed the post: implementing long-delayed, controversial plans to reduce stormwater runoff; hosting a national summit to curb harmful chemicals in drinking water; and issuing a report that outlined the agency's efforts to clean up rivers, promote recycling, and improve the environment in economically depressed areas.

In the future, she plans to do more to reduce childhood exposure to lead and clean up the region's 123 contaminated Superfund and brownfield sites to "revitalize communities," she said.

“There’s just so much opportunity in New England to revitalize communities,” she said.

An attorney who has taught environmental justice at several law schools, Dunn, 50, spent years as the director and general counsel of the Environmental Council of States and the Association of Clean Water Administrators, both national nonprofit organizations, where she earned a reputation as a nonpartisan advocate for the environment.

When Pruitt appointed Dunn to be one of the agency’s 10 regional administrators, he called her “exceptionally qualified.”

“Her service to others will be key to helping implement this administration’s positive environmental agenda,” he said in a statement.

At the time, the Trump administration had proposed cutting the EPA’s budget by about one-third — more than any other agency’s — and vowed to roll back a host of major environmental regulations. But Dunn had no qualms about taking the job, and she still has no regrets.

“To be honest, it’s a privilege to represent the federal government,” she said.

After Pruitt resigned in July, amid a pall of ethics scandals, EPA officials asked the agency’s regional administrators to attend meetings in Washington that emphasized the need for political appointees to act ethically and cooperate with the agency’s inspector general, Dunn said.

Asked if she has disagreed with any of Pruitt’s policies, often decried by environmental advocates, she said: “As a member of his team, I did not.”

Dunn compared her position to a “field general” whose job is to implement the law and the administration’s policies. Ideology hasn’t played a role in her work, she said. “What I try to do is be outcomes- and solutions-oriented,” she said. “So, party affiliation has a role, but it’s not the defining role in environmental policy.”

Asked if she has received chilly receptions as a representative of the Trump administration, she said: “I believe and feel like a representative of the administration in every room that I enter.” But she added: “I’ve found every audience to be extremely welcoming.”

Still, there has been some friction, particularly with the union that represents many of the nearly 500 full-time employees in the region. Their anger has grown as the Trump administration has sought to reduce the agency’s workforce and curb the union’s power.

Since 2010, as its budget has been cut by more than 10 percent, the region’s number of full-time employees has dropped by one-quarter, placing more of a burden on the remaining workers, said Steve Calder, president of the local branch of the American Federation of Government Employees.

In May, the union filed a federal lawsuit against Trump, arguing that an executive order he issued last spring violates union contracts.

"We feel the union is under attack," said Calder, a clean air inspector, adding that local union officials have been told they will have to pay rent to use the space where they previously managed union affairs at the agency's Boston headquarters.

Despite the union's frustrations with Washington, Calder praised Dunn. "While she has to toe the administration's line, she's an environmentalist, not someone from industry," he said. "We lucked out. . . . She's the cream of the crop, compared to what could be expected from this administration."

Last month, Dunn's careful diplomacy was again on display at an event in New Bedford to promote efforts to clean up Superfund sites. Dunn introduced Wheeler, who was on his first trip outside Washington since taking the agency's top job.

Environmental advocates have criticized Wheeler for the years he spent lobbying on behalf of the fossil fuel industry, which they say sought to block efforts to curb carbon emissions. Dunn called him a "passionate steward of the agency's mission" and said she was "thrilled" to introduce him to the local officials who have spent years trying to remove cancer-causing chemicals from parts of New Bedford Harbor.

Afterward, Dunn declined to criticize the administration's policies, such as its proposal to slash the EPA's budget and its decision to pull out of the Paris climate accord. "I have no opinion on that," she said, referring to the Paris agreement. "That was the president's decision, and there's no sign that that is going to be revisited."

She prefers to focus on areas of common ground, such as preparing the region to deal with climate change. "There's so much that we can do in New England to make a difference on the environment," she said.

For many advocates, Dunn's environmentally friendly actions have spoken louder than her carefully chosen words.

Bradley Campbell, a former EPA regional administrator and president of the Conservation Law Foundation in Boston, has vehemently opposed EPA pronouncements from Washington since Trump took power. But he couldn't say nicer things about Dunn, lauding her "commitment to environmental justice."

"She's a terrific choice, an appointment I'd applaud under any administration," he said.

E&E
Trump proposes pay freeze
https://www.eenews.net/greenwire/2018/08/30/stories/1060095513
Kevin Bogardus, **E&E News reporter**
Published: Thursday, August 30, 2018

President Trump is proposing a pay freeze for federal workers. Gage Skidmore/Flickr

President Trump proposed a pay freeze today for federal employees.

In a letter to Congress, Trump said he would use his legal authority to reject a pay increase in 2019 for the federal workforce. The president had proposed the same in his fiscal 2019 budget plan, which has not been followed by lawmakers as they work through appropriations bills on Capitol Hill.

"Specifically, I have determined that for 2019, both across the board pay increases and locality pay increases will be set at zero. These alternative pay plan decisions will not materially affect our ability to attract and retain a well qualified Federal workforce," Trump said in his letter.

The president said an across-the-board salary hike would not recruit new hires where needed at agencies.

"As noted in my Budget for Fiscal Year 2019, the cost of employing the Federal workforce is significant. In light of our Nation's fiscal situation, Federal employee pay must be performance-based, and aligned strategically toward recruiting, retaining, and rewarding high-performing Federal employees and those with critical skill sets," Trump said.

"Across-the-board pay increases and locality pay increases, in particular, have long-term fixed costs, yet fail to address existing pay disparities or target mission critical recruitment and retention goals."

Trump's pay freeze would take effect in January.

Some lawmakers, however, have moved to offer a pay raise for federal employees, which would bring them into conflict with the president.

The Senate has passed a 1.9 percent pay increase for government workers, which was included in a minibus spending package. The House-passed version, however, doesn't include that provision.

Unlike their civilian counterparts, service members are set to receive a 2.6 percent pay raise in 2019.

Reporter Kellie Lunney contributed.

Wash Examiner
Daily on Energy: First Energy sends a message to Trump in string of coal plant closures
https://www.washingtonexaminer.com/daily-on-energy-first-energy-sends-a-message-to-trump-in-string-of-coal-plant-closures
by John Sicilliano
& Josh Siegel | August 30, 2018 11:58 AM

FIRST ENERGY SENDS A MESSAGE TO TRUMP IN STRING OF COAL PLANT CLOSURES: The Ohio-based First Energy announced a string of coal power plant closures on Wednesday night, but said it could reverse its decision if the Trump administration takes action.

What does it take to get a bailout? The utility had been lobbying the Trump administration over the last several months to implement a plan to save the plants. Trump ordered Energy Secretary Rick Perry to develop a plan to save both coal and nuclear

plants on June 1. Critics have called the Trump plan a "bailout" for uneconomic power plants that cannot compete in a changing energy market dominated by low-cost natural gas.

The market is failing coal: The utility said in a statement that it "is closing the plants due to a market environment that fails to adequately compensate generators for the resiliency and fuel-security attributes that the plants provide."

But a fuel-security plan is on Trump's mind: The president said earlier this month that he was preparing to release what he called a "military plan" to help coal plants. The plan is expected to subsidize the ailing coal units based on a national security argument the White House is developing.

The utility wants a market that values security: "As with nuclear, our fossil-fueled plants face the insurmountable challenge of a market that does not sufficiently value their contribution to the security and flexibility of our power system," said Don Moul, First Energy's president of its generation companies and its chief nuclear officer. "The market fails to recognize, for example, the on-site fuel storage capability of coal, which increases the resilience of the grid."

The message to Trump: The company said that based on the timing of any federal policy action, these decisions could be "reversed or postponed."

***Welcome to Daily on Energy**, compiled by Washington Examiner Energy and Environment Writers John Siciliano (@JohnDSiciliano) and Josh Siegel (@SiegelScribe). Email dailyonenergy@washingtonexaminer.com for tips, suggestions, calendar items and anything else. If a friend sent this to you and you'd like to sign up, click here. If signing up doesn't work, shoot us an email and we'll add you to our list.*

... MEANWHILE, THE EPA IS READYING TO ROLLBACK MORE COAL RULES: The Environmental Protection Agency said earlier Wednesday that it will be revisiting the 2011 air pollution rule for coal plants, which is blamed for closing dozens of power plants around the country.

Stopping a trainwreck seven years later: The Obama-era rule was part of what the utility industry once dubbed the "train wreck," a group of EPA environmental rules that together required either massive upgrades to power plants, or for companies to shutter them.

What rule is it, again? The one that EPA is targeting is the Mercury and Air Toxics Standards, or MATS, which was meant to control air emissions and other pollutants like mercury from, primarily, coal and oil power plants.

Is the war on coal over, yet? The MATS rule is a prime component of what is commonly referred to by the coal industry and its supporters as the "war on coal." President Trump and his Cabinet have frequently declared that the "war on coal is over."

Is it too late to act? The utility industry told EPA recently it already spent $18 billion to comply with the regulations, and states have been meeting their air pollution targets based on those investments and the rules remaining law.

The industry wants EPA to evaluate technical changes to the rules, but "leave the underlying MATS rule in place and effective," according to a letter sent to EPA recently by all segments of the utility industry.

IRAN'S EMISSIONS SURGE MAKES CALIFORNIA LOOK GOOD: STUDY: Iran was one of the biggest culprits behind a spike in carbon emissions in 2015, right behind China and India, while California and U.S. emissions were falling, according to a new study released on Thursday.

Tracking a Republican-signed climate law: The study, produced by the consulting firm Beacon Economics for the innovation group Next 10, tracks California's decadelong implementation of its climate change law, AB 32, signed by former Republican Gov. Arnold Schwarzenegger.

The new greenhouse gas inventory details how the Golden State ranks when compared to 50 countries by using the most recent data compiled by the California Air Resources Board, the Environmental Protection Agency, and other government entities.

Golden state ranks as 18th largest polluter: "When looking at the global level, California was still the 18th-largest polluter in terms of carbon dioxide emissions from fossil fuel activities among the top 50 global polluters in 2015," the study said in its executive summary.

But the trifecta of big emitters included Iran: At the same time, however, carbon dioxide emissions from fossil fuels rose 15 percent, driven by China, India, and Iran, which led countries in greenhouse gas emissions that year, the study said.

2015 was the same year that nearly 200 countries signed onto the Paris climate change accord, which President Trump decided to later exit in 2017.

TRUMP TO NOMINATE CENTRIST TO LEAD EPA'S CHEMICAL SAFETY OFFICE: Trump is poised to nominate a centrist to lead the EPA's chemicals office after he was forced to withdraw his first pick due to insufficient support from senators.

The president plans to select Alexandra Dapolito Dunn to lead EPA's Chemical Safety and Pollution Prevention Office, the Washington Post reported Thursday.

She has nonpartisan credentials: Since November, Dunn has been administrator of EPA Region 1, the local office covering the New England area. Prior to that, Dunn served as executive director and general counsel for the Environmental Council of States, a nonpartisan nonprofit that helps states improve their environments. In that role, she helped state governments improve water infrastructure, air pollution, and chemical management, according to her EPA bio. Before that job, Dunn occupied the same role for the Association of Clean Water Administrators. She was also dean of environmental law programs at Pace University.

She's different than the last failed nominee: Dunn's nonpartisan background will likely please senators, including Republicans, who opposed Michael Dourson, Trump's first nominee for the chemicals office, because of his ties to industry, forcing him to withdraw.

DEMOCRATS QUESTION EPA'S IMPLEMENTATION OF CHEMICAL SAFETY LAW: If Dunn is nominated, Democrats will have plenty of questions for her on how she plans to implement a bipartisan law approved during the last year of the Obama administration, known as the Toxic Substances Control Act (TSCA), that set rules for how the agency determines health and safety risks of chemicals.

Democrats say the Trump administration is not faithfully implementing the law.

Ten Democrats of the House Energy and Commerce Committee wrote a letter Wednesday to the panel's Republican chairman, Greg Walden of Oregon, urging him to schedule a hearing on how EPA is managing the TSCA law and accusing the agency of "rubber-stamping" chemical risk reviews. The Democrats said they have been urging Republicans to call a hearing for more than a year.

What EPA allegedly is doing differently: The TSCA law required the EPA, under new authority, to evaluate hundreds of chemicals to determine if they should face restrictions or be removed from the market.

But the EPA, in its review of the first batch of 10 chemicals, decided in most cases not to consider the effects of indirect exposure to the substances, including possible leaking into the air, ground, and water caused by improper disposal.

The agency, according to internal documents obtained by the New York Times, said it would evaluate only direct exposure to the chemicals in the workplace or elsewhere.

ANTI-FRACKING MEASURE MAKES THE NOVEMBER BALLOT IN COLORADO: Colorado voters will have a chance to decide in November whether to block drilling in most of one of America's largest oil and gas producing states.

The Colorado secretary of state's office said Wednesday that opponents of oil and natural gas fracking had obtained sufficient signatures to put the issue on the November ballot.

It's basically a ban: The measure would ban drilling within 2,500 feet of homes, schools, and "vulnerable areas" such as playgrounds.

A state analysis shows that if the measure passed, it would block new oil and gas wells on 85 percent of nonfederal land in the state. Colorado is America's fifth-largest gas-producing and seventh-largest oil-producing state.

Consequences of the fracking boom: Oil and gas producers flooded Colorado during the fracking boom of the early 2000s, bringing jobs to the state, and boosting local and state tax revenue. Both of Colorado's candidates for governor, Republican Walker Stapleton and Democrat Jared Polis, have spoken out in recent weeks against the anti-fracking ballot measure, worried about the economic impact.

But opponents say wells are increasingly encroaching on populated areas. They question the safety of oil and gas operations, noting frequent explosions, including a fatal one last year that killed two men and destroyed a home, blamed on a leaky well that wasn't capped properly.

FEDERAL AND STATE OFFICIALS CELEBRATE DEMOLITION OF MARYLAND DAM TOGETHER: In what is being hailed as the largest wildlife restoration project on the East Coast, state and federal officials will gather next week to celebrate the demolition of the Bloede Dam on the Patapsco River just north of Washington.

Safety and wildlife is the focus: Demolishing the over 200-feet long Bloede Dam will improve public safety in Patapsco Valley State Park and revitalize fish and wildlife vital to the Chesapeake Bay, according to the group American Rivers that is helping to organize the Sept. 5 event.

A model for other states: The dam removal and river restoration is expected to be a model for other states challenged by outdated dams and water infrastructure.

Who is expected to attend? A number of Commerce Department officials are invited to attend the event, along with Democratic Sen. Chris Van Hollen and Rep. Elijah Cummings.

What about Ellicott City? The dam resides near Ellicott City, Md., where a landmark flooding event ravaged the historic part of town earlier this summer. The city had just recovered from another once-in-a-hundred-years flood just about two years earlier. It isn't being discussed whether the dam demolition will help the town from being flood prone. Environmentalists blamed the floods on changing weather patterns due to global warming.

EPA WATCHDOG TO REPORT ON SCOTT PRUITT'S USE OF ROUND-THE-CLOCK SECURITY: The EPA's internal watchdog hasn't forgotten about former Administrator Scott Pruitt. EPA's inspector general said Wednesday it plans to release a report the day after Memorial Day on former Administrator Scott Pruitt's use of an expensive round-the-clock security detail.

EPA's inspector general said it will release the report the morning of Sept. 4, along with an accompanying podcast.

In case you forgot: Pruitt resigned last month after facing a dozen federal investigations over his spending, first-class travel, and use of security.

The EPA's inspector general in April began investigating Pruitt for his use of the security detail on personal trips to Disneyland, the Rose Bowl, and college basketball games.

The EPA spent nearly $3.5 million on Pruitt's security detail during his first year on the job, including travel and overtime pay.

He was the first EPA administrator with that level of security. The EPA justified the constant security presence by saying Pruitt has faced unprecedented threats from people who opposed his deregulatory agenda.

Agency

The Hill
Washington's fall agenda: EPA to focus on new power plant, water rules
http://thehill.com/policy/energy-environment/404273-washingtons-fall-agenda-epa-to-focus-on-new-power-plant-water-rules
BY MIRANDA GREEN **AND** TIMOTHY CAMA

Congress and the White House are facing a number of important issues this fall. But the clock is ticking with the November midterms looming and the end of the year fast approaching. Here's a look at Washington's agenda and the key stories The Hill will be watching in the months ahead.

Federal officials will be hard at work throughout the fall, moving forward with high-profile actions to implement President Trump's agenda to dismantle major environmental regulations, boost fossil fuel production and streamline protections for endangered species.

Rather than follow the pattern of a typically slow August bookended by congressional recesses, the Environmental Protection Agency (EPA) spent the month rolling out two highly anticipated proposals to undo major pieces of former President Obama's environmental legacy.

The new rules aim to replace the Clean Power Plan (CPP), which sought to limit greenhouse gas emissions from power plants, and vehicle emissions standards that determined future fuel efficiency standards for cars and light trucks.

The CPP replacement, called the Affordable Clean Energy rule, would give states guidelines for how to reduce their coal plants' carbon dioxide emissions, mainly by making them more efficient. States would be given wide latitude in formulating plans as they see fit.

With no minimum or maximum standards set for carbon emissions under the new rule, critics fear the plan will do little to thwart air pollution and climate change. Republicans, on the other hand, have largely cheered the proposal as ending the Obama-era "war on coal."

Both the power plant and car proposals were opened for public comment in August, and comments are due in October, barring a decision to extend the time period. Officials would then have to read through the comments and make necessary changes before making the rollbacks final.

Despite new leadership at EPA following controversial former chief Scott Pruitt's departure in July, the agency is expected to continue to carry out a Republican agenda that favors deregulation and the fossil fuel industry - namely coal.

Looking forward, the agency under EPA Administrator Andrew Wheeler is likely to soon formally propose a new "Waters of the United States" (WOTUS) rule, which would redefine which small waterways, like ponds and streams, are under the federal government's jurisdiction. The 2015 rule asserted federal power over many

small waterways whose protections previously weren't clear. But the agriculture industry and others argued the rule gives regulators too much power.

Trump promised changes to the rule dating back to his presidential campaign and in January the administration formally suspended the rule in anticipation of a new proposal. In June, the EPA and the Army Corps of Engineers sent their new water rule proposal to the White House Office of Management and Budget for review, but no formal rule has since surfaced. In August, however, a federal court disputed the government's ability to suspend a rule without a replacement, reinstating WOTUS in 26 states until a new rule can be implemented.

The Interior Department has similarly been busy over the summer months, with the Fish and Wildlife Service rolling out a proposed rule that would change the way the federal government implements the Endangered Species Act. The controversial rule, announced in July, has largely been panned by animal rights and conservation groups who fear the administration is wrongly focusing on the price tag of species conservation efforts rather than the consequences of extinction.

However, logging, fossil fuel and private landowner representatives are in support of the proposed changes that aim to make it easier to remove species from the endangered list and weaken protections on species listed as threatened. Comments are due Sept. 24.

All of the action this fall won't be at the administration. On Capitol Hill, GOP lawmakers are carrying out their own efforts to reform the Endangered Species Act.

Sen. John Barrasso (R-Wyo.) introduced draft legislation in July to overhaul how species recovery is overseen. Barrasso told The Hill the final bill will be formally introduced in the fall.

The House's Western Caucus also rolled out a package of bills in July that covers a wide range of issues including easier removal of endangered species protections and curtailing lawsuits from conservationists. The House could take up the bills this fall.

Additionally, Interior is hard at work to increase oil and natural gas drilling on a number of fronts.

The agency is endeavoring to hold its first auction for drilling rights in Alaska's Arctic National Wildlife Refuge next year and is currently pushing through the environmental review process. The controversial sale is mandated under a GOP tax bill that passed last year; it requires two drilling rights lease sales over the next 10 years.

The department is also working to implement its plan to expand offshore drilling in federal waters. Interior Secretary Ryan Zinke proposed in January to allow drilling along the entire Atlantic, Pacific and Gulf of Mexico coasts, and around Alaska. The plan has faced significant pushback from Atlantic and Pacific states, though the oil industry wants the ability to at least explore those places for potential resources and has been lobbying for

the right to probe the regions. Many environmentalists oppose even basic oil probes, fearing they could disturb habitat.

The next step in the process is for officials to refine Zinke's January proposal and remove any areas that Interior determines would not be appropriate for drilling.

Chicago Tribune
Residents outraged by EPA pollution report call for Willowbrook Sterigenics plant to close
http://www.chicagotribune.com/suburbs/burr-ridge/news/ct-dbr-willowbrook-sterigenics-public-reaction-tl-0906-story,amp.html
By Kimberly Fornek, August 30, 2018

Hundreds of enraged residents called Wednesday for a Willowbrook company to be shut down at least until the harmful effects of a chemical used in its sterilization processes are more thoroughly understood.

Hearing that the company could not be immediately shut down because it was operating within the rules of its permits issued by the U.S. Environmental Protection Agency did not satisfy them.

“You need to be in that facility monitoring what is going on,” said Elizabeth DiCriscio, who lives in Wauconda, but works in Willowbrook. “Kids are getting sick. I have headaches everyday of my life. I have asthma. I have eye pain.”

DiCriscio told the EPA officials their response is too slow. Sterigenics is operating 24 hours a day.

“No one is stupid here,” DiCriscio said. “Your company should not be in this area period,” she told the Sterigenics officials.

Willowbrook Mayor Frank Trilla organized the community forum in response to a government report last week that the chemical ethylene oxide, used by Sterigenics International, is more harmful than previously known and poses a public health hazard to people who live and work around the Sterigenics plants in the village.

The report was based on data from the U.S. Environmental Protection Agency.

In December, the EPA increased the cancer risk from adult-based inhalation of ethylene oxide 30-fold, based on updated research. The EPA evaluated the implications of this change on Sterigenics facilities, at 830 Midway Drive and 7775 Quincy St., because more than 19,000 people live within a mile of the buildings.

The EPA ran models based on air samples taken between May 16-18 from 26 different locations in the commercial area around Sterigenics, northeast of Route 83 and Interstate 55, and in the residential neighborhoods, northwest of Route 83 and I-55.

The report concluded that if the measured and modeled data represent typical ethylene oxide concentrations, an elevated cancer risk exists long term for residents and off-site workers in the Willowbrook community surrounding the Sterigenics facility.

But that assessment was based on a worst-case scenario, someone breathing ethylene oxide emissions at the highest level found in the samples over a lifetime, EPA officials said.

But many people stood up and said they have lived 20 or more years near the Sterigenics plant.

Parents talked about children and other family members who have developed various types of cancer.

In July, Sterigenics said it installed equipment that reduced ethylene oxide emissions by more than 90 percent. The EPA plans to take air samples again by the end of September.

Where else in the country does Sterigenics have a facility located is such close proximity to residential neighborhoods, asked Sharon Ryan, who lives across from Gower West Elementary School in Willowbrook, one of the four schools within a mile of Sterigenics. She also took her daughter to a day care on Midway Drive near Sterigenics' buildings, she said.

Ryan thanked Trilla for bringing together representatives of the agency that wrote the report, the EPA and Sterigenics at the forum.

But other citizens held everyone accountable, from local officials whose zoning codes allowed a company handling dangerous chemicals to build a plant so close to a heavily populated area to federal agencies that should be providing better oversight of air quality.

Trilla, obviously frazzled after nearly a week of sorting through the report and trying to get clarification from experts about the potential health risks of Sterigenics' operation, sought to assure the audience.

"This is not a PR stunt," he said. "This is the best information, the only information I could get for you."

Chemicals

Bloomberg Environment
Chemours Chemicals to Get New EPA Safety Levels in Coming Weeks (1)
https://bnanews.bna.com/environment-and-energy/chemours-chemicals-to-get-new-epa-safety-levels-in-coming-weeks-1?context=landing&limit=10&tab=news
Posted Aug. 29, 2018, 1:33 PM Updated Aug. 29, 2018, 3:17 PM

- EPA to release new safety levels for series of chemicals manufactured by Chemours
- Draft safety levels to come out at end of September, agency official says
- Chemicals are part of broader group called PFAS causing water contamination concerns across the country

The EPA will propose new safety levels in a matter of weeks for a class of chemicals manufactured by the Chemours Co. that have triggered water contamination concerns across the country.

The Environmental Protection Agency is on pace to release draft safety levels by the end of September for the chemicals the company has been marketing as GenX, said Peter Grevatt, the EPA's top drinking water official.

These numbers, also known as "toxicity values," will attempt to define the thresholds for safe exposure to GenX chemicals through water, soil, air, and other media, Grevatt said. He spoke at an Aug. 29 conference of state environmental officials in Stowe, Vt.

The EPA will share these toxicity values with them before posting the numbers on the agency's website, he told the officials. The values are part of a broader agency effort to assess contamination at Superfund sites and other locations.

"We want to share this with the states before it appears publicly so you can think about the implications for your programs," Grevatt said.

Chemours didn't respond to an email from Bloomberg Environment seeking comment.

Draft Numbers

GenX is part of the broader class of chemicals known as per- and polyfluoroalkyl substances, or PFAS. They are long-lasting in the environment and have been linked to a number of health problems.

Additional testing for these chemicals has shown high levels in some of the country's water systems, especially those on or near military bases, where the chemicals were used in firefighting foam.

GenX has been an especially vexing problem in North Carolina, where Chemours had a manufacturing facility in Fayetteville that is now the subject of numerous lawsuits.

In addition to new safety levels for GenX, the EPA also will come out next month with numbers for the chemical perfluorobutane sulfonate, a component of the Scotchgard products produced by the 3M Co.

These numbers will be in draft form, and the public will have an opportunity to comment on them before they become final, Grevatt said.

More Action

While state officials at the Stowe conference could appreciate the EPA's efforts to open up its process, many also would like to see more action from the agency.

Several states have taken measures to regulate these chemicals independently of the EPA. New Jersey is considering setting one of the nation's first regulations that force water utilities to screen for PFAS, said the head of the state's Department of Environmental Protection, Catherine McCabe.

This has led to a confusing patchwork of differing regulations in different states.

Grevatt didn't specify whether or when the EPA could set a nationwide standard. But he seemed to indicate that he thinks this might not be the best approach, given that contamination levels vary widely from community to community.

"It matters where you go to look," he said. "If you go near known sources ... then you'll likely find elevated levels. This prompts the questions about what are the best tools to develop for states."

Bloomberg Environment
EPA's New Chemical Delays Hurting Business, Industry Says
https://bnanews.bna.com/environment-and-energy/epas-new-chemical-delays-hurting-business-industry-says?context=landing&llimit=10&tab=news
By Pat Rizzuto, Posted Aug. 29, 2018, 5:32 PM

- Specialty chemical makers frustrated by EPA approval delays
- Some new chemical reviews last two years or more

The EPA's new chemicals program may no longer face an environmental group's lawsuit, but specialty chemical manufacturers remain frustrated by the slow pace of the agency's approval process for new products.

The agency must make decisions within 180 days before new chemicals can enter the market but is frequently slipping past that legal limit.

The U.S. Court of Appeals for the Second Circuit approved on Aug. 29 the Natural Resources Defense Council's unopposed motion asking to drop the group's lawsuit. The council had challenged a strategy the Environmental Protection Agency planned to use to speed reviews of whether a new chemical can be sold.

The dropped lawsuit resolves one of four legal challenges to EPA's implementation of the 2016 Toxic Substances Control Act amendments.

But dropping the lawsuit doesn't address the chemical industry's primary concern about the EPA's new chemicals program: months-long delays that prevent manufacturers from selling new chemicals.

Timely Reviews Needed

The EPA is consistently missing the deadlines set by the amended TSCA to complete its reviews of new chemicals, Robert Helminiak, vice president for legal and government relations at the Society of Chemical Manufacturers and Affiliates (SOCMA), told Bloomberg Environment Aug. 29.

Timely reviews of new chemicals and issuance of final new use rules is critical, "so specialty chemical manufacturers can continue to thrive and develop new products," Helminiak said.

More than 100 new chemicals have been under review at EPA for more than two years, according to agency information analyzed by Bloomberg Environment. The EPA repeatedly has told Bloomberg Environment that it is working to reduce the amount of time it takes the agency to review new chemicals.

Under amendments to TSCA, the EPA is supposed to conclude—typically within 90 days, but up to 180 days total—whether or not a new chemical's known, intended, or reasonably foreseen uses may pose an unreasonable risk of injuring people's health or the environment.

If the chemical poses unreasonable risks, the agency is required to prevent that risk before allowing the new chemical to be sold. The agency can address the risks by requesting more data, limiting a chemical's release to water if it harms aquatic life, or requiring chemical manufacturers to add worker protections such as gloves, masks, and other protective gear, among other actions.

The TSCA amendments reinforced the deadlines by directing the EPA to refund the fee chemical manufacturers pay for the agency to review their new chemicals if it misses those deadlines. Instead of issuing refunds, however, the EPA routinely asks chemical manufacturers to voluntarily "stop the clock."

"The specialty chemical industry relies on innovation and with that innovation comes an urgency to get products to market," Helminiak said by email.

The EPA also needs to publish a type of regulation, called a "significant new use rule," more quickly, Helminiak said. Those rules level the regulatory playing field for future manufacturers of the same chemical by requiring them to abide by the same restrictions that the original manufacturer agreed to follow.

The case is Nat. Res. Def. Council v. EPA, 2d Cir., No. 18-00025, 8/29/18.

Bloomberg Environment
Bayer's Weed-Killing Future Targeted in Appeal of EPA Approvals
https://bnanews.bna.com/environment-and-energy/bayers-weed-killing-future-targeted-in-appeal-of-epa-approvals?context=landing&limit=10&tab=news
Posted Aug. 30, 2018, 9:10 AM
By Joel Rosenblatt and Lydia Mulvany

When it comes to killing weeds, Bayer AG's crop chemical XtendiMax has become a powerful new tool for American farmers. But environmental groups say U.S. regulators ignored warnings about the herbicide's main ingredient, dicamba, when they permitted its use in 2016.

A federal appeals court in Seattle was asked Aug. 29 to overturn the Environmental Protection Agency approval after the unintended destruction of millions of acres of crops not treated with XtendiMax, from wine grapes and peach orchards to vegetables and soybeans. Bayer inherited XtendiMax when it acquired Monsanto Co. for

$66 billion in June, and dicamba-based products are key to its growth strategy for herbicides and genetically modified seeds.

Groups including The Center for Food Safety allege the EPA violated federal law by ignoring evidence from officials in various states that the chemical easily drifted onto untreated crops. In 2017, among soybean farms alone, 3.6 million acres of non-resistant crops were damaged, according to Kevin Bradley, a professor of plant sciences at the University of Missouri. After about 2,700 complaints last year, the EPA required a more detailed product label, mandatory application training, and more rigorous record keeping.

"It's around in a massive way that's not getting reported," said Steve Smith, the director of agriculture at Orestes, Ind.-based Red Gold Tomatoes, the largest privately held tomato processor.

"When I drive around the countryside, trees around fields are really showing damage, and that's not showing up in anybody's numbers," said Smith, who is a member of Save Our Crops Coalition, which wasn't party to the lawsuit. "Everyone had training, so no one can say education is the issue. It's the product."

At the hearing Aug. 29, the environmental groups asked the appeals court to invalidate the EPA's 2016 approval of XtendiMax to make sales illegal.

Many American farmers—especially those who grow corn and soybeans, the two biggest U.S. crops—have become increasingly dependent upon herbicides and seeds that are genetically modified to produced plants that can withstand the chemicals. Monsanto developed the blockbuster weedkiller Roundup in the 1970s, but its effectiveness has waned in recent years as some weeds grew resistant to the active ingredient, glyphosate.

Dicamba-based products are intended to combat the new superweeds, and more are coming. Seeds are being designed with resistance to five or six chemicals. Bayer Chief Executive Officer Werner Baumann, in an Aug. 23 call with analysts, described the glyphosate-dicamba combination, called the Roundup Ready Xtend Crop System, as "our next-generation weed-control system."

Regulating Chemicals

The EPA regulates pesticides and herbicides, which have to be registered with the agency. While permits are reviewed at least every 15 years, the EPA registered new formulations of dicamba for a two-year period to allow the agency to change the registration, if necessary.

The challenge with dicamba is that the chemical can vaporize after it's applied, which means the air can blow it onto untreated plants nearby. That's forced some farmers to buy the products defensively, according to the lawsuit. Bradley, the Missouri weed scientist, has said growers will have no choice but to buy seeds with Xtend technology to protect themselves if their neighbors are using the products.

"Bayer wants to double-down on this treadmill where we're going to have more and more toxic pesticides and cocktails," said George Kimbrell, the legal director at the Center for Food Safety. Dicamba's drift problem is "not something farmers can address with label measures," he said.

Field Studies

At the Aug. 29 hearing, Judge William A. Fletcher was critical of the EPA's 2016 decision, which was based on just two "real world" field studies. One was in Georgia and the other was in Texas, where the data was withheld, he said.

"The only data we have is from one of those two fields," Fletcher said. "Is that enough? That doesn't strike me as very much given the great danger that everybody knew dicamba posed to post-emergent fields. It turns out, of course, that the danger was there."

Brett Grosko, EPA's lawyer, said that the studies were "sufficient under the standards" and that the court must "allow the EPA to decide" what the best available science is.

Monsanto filed briefs supporting the EPA's decision-making, arguing farmers need new tools to combat weeds that have grown resistant to Roundup and by 2012 covered more than 60 million acres of U.S. farmland.

"Dicamba-based herbicides have a 50-year history of safe use, when applied according to label directions, and we are confident the government's exhaustive assessment will prevail," the company said in an emailed statement.

Expiring Registration

The court fight comes as the EPA's approval of dicamba formulations expires Nov. 9, and Bayer expects a renewal decision before then.

Bayer says farmers are adopting its new seeds and herbicide in record numbers. Dicamba-resistant soybeans were planted on 42 million acres in 2018, double the year-earlier total and almost half of the U.S. total of 89.6 million acres, the company said. For cotton, the total was 8 million acres of the 13.5 million acres farmers planted this season.

"We are confident that, in working closely with the EPA, a satisfactory solution for the farmers will be achieved," Bayer CEO Baumann said on the Aug. 23 call with investors.

The case is Nat'l Family Farm Coal. v. EPA, 9th Cir., No. 17-70196, argued 8/29/18.

Inside EPA
EPA Official Raises Concern Over PFAS MCL As States Back Standard
https://insideepa.com/daily-news/epa-official-raises-concern-over-pfas-mcl-states-back-standard
By Dave Reynolds, August 29, 2018

STOWE, VT -- Even as he claimed not to be signaling how the agency may proceed, a top EPA water official is raising concerns about whether the agency should develop a federally-enforceable standard targeting per- and polyfluoroalkyl substances (PFAS), a ubiquitous class of drinking water contaminants, that many states continue to seek.

During the Environmental Council of the States (ECOS) Fall Meeting here Peter Grevatt, director of EPA's Office of Ground Water and Drinking Water, who is leading agency efforts to address PFAS, reiterated his past concerns that a single national standard may be inappropriate given that a recent agency survey of systems that supply drinking water to 80 percent of users found PFAS in less than 2 percent of those systems.

In particular, he noted that a 2013-2015 survey conducted under EPA's Unregulated Contaminant Monitoring Rule (UCMR) that checked for six forms of PFAS found the substance in just 1.3 percent of water systems surveyed, though the rule was criticized by environmentalists, who charged that it set a high reporting theshold for the substances while concentrations detected at lower levels were not released to the public.

In his remarks, Grevatt also noted that PFAS contamination is more commonly found near military installations or other known sources, suggesting such knowledge could inform a more targeted approach.

Yet Grevatt stated he was not signaling whether EPA would pursue the standard, known as a maximum contaminant level (MCL), he left the door open to pursuing in remarks to ECOS this spring.

"It matters where you look," he said, noting that contamination is more common near certain locations used for bio-solid disposal or spraying firefighting foam. "If you go there, you would likely find elevated levels in the drinking water systems. From EPA's side this prompts the question, what is the best tool to develop, what are the most useful for the states."

In response, several state regulators reiterated calls for EPA to curb PFAS contamination, with one Vermont official saying that if state law did not allow oversight of the substances "we would be nowhere."

The class of chemicals, which number more than 3,000 substances, have been used to make a wide range of products, including fire fighting foam, waterproof textiles and cookware. The chemicals have been linked to various adverse health effects, including certain cancers, ulcerative colitis and thyroid disease. PFAS has drawn growing concerns from communities and states as their presence has been found in drinking water systems, and in groundwater.

EPA's review of the two most common PFAS -- perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) -- stems from its 2016 decision to list the two substances on the Safe Drinking Water Act Contaminant Candidate List (CCL4), which also listed 95 other chemical contaminants and 12 microbial substances.

Under the law, the agency is required to assess listed contaminants against three criteria: whether the substance may have an adverse effect on human health; is known to occur or there is a substantial likelihood

that it will occur in public water systems with a frequency and at levels of public health concern; and, in the judgment of the Administrator, regulation presents a meaningful opportunity for health risk reductions.

But the agency is only required to make a decision on whether or not to regulate at least five of the more than 100 CCL4 contaminants by January 2021.

PFAS Agenda

While it is not clear how or whether the agency will proceed, its plan to consider whether to craft a standard for at least two of the thousands of PFAS was a centerpiece of the agency's agenda to address the substances.

During a May 22 summit, former Administrator Scott Pruitt announced officials would "take the next step" to evaluate the need for a drinking water standard for PFOA and PFOS, a step that the Defense Department (DOD) and many states are seeking to provide a consistent national cleanup standard.

Many lawmakers and their constituents -- especially in communities with contamination -- are also urging the agency to set a standard.

But Grevatt has previously indicated that any decision on whether to regulate was likely a long way off. "This is one of the issues that [Pruitt] will certainly think about," Grevatt told ECOS officials in March. He cautioned that crafting an MCL would require numerous steps including a regulatory determination and multiple rounds of public comment. "That is not going to happen in a year. That is a multi-year process."

State officials at the meeting pushed back on any suggestion that EPA may be stepping back from a strict approach on the contaminants.

Maia Bellon, director of the Washington State Department of Ecology, said that while regulators are addressing cleanup, "we have to get at the top of the pipe -- how is this getting into communities?" She added that EPA should work with industry to curb the pollution before it occurs.

"I understand that EPA has some very good relationships with manufacturers and chemical producers, and I ask EPA to engage at that level to give us a fighting chance so we don't continually have to play from the defensive to protect our residents," she said.

And Peter Walke, deputy secretary of the Vermont Agency of Natural Resources, backed Bellon's call for reducing pollution "on the front end" as "all that matters," and said thankfully Vermont state law allows that agency to regulate the substances or "we'd be nowhere."

"We need your leadership and we need your cooperation, but I'm grateful we are where we are," Walke added.

Grevatt responded that industry collaboration has shared data that has informed EPA assessments of some of the emerging contaminants.

Grevatt also provided an update on several of the agency's other priorities for addressing PFAS contamination, which includes exploring listing PFOA and PFOS as hazardous substances under the Superfund or other laws.

He also said that the agency is currently developing groundwater cleanup recommendations for certain PFAS substances, and developing toxicity values for two other substances, one of which is GenX, an emerging contaminant found in North Carolina's Cape Fear River.

Grevatt said EPA has been working with five states on developing those toxicity factors the agency plans to issue for public comment before the end of September.

Grevatt also backed states' calls for improved communication of the substances' risks, an idea the agency heard reiterated during public listening sessions recently held in communities with PFAS contamination. "Communities that are impacted by these compounds are really struggling with how to deal with these challenges," he said. "Risk communication has been hammered home about the need to be clear about what we know and what we don't know." -- *Dave Reynolds* (dreynolds@iwpnews.com)

M.Live.com
Michigan cut from EPA national PFAS forum tour
https://articles.mlive.com/news/index.ssf/2018/08/michigan_epa_pfas_forum.amp
Updated on Aug 29, 2018 at 04:24 PM EDT

LANSING, MI -- Plans for a Michigan public forum on toxic water contamination led by the Environmental Protection Agency have been scuttled amid apparent disagreements over location and meeting format between the state and federal government.

This week, the EPA announced that Kansas will be the last stop on its " community engagement " series, which the agency has taken around the country this summer to states grappling with drinking water contaminated by per- and polyfluoroalkyl substances, or PFAS.

The meetings, which featured conference-style expert presentations and lengthy public feedback sessions, have been held in four states since the forum tour was announced in May during a summit on PFAS contamination at EPA headquarters.

Michigan was announced as one of the first two stops on the outreach effort, which is meant to help guide creation of a national management plan for PFAS that may involve new drinking water standards and chemical regulation under federal toxic cleanup law.

The EPA has been criticized for allowing the so-called "forever chemicals" to fester on the unregulated contaminant list, causing some states to develop their own regulations as testing finds the pollutants in ever greater amounts and sites nationwide.

Hundreds of people have attended the meetings, many of whom have called on the EPA to take a stronger hand in regulating PFAS chemicals as a class, not just individually.

Big question at EPA summit: How many PFAS do we regulate?

Both EPA and state officials say there's still the possibility of a PFAS meeting in Michigan yet this fall, but that it may not look like the others, which featured extended "listening sessions" for the public to share personal experiences, offer input and suggestions.

Statements from the Michigan Department of Environmental Quality indicate the state would rather see a small gathering of community representatives rather than a public townhall.

Environmental activists expressed frustration that Michigan -- which sits atop the national list of states with PFAS contamination sites -- won't get a public meeting like other states.

"I'm disappointed that the community engagement meetings have been completed and Michigan has been shut out," said Tony Spaniola, a Troy attorney who owns property in Oscoda, where PFAS from the former Wurtsmith Air Force Base has contaminated Van Etten Lake, the Au Sable River and nearby drinking water supplies.

"A full-blown public engagement event is exactly what we need here," he said. "There are a lot of people with lots of concerns who need to be able to express them in an open public session."

Expectations were that EPA would visit Michigan in short order after the state was afforded a substantial role in the national PFAS summit on May 22-23. Michigan DEQ director Heidi Grether spoke and former EPA administrator Scott Pruitt praised the state for "leadership."

That was 14 weeks ago. In the meantime, EPA has held forum events in Exeter, N.H. on June 25-26; Horsham, Penn. on July 25; Colorado Springs, Colo., on Aug. 7-8 and Fayetteville, N.C. on Aug. 14. The final stop is Sept. 5 in Leavenworth, Kan.

If the EPA does hold a PFAS event in Michigan, it says the format may not include a public listening component or feature certain national staff who have been at other meetings.

The listening sessions in other states have been long affairs -- sometimes four to five hours. In North Carolina, it was 3 to 8 p.m. In Kansas, the scheduled session is almost four hours.

"Throughout the summer, EPA worked to balance the need to take action with the agency's desire to hear from as many communities as possible," said EPA spokeswoman Molly Block.

Scott Dean, spokesman for Michigan DEQ, said the agency has held "numerous discussions" with EPA related to location and format for a PFAS forum over the summer.

"We're happy to host any type of meeting that EPA would like to have," he said, but noting that DEQ is interested in doing so in a "productive and manageable format."

Because Michigan has been actively searching for and discovering contamination sites, Dean said it has "a number of interested constituencies" statewide. Communities like Oscoda, Rockford and Parchment are among those where high levels of contamination have been found in drinking water from past PFAS use or disposal by private industry or the military.

"There may be interest in bringing together key representatives from many constituencies in one location," Dean said, for a meeting which could be more roundtable and less townhall.

Dean called suggestions that Michigan is not interested in hearing from its citizens "false," citing the multiple meetings DEQ or other state agencies under the state's PFAS team, MPART, have hosted or presented at related to contamination in Michigan.

Block said that whether or not EPA does any meeting in Michigan, state residents can still submit input via EPA's non-regulatory docket. (Click here , enter Docket ID No. EPA-OW-2018-0270).

Spaniola is taking a wait-and-see approach.

"I'm certainly interested to see what they have in store, but the summer is now passed," he said. "I'm interested to see what Michigan's so-called 'leadership' has gotten for us."

"It doesn't look like much."

POLITICO Pro
House to hold first hearing on PFAS
https://subscriber.politicopro.com/energy/whiteboard/2018/08/house-to-hold-first-hearing-on-pfas-1844236
By ANNIE SNIDER
A House Energy and Commerce Committee subpanel will hold the first congressional hearing on contamination from nonstick chemicals next week.

Rep. John Shimkus' (R-Ill.) Subcommittee on Environment will hold the hearing, entitled "Perfluorinated Chemicals in the Environment: An Update on the Response to Contamination and Challenges Presented," on Thursday, Sept. 6. The committee has not announced witnesses.

The hearing comes on the heels of a series of EPA community meetings held around the country this summer as the agency works on an "action plan" for the class of chemicals. The chemicals are found in 99.7 percent of Americans' blood and an increasing number of drinking water supplies, including in Shimkus' state. The most studied chemical in the class, PFOA, has been linked with kidney and testicular cancer, thyroid problems and preeclampsia, among other ailments. None are currently regulated in drinking water, although EPA has begun the process of evaluating whether the two best-understood chemicals should be.

"Every family deserves to know the truth about what is going on regarding PFAS. It has been in the news and there is too little information about the health risks and ways to address it in the environment," Shimkus said in a statement. "With all the questions about PFAS exposure impacts swirling around, it's critical that we investigate the facts, the real risks, and what it takes to protect the public and clean up the contamination."

WHAT'S NEXT: The hearing will take place Thursday, Sept. 6, 2018 at 10:00 a.m. A Senate Homeland Security and Government Affairs Committee subpanel has a similar hearing scheduled later in the month.

POLITICO Pro
Trump to tap former ECOS chief for EPA chemicals job
https://subscriber.politicopro.com/agriculture/whiteboard/2018/08/trump-to-tap-former-ecos-chief-for-epa-chemicals-job-1842514
By ANNIE SNIDER **and** ALEX GUILLÉN
President Donald Trump will pick Alexandra Dapolito Dunn, a longtime environmental attorney and current head of EPA's New England office, to head the agency's chemicals and pesticides office, the Washington Post reports, citing unnamed sources briefed on her nomination.

The White House did not immediately return request for comment.

The Office of Chemical Safety and Pollution Prevention has been in the spotlight following some controversial moves, including overturning the Obama administration's move to ban the pesticide chlorpyrifos. That action was reversed this month by a federal court that said EPA had ignored the science showing the pesticide posed a health risk.

The chemicals office is also responsible for implementing Congress' overhaul of the Toxic Substances Control Act, though Democrats and environmentalists have argued EPA is is taking industry-friendly positions on asbestos and other harmful chemicals.

Trump's first nominee for the job, toxicologist Michael Dourson, drew fire for his close industry ties and eventually pulled his nomination after several Senate Republicans indicated they would not vote for him.

Dunn is seen as a more moderate pick. She was named last year to run EPA's Region 1, where she has gained the trust of community advocates working on contamination from perfluorinated compounds, or PFAS. Dunn hosted EPA's first community meeting on PFAS in June.

She served as executive director and general counsel for the Environmental Council of States for nearly four years. Prior to that she held similar roles at the Association of Clean Water Administrators and the National Association of Clean Water Agencies.

Wash Post
Trump set to tap centrist to head EPA's chemical safety office
https://www.washingtonpost.com/energy-environment/2018/08/30/trump-set-tap-centrist-head-epas-chemical-safety-office/
By Juliet Eilperin, Brady Dennis
August 30, 2018 at 8:13 AM

When President Trump first took office and was looking for someone to head the Environmental Protection Agency's chemical safety division, it didn't go well.

He nominated Michael Dourson, a University of Cincinnati professor whose research had been used for years by chemical firms and other companies to challenge claims that their products posed a public health risk. After North Carolina's two

Republican senators publicly declared their opposition, and a third Republican suggested she would vote no, Dourson withdrew his name from consideration in December.

Now, Trump is poised to shift course. He plans to nominate a centrist to head the EPA's Chemical Safety and Pollution Prevention Office, according to two individuals briefed on the decision who spoke on the condition of anonymity because it is not yet public.

EPA Region 1 Administrator Alexandra Dapolito Dunn, who was appointed to her current post in November, has deep roots working at nonpartisan environmental organizations and academia. Before becoming the agency's top official for New England, Dunn served as executive director and general counsel for the Environmental Council of States. Before then, she occupied the same role at the Association of Clean Water Administrators, which represents state water officials across the country.

Dunn has taught environmental law at Pace University, where she served as its dean of environmental law programs, and as an adjunct professor at Catholic University's Columbus School of Law and American University's Washington College of Law.

An EPA spokesman referred questions about Dunn's nomination to the White House, which declined to comment.

American University law professor Amanda Leiter, who served the Interior Department's deputy assistant secretary for land and minerals under President Barack Obama, praised Dunn's environmental expertise in an email.

"She taught environmental justice here and students loved her," said Leiter, who recruited her to teach at both Catholic University and AU. "She's a consummate professional with a longstanding commitment to environmental protection and cooperative federalism, and a deep understanding of the importance of sound federal regulation."

The EPA's chemical safety office has already attracted scrutiny for how it is implementing a major chemical safety law passed by Congress in 2016, The bipartisan update to the Toxic Substances Control Act (TSCA) gives the agency far-reaching authority to prioritize and evaluate existing chemicals in commercial products to make sure they do not pose a health hazard to Americans. It also must evaluate new chemicals to determine any associated health risks.

The agency has said it hopes to complete its evaluation of 10 initial chemicals -- a list that includes asbestos and a range of other compounds -- by next year.

On Wednesday, all 10 members of the House Energy and Commerce subcommittee on environment wrote a letter to GOP committee leaders demanding a hearing on how EPA was carrying out the law, saying the agency's current approach "contradicts the new law's language and intent and undermines public confidence in the program."

Other decisions concerning pesticides and toxic chemicals, made when Scott Pruitt helmed the agency, now face legal challenges. Pruitt decided last spring that the widely used pesticide chlorpyrifos, which has been linked in studies to neurological developmental problems in children, would be kept on the market. Earlier this month, a panel of the U.S.

Court of Appeals for the 9th Circuit ruled 2 to 1 that federal law requires the agency to ban the use of a pesticide on food if it finds any harm from exposure to it. The ruling gave the EPA 60 days to institute a ban.

Dunn appears unlikely to stir nearly the same level of political resistance as Dourson, whose nomination in July 2017 drew widespread criticism from environmental and public health advocates.

A longtime toxicologist who worked at the EPA from 1980 to 1994, Dourson was closely tied to the chemical industry through a nonprofit consulting group he founded. Over the years, it produced research for chemical companies that consistently showed little or no human health risks from their products.

Critics argued that Dourson, who worked as an EPA adviser while awaiting a Senate vote, had too many conflicts of interest to be considered for an EPA post that would position him to oversee the review of chemicals produced by companies he once represented. In October, a Senate committee narrowly advanced Dourson's nomination along party lines. But some Senate Republicans began voicing reservations about confirming him to the high-level post.

North Carolina GOP Sens. Richard Burr and Thom Tillis both raised questions about his record, and Sen. Susan Collins (R-Maine) also raised concerns. Burr said he was most alarmed about Dourson's work on a case involving contaminated water at a North Carolina military base and an unregulated compound known as Gen X, used to produce Teflon and other products, that was discovered in the Cape Fear River.

"I am not confident he is the best choice for our country," Burr said at the time.

Former Administrator Pruitt

The Hill
Pruitt aide wrote memo to absolve him in controversy over raises
http://thehill.com/policy/energy-environment/404292-pruitt-aide-wrote-memo-to-absolve-him-in-controversy-over-raises
By Timothy Cama - 08/29/18 07:56 PM EDT

A top aide to former Environmental Protection Agency (EPA) chief Scott Pruitt wrote a memo earlier this year that appeared to be aimed at absolving Pruitt of blame over a controversial raise given to the aide.

Internal EPA documents obtained Wednesday by The Hill offer more details surrounding one of many spending and ethics scandals weighing on Pruitt before his departure in July.

It also provides more fodder to critics who say there is lingering corruption at the EPA.

Sarah Greenwalt, who was Pruitt's senior attorney before she resigned in June, received a significant pay increase in March to $164,200, from $107,435, shortly after the White House rejected the EPA's bid to give her a raise. At the time, Pruitt's chief of staff, Ryan Jackson, used a special procedure under the Safe Drinking Water Act to get around the White House and authorize the pay raise, as well a big raise to Millan Hupp, Pruitt's scheduler at the time.

Greenwalt's and Hupp's raises were especially controversial because both women were close aides who had worked for Pruitt in his previous job as Oklahoma's attorney general.

Hupp, whose salary went to $114,590 from $86,460, told congressional investigators that she helped him with personal tasks like finding apartments and trying to buy a used mattress from the Trump International Hotel. In a Senate hearing, Pruitt called Hupp "a longtime friend of my wife and myself."

After The Atlantic broke the news of those raises on April 3, Pruitt denied that he was aware of them, despite a previously reported email Greenwalt wrote in February to a human resources official at the EPA, saying that her salary boost had been "previously discussed with the Administrator."

The email seemed to implicate Pruitt and differed with his April 4 interview on Fox News, in which he claimed to have "found out about it yesterday."

But in a previously unreported memo to Jackson dated April 9, Greenwalt appeared to try to clean up the mess, saying she had discussed taking on new responsibilities with Pruitt in January and getting a raise, but not the specific salary or what method Jackson would use to implement it.

"At the time that promotion was discussed, I asked generally if that would encompass an increase in salary commensurate with the increase in responsibility and portfolio," Greenwalt wrote. "At no time was there ever a discussion with the Administrator as to what the new salary would be, or the process by which that salary would be determined."

It's unclear from the documents if Pruitt or Jackson — who stayed at EPA after Pruitt's departure as Acting Administrator Andrew Wheeler's chief of staff — instructed Greenwalt to write the memo.

The EPA didn't respond to a request for comment, nor did the Oklahoma Workers Compensation Commission, where Greenwalt now works as general counsel.

The memo came the same day that The Atlantic published a new story reporting that Greenwalt had sent the February email.

Also on that day, President Trump brought up the scandals in a White House meeting with Pruitt and other administration officials that was intended to be about ethanol policy, according to The Washington Post. He said at the meeting that Pruitt had a "rough week," and asked him to "cool it," the Post reported.

Pruitt's later statements about the controversial raises align more closely with Greenwalt's memo than with comments made during the Fox interview.

"I was not aware of the amount," Pruitt told House lawmakers later in April. "Nor was I aware of the bypassing or the [White House Presidential Personnel Office] process not being respected."

The day after Greenwalt wrote her memo, Jackson also put out a statement saying he was responsible for the raises and for doing an end-run around the White House. The EPA released a document showing that Pruitt had delegated hiring authority, including authority to use the Safe Drinking Water Act hiring, to Jackson.

Pruitt also reversed the raises after The Atlantic's initial report.

The Sierra Club, which has helped expose many of Pruitt's scandals through Freedom of Information Act requests, said the memo serves as a reminder of the role that Pruitt staffers who are still at the agency — such as Jackson — played in some of the scandals.

"Andrew Wheeler is running an EPA that includes Pruitt staff who have accommodated and covered up deep corruption and abuse of taxpayer dollars," spokesman Adam Beitman said.

"The fact that he tolerates that in order to push the fossil fuel industry's agenda shows that his disrespect for the public is as extraordinary as Pruitt's."

POLITICO Pro
EPA watchdog to issue Pruitt security report next week
https://subscriber.politicopro.com/energy/whiteboard/2018/08/epa-watchdog-to-issue-pruitt-security-report-next-week-1837827
By ALEX GUILLÉN
EPA's Office of Inspector General will issue its report on former EPA Administrator Scott Pruitt's security detail on Tuesday, Sept. 4, the OIG said today.

The scope of the report is unclear. The OIG was looking into several aspects of Pruitt's security detail, including the increase in its spending compared to previous administrators, especially spending related to first-class travel, as well as Pruitt's use of the detail on personal trips such as family vacations to Disneyland and the Rose Bowl.

This will be one of the OIG's first official reports on Pruitt's activities. Multiple probes were launched earlier this year to review a litany of allegations against him, and have continued following his July resignation.

WHAT'S NEXT: EPA'S Office of Inspector General said it will release the report on the morning of Sept. 4.

Fuels

Agri-Pulse
Perdue: Trump wants to announce E15 fix next week
https://www.agri-pulse.com/articles/11384-perdue-trump-wants-to-announce-e15-fix-next-week
By Spencer Chase, 8/29/18/18 3:27 p.m.

Ag Secretary Sonny Perdue's decision to answer a phone call from a number marked "Unknown" may lead to movement on the administration's stalled efforts to allow year-round sales of E15.

Perdue's phone call ended up being from the White House operator, which led to a conversation where President Donald Trump instructed Perdue to meet with EPA Acting Administrator Andrew Wheeler and present a deal Trump can announce next week.

"The President called me this morning and said 'let's get it done,'" Perdue told reporters Wednesday at the Farm Progress Show near Boone, Iowa. "He wants to get that done, so hopefully he'll have an announcement hopefully sooner rather than later."

Perdue first made the announcement at a pro-E15 rally held on the farm show grounds. Surrounded by farmers and biofuel supporters wearing blue "Make the RFS Great Again" hats – one of which found its way onto Perdue's noggin – Perdue said President Trump was eager to prove good on his campaign promise to support the ethanol industry.

Coming to a conclusion on the debate has proven to be a tricky issue. The administration thought they had a deal earlier this year in a package that would have traded the Reid Vapor Pressure waiver necessary for year-round E15 sales in exchange for allowing exported biofuels to count toward Renewable Fuel Standard

compliance. President Trump rejected that deal at the behest of Iowa Senators Chuck Grassley and Joni Ernst, leaving the issue unresolved.

The administration has sought to trade the RVP waiver for a favor for oil refiners, which has proven difficult to this point. Wheeler said an RVP waiver would require a deal of sorts, something Perdue echoed Wednesday.

"We just have to balance it out and talk with our corn constituency – our corn growers and our ethanol community – about what is the balance for the refineries," Perdue said of Trump's instructions. "He needs to have something he can demonstrate to them as well."

Perdue and Wheeler are now tasked with reaching a compromise that has been previously elusive with a now expedited turnaround time. Previous difficulties notwithstanding, Perdue said he wants to be able to return a satisfactory deal to the president.

"This has been on the President's heart for a while," Perdue said. "This is what he wants to do, and he doesn't give executive suggestions, he gives executive orders, so we're going to get it done."

Bloomberg Environment
California Car Emissions Rise as Trump's Cuts to Standards Loom
https://bnanews.bna.com/environment-and-energy/california-car-emissions-rise-as-trumps-cuts-to-standards-loom?context=landing&limit=10&tab=news
Posted Aug. 30, 2018, 7:35 AM
By Eric Roston

- Report shows state has cut greenhouse gases from other sources
- State GDP, population grow while energy intensity drops

A new report shows California is failing to cut greenhouse gas pollution from automobiles just as the Trump administration is poised to revoke the state's right to regulate its tailpipes in pursuit of a single, national standard.

Climate pollution from transportation hasn't slowed since 2012 and now represents more than 40 percent of the state's total, according to an annual assessment from Next 10, a San Francisco based non-profit. The figure represents a "worrisome trend" in a state that has achieved its overall 2020 climate change goal—to push annual emissions below 1990 levels—four years early.

The report could become part of an expected confrontation between the state and White House. The U.S. Environmental Protection Agency and the National Highway Traffic Safety Administration proposed earlier this month new auto efficiency regulations, including a provision that would revoke California's ability to issue tailpipe limits that are tougher than federal ones.

A combination of factors keeps pushing transportation emissions higher, according to Next 10's 10th annual California Green Innovation Index. Californians have shown an increasing aversion to use public transit.

Difficulty finding affordable housing near work means people have to drive more to their jobs. Lower gasoline prices are always greeted warmly—but attract drivers to pick-ups and sport utility vehicles from more fuel-efficient smaller cars.

Emissions from cars and other light-duty vehicles in 2016 hovered near the 2008 level of 118 million metric tons of carbon dioxide or its equivalent. Truck emissions continued to decline at a rate insufficient to make up for the added tailpipe pollution.

"It has become clear that the transportation sector is heading in the wrong direction," according to the report. "A notable increase in GHG emissions in recent years means the sector is now California's largest source of total emissions."

The anomalous transportation numbers blemish Next 10's otherwise upbeat story of long-term transformation in economic growth and energy use. Rates of change in per capita greenhouse gas emissions and California's gross domestic product continue to part ways.

Per capita GDP increased at 2.3 percent from 2015 to 2016. Emissions fell at 3.4 percent at the same time. California ranked third globally among nations investing venture capital in clean technologies last year buoyed by $1.4 billion—behind China ($4.1 billion) and the U.S. ($2.5 billion).

The slide in transportation emissions sullies the popular image of California as the clean-tech-savvy home to Tesla Inc. and 8 percent of the world's on-road electric car fleet—equal to the rest of the U.S.

E&E
Bundled comments back clean car rollback. Sender unknown
https://www.eenews.net/greenwire/2018/08/30/stories/1060095473
Maxine Joselow, **E&E News reporter**
Published: Thursday, August 30, 2018

A shadowy mass comment campaign has emerged to support President Trump's proposed rollback of Obama-era clean car standards.

An E&E News analysis found at least 1,820 comments that use identical language to argue that the fuel economy standards were too costly for consumers, saying in particular that the standards would raise the upfront cost of a new car by an average of $3,000. Consider:

- A comment that appears 182 times says, "I urge the Department of Transportation and the EPA to get under the hood and fix the mileage standard. Nothing that will raise the price of a new car by $3,000 is a good idea."

- Appearing 199 times: "I want to support the modernization of the Obama mileage standards. All sides agree the Obama standards will raise the price of a new car by at least $3,000 once they are implemented."

- And a paragraph used 206 times reads, "Anybody who has ever been in a new car showroom understands what sticker shock is. It happens when you are surprised by the price of the new car you want. With the Obama mileage standards, we are guaranteeing a nationwide outbreak of sticker shock. A price hike of $3,000 for a new car will force buyers off the showroom floor."

Each comment includes a person's name but omits contact information such as a telephone number or email address. Also missing: the name of the group that organized the mass-comment campaign.

Watchdogs say that not including the name of an entity that organized the comments allows for hidden influence in rulemaking that undermines transparency and erodes public trust.

"I've never seen anything like this before," said James Goodwin, senior policy analyst at the Center for Progressive Reform. "I couldn't find anything about the source of the comments."

He added, "Environmental organizations and public interest groups always put their name on [form comments]. The public interest side is only too happy to have their fingerprints all over these things. These set off my b.s. alarm."

EPA and the National Highway Traffic Safety Administration earlier this month proposed freezing fuel economy standards at 2020 levels through 2026, rather than maintaining the year-over-year increases that automakers agreed to under President Obama (*Greenwire*, Aug. 2).

The comments are in line with critics of the Obama EPA who say the agency overstepped its legal boundaries with regulations that hamstrung the economy. On the other side are environmentalists and public health advocates who say the Obama-era standards would play an important role in curbing planet-warming emissions and reducing air pollution and related illnesses.

Some environmental groups have even argued the standards would save consumers money in the long run. An analysis by the Union of Concerned Scientists found that although the upfront cost of a new car may be higher, consumers see even greater savings at the gas pump from increased fuel efficiency.

EPA and NHTSA have joint jurisdiction over the clean car rules, with EPA regulating tailpipe greenhouse gas emissions and NHTSA regulating fuel economy. The comments appear on NHTSA's docket, not EPA's.

Attempts by E&E News to determine the source of the mass-comment campaign were unsuccessful.

The $3,000 as an added regulatory cost for consumers has been heavily promoted by the National Automobile Dealers Association. "The cumulative burden of all the Administration's fuel economy rules will cost consumers about $3,000 per vehicle," NADA said in a 2016 issue brief.

But NADA spokesman Jared Allen said the trade group has not been involved in a mass-comment campaign on fuel efficiency rules. "We are not running an active campaign on this issue," he said in an email.

The $3,000 figure has also been promoted by Stephen Moore, an economic policy analyst at the conservative Heritage Foundation who served as one of the top economic advisers to Trump's 2016 presidential campaign.

In a post, "Trump Rules Make Driving Safer and Cheaper," Moore contended that Obama's requirements "would raise the cost of many new cars by almost $3,000."

Moore said in an interview that Heritage hasn't been involved in a mass-comment campaign on the car rules. But he said he appreciates that attention is being given to the cost of Obama's car rules.

"Depending on which cars you're talking about, the Obama standards made the cars more expensive," Moore said. "So you would actually have fewer people buying new cars because it prices people out of the market. In some cases, cars could cost as much as $2,000 more. For a middle-class family, that's a lot of money."

FreedomWorks, a conservative grass-roots organization, plans to launch a comment campaign for the car rules in the coming days. But the campaign will seek to encourage personalized comments supporting the rollback rather than identical form comments, said Patrick Hedger, the group's director of policy.

"We're not going to be doing the type of form comments you might see from other groups," Hedger said.

"Just hearing from folks that are in the agencies now, increasingly they are looking at these form comments and basically saying, 'OK, this is one comment.' It gets their attention when they see that people are actually taking the time to generate these comments themselves, not just clicking three times and having their comment submitted for them," he said.

Fake?

Another possibility is that the comments are fake.

A *Wall Street Journal* investigation last year found that millions of comments on federal regulations are fake. They come from lobbying or advocacy interests using falsified names and email addresses.

The Pew Research Center also found last year that 57 percent of comments on the Federal Communications Commission's proposed repeal of net neutrality regulations used temporary or duplicate email addresses and that seven popular comments accounted for 38 percent of all submissions.

Last June, Reps. Frank Pallone (D-N.J.), Elijah Cummings (D-Md.) and Gregory Meeks (D-N.Y.) asked the Government Accountability Office — the federal government's top watchdog — to investigate fake public comments. GAO agreed to look into the matter earlier this year.

"The issue of fake comments isn't new: It was most prominent in a recent FCC rulemaking to undo the Obama net neutrality regs," said Goodwin of the Center for Progressive Reform. "Apparently, there were potentially millions of fake comments on that proposal. It attracted a lot of controversy at the time."

The experience of at least one person whose name appears on a comment on the car rules suggests some fake apparatus.

A commenter named Kanani Puuohau submitted a popular comment for the record: "Anybody who has ever been in a new car showroom understands what sticker shock is. It happens when you are surprised by the price of the new car you want."

E&E News reached out to someone on Facebook named Kanani Puuohau who lives in Honolulu, Hawaii.

In a Facebook message, Puuohau said, "I did not write that commit [sic]. Never even saw the ad. Someone is using my name!"

Inside EPA
Administration, California officials meet over vehicle GHG rollback plan
https://insideepa.com/daily-feed/administration-california-officials-meet-over-vehicle-ghg-rollback-plan

Faced with broad opposition, Trump administration officials met with the California Air Resources Board (CARB) regarding their controversial plan to roll back Obama-era vehicle greenhouse gas and fuel economy rules, as well as California's equivalent standards, and are pledging to continue talks with the goal of agreeing on changes to the limits.

The White House and CARB released a joint statement announcing the Aug. 29 meeting, which also included officials from EPA and the Transportation Department (DOT).

The Trump administration and CARB “agreed to future meetings to discuss technical, legal and policy issues” related to the standards, the statement says. It adds that the two sides have a “shared goal of achieving one national set of standards for vehicle fuel economy and greenhouse gas emissions.”

The administration's renewed call for a single national set of rules has long been expressed by automakers, though one industry official recently outlined two distinct paths toward achieving that outcome -- federal officials reaching a deal with California, or the Trump administration getting the Golden State “out of the game completely.”

The administration's proposal reflects the latter strategy by proposing to preempt California's unique authority to enforce its own vehicle GHG standards.

However, Charlie Haake, the assistant general counsel of the Association of Global Automakers, told a recent American Bar Association event that such a strategy would result in “prolonged litigation and uncertainty, which again is also not good for the industry. We do not prefer this path” to maintaining a set of national standards.

However, reaching agreement with California likely would require the White House to back off its “preferred” regulatory proposal to freeze limits at model year 2020 levels through MY26.

And while automakers have long called for a deal -- and the recent White House/CARB statement signals an increased level of engagement between the two sides -- few observers are expecting a deal to materialize and are instead predicting a furious legal and political fight.

“When the Trump administration's first proposal is essentially saying, 'We are going to kneecap you,' it is hard to come back later and say, 'Let's talk,'” Ben Longstreth of the Natural Resources Defense Council earlier said.

NBC News: Detroit schools to use bottled water due to lead, copper concerns
'Out of an abundance of caution" drinking water on all Detroit Public Schools campuses is being shut down until further notice, the superintendent said.
https://www.nbcnews.com/news/amp/ncna904946
by Dennis Romero / Aug.29.2018 / 11:17 PM ET

Detroit public school students will start the year next week with no access to water fountains because of contamination concerns, officials said Wednesday.

Detroit Public Schools Community District Superintendent Nikolai P. Vitti sent a letter to staff to announce that he was ordering drinking fountains at all 106 district campuses turned off after tests found 16 schools with "higher than acceptable" levels of copper or lead in their tap water.

Ivy Bailey, president of the Detroit Federation of Teachers, says she's happy the district has been proactive about the problem.

"I have to give them kudos for being transparent," she said. "The timeline is awful, but let's just deal with it. I hope that we move quickly to get these water fountains repaired."

According to a statement from Vitti, 10 schools were already using a filtration system as a result of water quality issues. Eight additional campuses had ongoing issues since 2016, bringing the total number of campuses verified to have water quality problems to 34, Vitti said.

"Although we have no evidence that there are elevated levels of copper or lead in our other schools (over 50) where we are awaiting test results, out of an abundance of caution and concern for the safety of our students and employees, I am turning off all drinking water in our schools until a deeper and broader analysis can be conducted to determine the long-term solutions for all schools," Vitti said.

Bailey of the teachers' union said she was told the problem wasn't systemic but rather had to do with older plumbing near the foutains' bubblers, or drinking ends. "It's not the pipes in the buildings," she said.

Water bottles and, as soon as possible, water coolers will be used until the problem could be fixed, Vitti said. A timeline wasn't immediately given.

The shut down of water fountains doesn't apply to charter schools, but Detroit Mayor Mike Duggan, intends to initiate "the same level of" water quality testing at those campuses, Vitta said.

Parents were being informed about the situation via robo calls, the superintendent said.

MATS

Bloomberg Environment
No Boost to Coal-fired Generation If EPA Tweaks Mercury Rule
https://bnanews.bna.com/environment-and-energy/no-boost-to-coal-fired-generation-if-epa-tweaks-mercury-rule?context=landing&limit=10&tab=news
Posted Aug. 30, 2018, 6:00 AM
By Amena H. Saiyid

- EPA working on proposal to revisit Obama-era mercury rule
- Power plants have already spent billions to comply

Coal-fired power plants won't benefit from any change the EPA makes to its toxic air pollution standards, lawyers and analysts told Bloomberg Environment.

The Environmental Protection Agency is drafting a proposal that will question whether it was "appropriate and necessary" for the agency to set standards in 2012 for mercury and other toxic air pollution emitted by existing power plants. It also told Bloomberg Environment it will consider the "standards set by the rule itself."

Under this upcoming proposal, the EPA may decide to change or even revoke the Mercury and Air Toxics Standards, or MATS (RIN: 2060-AP52, RIN 2060–AR31), which required most power plants to comply by 2016. In 2012, the EPA estimated that the rule would yield between $37 billion and $90 billion in annual benefits, mostly from installing technology that also would reduce airborne particle pollution, resulting in 4,200 to 11,000 fewer related premature deaths.

Several power industry groups earlier this summer urged the Trump administration to leave the mercury and air toxics standards in place, citing the more than $18 billion utilities have already spent on compliance.

"It would serve no purpose because the power sector has already spent billions of dollars to bring all their plants into compliance," Jeff Holmstead, a partner with Bracewell LLP in Washington who served as the EPA assistant administrator for air and radiation under President George W. Bush, told Bloomberg Environment.

However a small subset of power plants, those that generate energy from decades-old coal waste piles, think they could benefit if EPA makes some changes to the standards. The coal refuse power sector has been pushing legislation (H.R. 1119) that would lower compliance obligations under MATS.

"Our primary concern is with meeting the limits for acid gases," Jaret Gibbons, executive director for the Appalachian Region Independent Power Producers Association, told Bloomberg Environment. The association represents plants that generate power using coal refuse, most of which are in Pennsylvania.

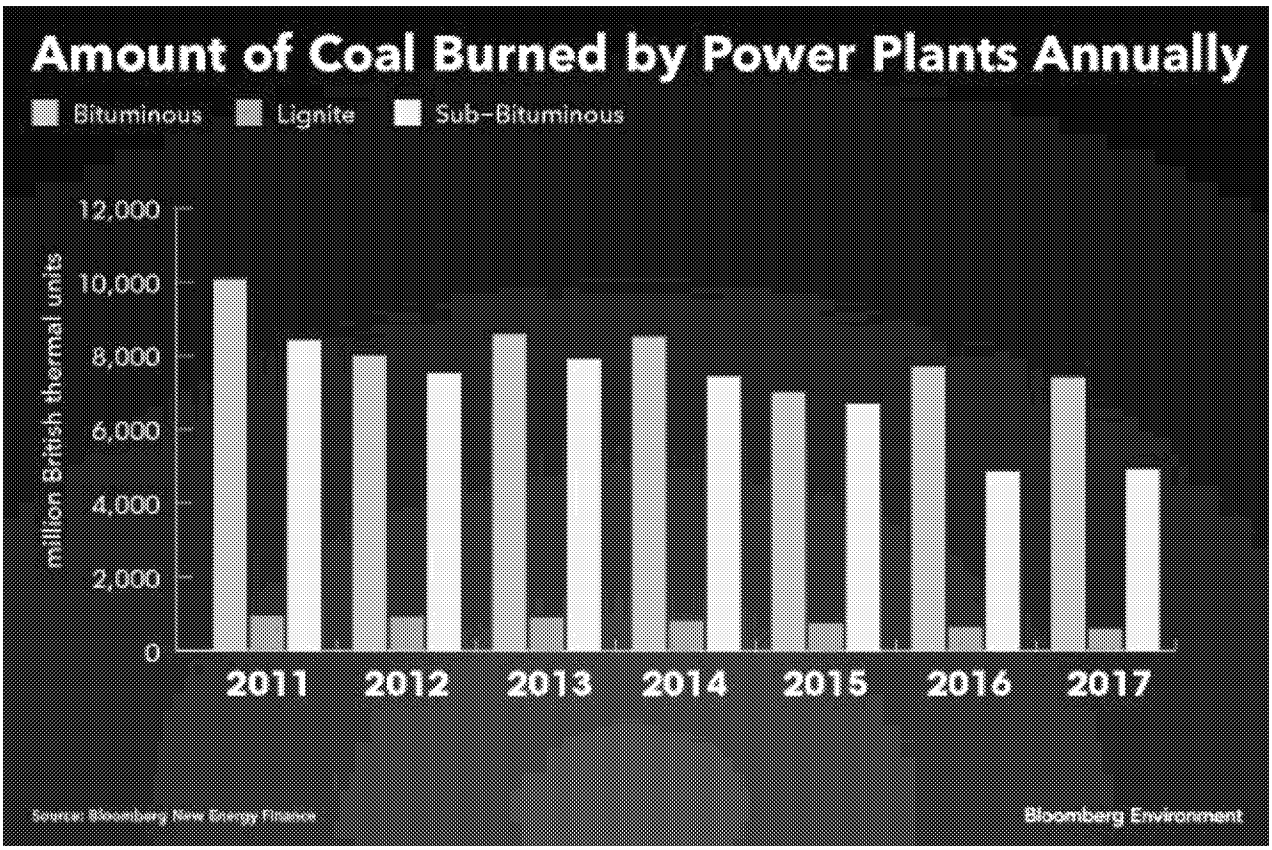
Plants Close, Coal Drops

Many coal-fired power plants have closed in recent years as utilities have shifted toward natural gas and renewables for power generation.

"You can't undo what's already done," Andrew Cosgrove, a Bloomberg Intelligence analyst, told Bloomberg Environment.

The closure of coal plants has continued even as the Trump administration has moved to change Obama-era regulations on the sector, including the Clean Power Plan rule limiting carbon dioxide emissions. FirstEnergy Solutions Corp. Aug. 29 announced plans to close diesel- and coal-fired power plants in Ohio and Pennsylvania, including the 2,490 megawatt Bruce Mansfield plant and more than 1,500 megawatts of capacity at its W.H. Sammis facility.

Bloomberg New Energy Finance estimates show that domestic annual coal burns—or the coal that is used by power utilities to generate power—dropped from a high of 21 quadrillion British thermal units in 2011 to about 18.4 quadrillion British thermal units a year later. The annual coal burns have continued to drop steadily, reaching just about 15 quadrillion British thermal units in 2017, the data show.



It all comes down to economics, Cosgrove said, adding that utilities will opt to run natural gas fired plants if it is cheaper.

Between 2012 and 2016, 64 coal-fired units that have the capacity to generate about 9,010.7 megawatts of electricity switched to burning natural gas at power plants across the country. This was primarily due to the

Obama-era mercury rule, according to an estimate by Arlington, Va.-based Energy Ventures Analysis Inc., an energy consulting firm.

Environmental groups, notably the Natural Resources Defense Council, see no benefit from the EPA's upcoming action.

"This is reckless chaos for the sake of chaos," John Walke, the group's clean air program director, told Bloomberg Environment. "The power sector is fully complying and has appealed to EPA publicly, with labor organizations, to leave the standards alone."

CNN
EPA prepares second overhaul of power plant rules
https://www.cnn.com/2018/08/30/politics/epa-mercury-rule/index.html
By Gregory Wallace and Debra Goldschmidt UPDATED 10:47 a.m.

(CNN) — The Environmental Protection Agency is preparing a second overhaul to the way coal-fired power plants are regulated, a change to the Obama-era rule limiting mercury emissions that environmentalists have supported.

It follows the agency's proposal last week to shift the regulation of power plant carbon dioxide emissions from the federal government to states. The administration's Affordable Clean Energy rule would replace the Obama administration's Clean Power Plan, a central part of its efforts to combat climate change.

Details of the mercury rule have not been released, but agency spokeswoman Molly Block said the proposal "will soon begin the interagency review process," which "typically takes between 60 to 90 days." After that, the proposal will be made public and the agency will accept public comments, she said.

The current Mercury and Air Toxics Standards rule requires coal- and oil-fired power plants to reduce emissions of mercury, as well as arsenic, acid gas, cyanide, nickel, and selenium, which are linked to various cancers and diseases. It was finalized by the Obama administration in 2011 after a federal court struck down the Bush administration's regulation. Challenges to the Obama administration's rule eventually reached the Supreme Court, which largely upheld it.

The EPA statement specifically noted it is considering "whether and how to account for co-benefits," suggesting it is re-evaluating the Obama administration's justification that reduced pollution leads to decreased health care spending. That analysis had estimated $3 to $9 in savings for every dollar spent.

Mercury is a neurotoxin dangerous even in small doses, and is considered by the World Health Organization to be one of the top 10 chemicals "of major public health concern."

"Mercury may have toxic effects on the nervous, digestive and immune systems, and on lungs, kidneys, skin and eyes," according to the WHO. It can also impact the development of unborn babies and young children.

The largest industrial source of mercury pollution is power plants, according to the EPA.

News of the proposal prompted rebuke from environmentalists.

Sen. Tom Carper, a Democrat from Delaware and critic of the administration's environmental policy, called the proposal "particularly egregious, even by Trump standards." He recently proposed legislation to create a nationwide monitoring system for mercury.

Mandy Warner of the Environmental Defense Fund called the current rules "established and successful," and pointed to Obama administration projections that the rule would save between 4,200 and 11,000 lives every year.

Block, the EPA spokeswoman, said the "EPA knows these issues are of importance to the regulated community and the public at large and is committed to a thoughtful and transparent regulatory process in addressing them."

E&E
In EPA's review of mercury rule, some see lifeline for coal
https://www.eenews.net/greenwire/2018/08/30/stories/1060095511
Zack Colman, **E&E News reporter**
Published: Thursday, August 30, 2018

When EPA announced yesterday it was reconsidering a power plant rule with which major utilities already comply, many saw it as a largely fruitless exercise.

But struggling coal-fired power plants saw it as a lifeline.

Whatever damage came from the Mercury and Air Toxics Standards, or MATS, is already done in the eyes of big players like Duke Energy Corp. and American Electric Power Co. They've installed the technology to reduce pollution that MATS required. Aging reactors that shut down rather than add the costly kit aren't coming back (*Greenwire*, Aug. 29).

But a clutch of coal-saturated utilities see an avenue for avoiding "Armageddon," according to an industry attorney.

Those utilities want to move regulations for mercury and other pollution out of one section of the Clean Air Act and into another — the one EPA is using to set limits for carbon — to avoid more stringent future regulations that could signal a death knell for the nation's most coal-intensive reactors.

"Legally what he's suggesting is bonkers, but it's fascinating," John Walke, director of the federal clean air, climate and clean energy program with the Natural Resources Defense Council, said of the case being raised by those attorneys.

At issue is what's known as the "Risk and Technology Review" under the Clean Air Act's Section 112, a provision that requires a check-in eight years after developing pollution standards to see whether initial controls have done enough to eliminate or reduce the risks of cancer, heart and lung ailments, and other public health problems. There's no negotiating; that review comes in 2020 for power plants so long as the MATS rule developed in 2012 remains in effect.

What concerns coal-saturated power operators is that environmental groups will use the findings from those reviews to press for stricter standards on a host of pollutants. That would include particulate matter — tiny soot particles — the reduction of which generated a significant amount of benefits for the Obama administration's now-defunct climate rule, the Clean Power Plan.

Officially, those utilities are arguing that re-evaluating MATS and placing it under Section 111(d) — which the Trump and Obama administrations used to impose carbon emissions rules for power plants — would satisfy the "112 exclusion."

That argument claims EPA cannot regulate power plants under Section 111(d) if those facilities also face rules under Section 112. They see EPA's move yesterday to reassess whether the Obama administration's determination to regulate mercury and air toxins was "appropriate and necessary" as the starting point for shifting the program from 112 to 111(d).

"The EPA has an excellent opportunity now to streamline its regulatory approach under Section 111(d), encourage the states to play a meaningful role in the regulatory process, and allow the kind of flexibility and sensitivity to local needs that the Clean Air Act was intended to promote," Andrew Grossman, an attorney with BakerHostetler, said in an email.

Unofficially, the situation is a little different.

"It's about what the environmental groups will use those reviews to do and what D.C. Circuit Court judges would do to EPA," the utility attorney said. "The first war on coal was about [sulfur dioxide]. And the second will be on particulate matter."

In fact, many utilities want EPA to keep the MATS rule. Because most have complied with the rules — chalked up as the costliest in EPA history — there's little upside to ditching it now.

Trade groups Edison Electric Institute and National Rural Electric Cooperative Association, along with labor unions, wrote a July letter urging EPA air chief Bill Wehrum to maintain the rule and to "complete the statutorily mandated Residual Risk and Technology Review (RTR) for power plants as expeditiously as possible" (*Greenwire*, July 11).

The developing strategy from those looking to squash the 112 program exposes a subtle division among utility industry lawyers, Walke said.

Some attorneys who represent utilities that have spent billions of dollars complying worry that undoing and rewriting the MATS rule would take too long. That means it could park the Risk and Technology Review squarely within a Democratic administration rather than a more sympathetic Trump EPA.

"That July letter strongly promotes moving straight to that process, to the residual risk process," Walke said of the letter from utility organizations and labor unions. "They want the Trump EPA to complete it. They want Bill Wehrum to say, 'We don't want you to do any more.'"

But industry attorneys on the other side of that argument worry about the effects the reviews would have on power plants that use only electrostatic precipitators to remove pollutants rather than scrubbers, the latter of which Walke said are more effective. Those are the types of facilities that could come under greater pressure from actions resulting from that review.

"The issue going forward is there is a future round of standards," the utility attorney said.

Proponents of that legal opinion argue that the section the Obama administration used for MATS was always imperfect for power plants. That part of the Clean Air Act was intended for a national program, but power plants use different types of coal for various reasons and compete regionally, not across the whole country.

"This claim is valid. In general, coal plants that burn eastern coal had a much more expensive compliance pathway than coal plants that burn [Powder River Basin] coal," Brian Potts, an environmental and energy attorney and partner at Perkins Coie, said in an email, though he wasn't commenting on the overarching legal play.

Still, doing what those utilities envision — shifting the regulatory program from Section 112 to Section 111(d) — is no easy task, Potts said.

That, essentially, is what EPA tried to do under President George W. Bush, Potts said. Courts struck down the Clean Air Mercury Rule because they said the agency lacked authority to simply delist power plants from Section 112 and replace it with a cap-and-trade program.

"Plants are already complying with the current standards now. Certainly if the current standards are made more stringent, that could impact some plants," Potts said. "But it seems a bit odd to me to preemptively revoke standards in order to avoid the possibility of a future administration making them more stringent — especially when the current administration is in its first term."

E&E
Trump EPA to reconsider Obama-era mercury rule
https://www.eenews.net/stories/1060095439
Zack Colman, **E&E News reporter**
Published: August 29, 2018 at 4:26 PM

EPA will reconsider a rule that restricts mercury and toxic air emissions from power plants, the agency confirmed to E&E News today.

Agency spokeswoman Molly Block said it will initiate a federal review of a draft proposal to determine whether the Mercury and Air Toxics Standards, or MATS, were "appropriate and necessary." It also will evaluate the overall standards.

"EPA knows these issues are of importance to the regulated community and the public at large and is committed to a thoughtful and transparent regulatory process in addressing them," Block said in an email.

Bloomberg BNA first reported the news.

Most power plants have already complied with the regulation, which required the installation of pollution control technology. Others have shuttered. Several power companies now want the regulation to remain in place.

"If EPA recklessly disrupts the legal obligations to meet the Mercury & Air Toxics Standards, across the country coal plant owners will face legal challenges to prior utility commission approvals of pollution control costs incurred to meet those obligations,"• John Walke, director of the federal clean air, climate and clean energy program with the Natural Resources Defense Council, said in an email. "Worse, EPA could let coal plant owners turn off installed pollution control equipment whose costs are being charged to consumers. Americans will suffer, needlessly."

Conservatives, though, have argued reassessing — and potentially ditching — the rule is necessary. They noted the Supreme Court in 2015 rejected the Obama EPA's cost-benefit analysis. It contended the agency didn't properly account for industry's compliance costs.

EPA later updated its calculations and found the regulation was still warranted. But opponents contend the agency relied on "co-benefits" •— basically, counting reduction in pollutants outside of those directly regulated by the standards as a potential boon to public health.

The Trump administration is considering eliminating counting co-benefits of environmental regulations. Environmental groups and more liberal states, however, have charged that such a change would kneecap environmental regulations.

"One of a number of issues EPA is assessing in the context of the appropriate and necessary analysis is whether and how to account for co-benefits,"• Block said.

Reporter Maxine Joselow contributed.

NYT
E.P.A. to Reconsider Obama-Era Curbs on Mercury Emissions by Power Plants
https://www.nytimes.com/2018/08/29/climate/epa-mercury-emissions.html

August 29, 2018 By Coral Davenport

WASHINGTON — The Trump administration is reviewing a major Obama-era clean air regulation on the emission of mercury — a pollutant linked with damage to the brain, to the nervous system and to fetal development — with the intent of proposing a replacement rule, a spokeswoman for the Environmental Protection Agency said Wednesday.

The E.P.A.'s review of the 2011 mercury rule comes amid a string of initiatives by the Trump administration to roll back or weaken many environmental regulations put forth by the Obama administration. After reviewing the rule, a process which typically takes 60 to 90 days, the E.P.A. will issue a proposed replacement rule, the agency spokeswoman, Molly Block, said in an email.

The mercury regulation under review chiefly affects pollution from coal-fired power plants. The move comes as President Trump has pressed forward on numerous fronts in an attempt to meet his campaign pledge to revive the nation's coal industry, despite economic analyses showing that the decline in demand for coal is largely driven by market forces rather than regulations.

Last week, the E.P.A. proposed a new rule designed to replace the Clean Power Plan, another major Obama-era regulation governing coal-fired power plants. That rule would have restricted coal plants' emission of a different pollutant: carbon dioxide, one of the chief causes of global warming.

At the time the Obama administration put forth the mercury regulations, which took more than 20 years to formulate, E.P.A. officials estimated they would save thousands of lives and return economic and health benefits many times their estimated $9.6 billion annual cost.

While owners of coal plants fought the rule in the courts, most have since complied with regulation. Because coal plant owners have already invested in the technology required to lower mercury pollution, some analysts say, it makes little sense to change the regulation now.

"This is reckless chaos for the sake of chaos," said John Walke, an expert on the Clean Air Act with the Natural Resources Defense Council, an advocacy group. "The power sector is fully complying and has appealed to E.P.A. publicly, with labor organizations, to leave the standards alone."

If the agency rolls back the rules, he said, it raises the prospect that "coal plant owners will face legal challenges to prior utility-commission approvals of pollution-control costs incurred to meet those obligations."

In 2015, in a victory for opponents of the mercury rule, the Supreme Court concluded that the E.P.A. did not appropriately consider the costs to industry when crafting the rule and directed the E.P.A. to recalculate those costs. The Obama administration then reissued the rule in 2016, and power plants have complied with it since then.

Jeffrey Holmstead, a lawyer who represents coal-burning electric utilities and who served in the E.P.A. under former President George W. Bush, said in an email he was "not surprised" that the agency was reviewing the Obama-era finding that it was "appropriate and necessary" to regulate power plants for mercury pollution

considering that several Supreme Court justices "expressed skepticism about the argument that the Obama E.P.A. made to support its second finding, which the current E.P.A. is now reviewing."

Mr. Holmstead said, however, that he did not expect the Trump administration to try to eliminate a rule on mercury pollution entirely. "It would serve no purpose because the power sector has already spent billions of dollars to bring all their plants into compliance."

POLITICO Pro
EPA to revisit Obama mercury rule with eye on use of co-benefits
https://subscriber.politicopro.com/energy/article/2018/08/epa-to-revisit-obama-mercury-rule-with-eye-on-use-of-co-benefits-761454
ALEX GUILLÉN **08/29/2018 05:29 PM EDT**

The Supreme Court struck down EPA's original finding in 2015, although the rest of the rule survived legal challenges and the court allowed it to remain in effect. | AP Photo

EPA will reconsider a key justification for the Obama administration's 2012 mercury rule for power plants, the agency confirmed today, a move that could lead to a repeal of the regulation that contributed to the closure of many old coal-fired power plants.

Spokeswoman Molly Block said the agency will send a draft proposal soon to the Office of Management and Budget for review. EPA's proposal will reconsider the so-called appropriate and necessary finding, an early part of the rulemaking process where the Obama-era EPA justified the need to issue the regulation.

The Supreme Court struck down EPA's original finding in 2015, although the rest of the rule survived legal challenges and the court allowed it to remain in effect. The Obama administration issued an updated version of the finding that addressed the high court's ruling.

Also under reconsideration are the underlying mercury standards themselves, according to Block. Though utilities paid for and installed pollution controls to meet the regulation years ago, critics have suggested they could reduce operating expenses for coal-fired power plants if the rule were repealed and the controls turned off.

"EPA knows these issues are of importance to the regulated community and the public at large and is committed to a thoughtful and transparent regulatory process in addressing them," she said.

The mercury rule, known as the Mercury and Air Toxics Standard or the utility MACT, has been a longtime target of the coal industry because it contributed to the shutdown a significant swath of coal plants, since many of the nation's oldest and dirtiest plants could not justify paying for expensive mercury controls.

Challengers like Murray Energy — the Ohio coal company whose owner, Bob Murray, has met several times with President Donald Trump and his cabinet — complained that the rule relied heavily on "co-benefits" from

reduced particulate matter pollution instead of the limited quantifiable benefits from reduced mercury emissions.

"One of a number of issues EPA is assessing in the context of the appropriate and necessary analysis is whether and how to account for co-benefits," Block said in an email.

The major utility industry groups in July urged EPA against revoking the mercury rule because many utilities need the rule in place to justify recovering potentially billions of dollars in costs under ongoing state-level rate cases. At least one Republican, Sen. Lamar Alexander (R-Tenn.), has echoed that call.

After the Obama administration issued its updated "appropriate and necessary" finding in 2016, Murray and several states sued, arguing that EPA cannot rely on co-benefits to justify its regulations. The Obama EPA argued that it had other justifications beyond a direct cost-benefit comparison.

The court put that lawsuit on hold last year after EPA said it was reviewing the matter. Separately, EPA is considering changing the rules governing its cost-benefit analyses, including potentially discounting such co-benefits, a move that would make many future regulations harder to rationalize.

Once OMB receives the proposal, its review likely will take 60-90 days, Block said. That would place the rule's public release in November or December.

Bloomberg first reported on EPA's plans on Wednesday.

The Hill
EPA to reconsider 2011 power plant pollution rule
http://thehill.com/policy/energy-environment/404222-epa-to-reconsider-2011-power-plant-pollution-rule?amp
By Timothy Cama, August 29, 2018 - 03:27 PM EDT

The Environmental Protection Agency (EPA) announced Wednesday that it is reconsidering a 2011 air pollution rule that has been blamed for numerous coal-fired power plant closures.

The Mercury and Air Toxics Standards (MATS) set new limits for emissions of mercury, lead, arsenic and cadmium, which the coal industry and Republicans have said was central to former President Barack Obama's "War on Coal."

Now the Trump administration is eyeing changes to the standards, an EPA spokeswoman said.

Officials are also considering changes to a 2016 retroactive declaration by the EPA that the 2011 rule was "appropriate and necessary."

"One of a number of issues EPA is assessing in the context of the appropriate and necessary analysis is striking the right balance when accounting for co-benefits," spokeswoman Molly Block said Wednesday, referring to

benefits in a regulation's cost-benefit analysis that come from reducing pollutants that are not targeted in the rule itself.

"EPA knows these issues are of importance to the regulated community and the public at large and is committed to a thoughtful and transparent regulatory process in addressing them."

Wednesday's announcement was first reported by Bloomberg Environment.

The reconsideration is part of a wide-ranging effort under President Trump to dismantle former President Barack Obama's aggressive environmental agenda, and to remove what are seen as barriers to the production and use of fossil fuels and other domestic energy.

The rule caused nearly a fifth of the nation's coal-fired power plant fleet to shut down or make plans to do so, according to Bloomberg New Energy Finance. Other plants installed equipment to clean up their emissions, converted to other fuel sources or shut down for other reasons.

EPA made the 2016 "appropriate and necessary" finding to comply with the Supreme Court's 2015 Michigan v. EPA ruling, which found that the agency should have made such a determination before writing the rule, even though the cost-benefit analysis for the rule itself found benefits of up to $90 billion, and costs of up to $9.6 billion.

*****Includes 9:58 of audio.*****
PBS NewsHour
The EPA isn't taking its own advice on a pesticide that causes brain damage in children
https://www.pbs.org/newshour/show/the-epa-isnt-taking-its-own-advice-on-a-pesticide-that-causes-brain-damage-in-children
By **— Miles O'Brien August 29, 2018, 6:30 p.m.**

After decades of research and debate, the EPA was on the cusp of banning all use of chlorpyrifos, a poison that attacks the nervous system. But in 2017, then-EPA administrator Scott Pruitt delayed a decision by five years. Science correspondent Miles O'Brien reports that fight is part of a larger battle over the use of scientific studies and industry pressure.

Full Transcript

- **Judy Woodruff:**
It's not well known to the general public yet that the Environmental Protection Agency under President Trump wants to change which scientific studies can be used by the federal government to regulate industry.

The administration and business voices say studies should be used only if all of the data is publicly available and transparent. But many scientists and researchers say doing so would violate privacy protections for patients in studies.

This issue is now playing out in a long-running battle over whether the ban pesticides that harm babies and children.

Miles O'Brien looks at the science and the debate behind it all.

It's part of our weekly series on the Leading Edge of science, medicine and technology.

- **Miles O'Brien:**
  When Fidelia Morales moved into her dream home nestled among the orange groves in California's Central Valley 12 years ago, she didn't know much about agriculture.
- **Fidelia Morales (through translator):**
  We didn't we know that they were communicating with these huge machines, that they were spraying these extremely strong chemicals.
- **Miles O'Brien:**
  It happens on the calm margins of the day. When the when lays down, growers gear up to spray their crops with pesticides.
- **Fidelia Morales (through translator):**
  Look at the distance between the machine and our yard. It's impossible to keep the pesticides off my property.

Sometimes, at night, we have the air conditioning on and we can still smell the pesticides they're praying throughout the entire house.

- **Miles O'Brien:**
  She wonders what the chemicals may be doing to her children, especially her youngest son, the only one born here.
- **Fidelia Morales (through translator):**
  He can't sit in one place. We have received many complaints about him from his teachers, who say he needs to focus.
- **Miles O'Brien:**
  While it is hard to make a direct link, those are textbooks symptoms of exposure to chemicals known as organophosphates. The most widely used variety is chlorpyrifos, manufactured by DowDuPont.

After decades of research reviews and debate, the Environmental Protection Agency was on the cusp of banning all use of chlorpyrifos in November of 2016. But in March of 2017, then EPA administrator Scott Pruitt delayed a decision on the ban by five years, saying American farms that rely on the insecticide needed regulatory certainty.

DowDuPont called it the right decision for farmers. And yet, on August 9, a panel of federal judges ruled the EPA had no justification to allow continued use of chlorpyrifos in the face of scientific evidence that its residue on food causes neurodevelopmental damage to children.

Chlorpyrifos and other organophosphates are neurotoxins, a poison that attacks the nervous system.

- **Robert Sapolsky:**
  It causes a huge excitatory burst in the nervous system.

- **Miles O'Brien:**
  Robert Sapolsky is a professor of neuroscience at Stanford University. The burst of nerve firing can be so severe, it works the neurons to death.

  The body's response? The nervous system tries to repair itself by growing new connections to patch the damaged circuit.
- **Robert Sapolsky:**
  And one of the things that sometimes happens is, the wiring goes sort of haywire, and a neuron will wind up coming back and stimulating itself, so that every time it fires, it stimulates itself, and it fires and fires.

  And what you have now set up, with a positive feedback loop like this, is chronic seizure disorder.
- **Miles O'Brien:**
  First introduced as an insecticide in 1965, chlorpyrifos was sold to consumers for home and garden use under various brand names, including Raid.
- **Actor:**
  Hello.
- **Actor:**
  Goodbye.
- **Narrator:**
  It really kills them dead.
- **Miles O'Brien:**
  It was widely used, even though scientists had published evidence that exposure to organophosphates causes permanent brain damage in rodents.

  So what were the consequences for humans exposed to this neurotoxin?
- **Virginia Rauh:**
  We knew we had a chemical that was worthy of taking a look at if we were concerned about its potential adverse effects.
- **Miles O'Brien:**
  Virginia Rauh is an epidemiologist at the Columbia University Mailman School of Public Health. For 20 years now, she has followed 750 mothers and their children in the Washington Heights section of Manhattan.

  Pregnant mothers in her study wore a backpack with a pump designed to gather air samples as they went about their daily routine. Rauh's team found organophosphates in 99 percent of the air samples they gathered and 70 percent of the blood samples of the children.

  Rauh's conclusion, higher levels of organophosphates found in the blood of her subjects lead to lower birth weight, reduced I.Q., ADHD symptoms and tremors.

  MRIs of the brains of exposed subjects reveal enlargement in some areas and abnormally thin cortices, the outermost layer of nerve cells in the brain, crucial for cognitive functions such as perception, language, memory, and consciousness.

- **Virginia Rauh:**
  I think, in reality, there is no safe level. It depends upon the level of risk that we tolerate as a society. But to damage even to the extent of several I.Q. points or some very tiny attentional issues, in my mind, is not acceptable, if we know that it is associated with an exposure.
- **Miles O'Brien:**
  The Food Quality Protection Act says exposure to a pesticide must be safe for infants and children if it is going to be used on food.

  With evidence mounting that chlorpyrifos posed a human health hazard, the chemical industry struck a deal with the EPA in 2002 to stop selling the pesticide for home use. Raid and other consumer products were reformulated, and some agricultural uses were curtailed.

  But, today, chlorpyrifos remains a favorite among farmers.

  When we met, Bob Blakely was vice president at California Citrus Mutual, which represents growers.
- **Bob Blakely:**
  And the studies that are being referenced to buy a lot of those who are — who are opposed to this — this chemical have not been replicated and they have been not been substantiated by the rest of the scientific community, nor they have been duplicated in other countries.
- **Miles O'Brien:**
  The EPA says the Columbia data remains inaccessible and has hindered the agency's ongoing process to fully evaluate the pesticide.

  Dow says it remains confident that authorized uses of chlorpyrifos products as directed offer wide margins of protection for human health and safety. The company has funded several studies that support that conclusion.

  Robert Sapolsky and a team of neuroscientists at Stanford pored through many of these papers.
- **Robert Sapolsky:**
  Freshman science majors are not supposed to make mistakes like these. The science was basically empty.
- **Miles O'Brien:**
  And he says every time there was a mistake — and there were dozens of them — it favored the industry position that organophosphates, used properly, don't harm humans.
- **Robert Sapolsky:**
  For literature as a whole as lousy as the subset of these papers that I looked at, this really does bring into question lots of things, most basically, whether Dow has a leg to stand on saying this stuff has been scientifically shown to be safe.
- **Miles O'Brien:**
  EPA scientists agree. But in the Trump administration, their conclusions are frequently overruled by industry pressure.

  Miriam Rotkin-Ellman senior scientist with the Natural Resources Defense Council, which is suing the EPA, hoping to force the agency to follow its own rules and take its own scientific advice.

- **Miriam Rotkin-Ellman:**
  when we have the evidence right in front of us that an exposure that's widespread in the American population could be or is increasing the risk of those learning disabilities, and we are refusing to take action on that, it's terrifying.
- **Miles O'Brien:**
  Especially so for Fidelia Morales and her family, surrounded by citrus and pesticides in California.
- **Fidelia Morales (through translator):**
  If our children are exposed to chlorpyrifos, they are not going to have a future. Together, as a community, we're fighting for them to stop and to prohibit the use of chlorpyrifos here in this county.

  I think that they don't care, because, if they did care, they would try to stop this without us asking.
- **Miles O'Brien:**
  The state of Hawaii recently banned chlorpyrifos.

  And California's EPA has come to the same scientific conclusions as their federal counterparts. That could lead to a statewide ban there.

  Meanwhile, the federal court has ordered the EPA to enact a ban on chlorpyrifos nationwide within 60 days. The agency can appeal, but says it is still reviewing the decision.

  In California's Central Valley, I'm Miles O'Brien for the "PBS NewsHour."

POLITICO Pro
Dicamba drift causing 'unmanageable workload' for state pesticide officials
https://subscriber.politicopro.com/agriculture/whiteboard/2018/08/dicamba-drift-causing-unmanageable-workload-for-state-pesticide-officials-1843793
By LIZ CRAMPTON
A state pesticide regulatory body is asking the EPA for more money to help address problems linked to dicamba drift, which has occurred on such a large scale in recent growing seasons that it has created "an unmanageable workload" for officials.

Drift from dicamba, a widely used herbicide especially on soybeans, has caused unintended damage to millions of acres of crops ever since the EPA approved its full use in 2016. States have "recorded unprecedented numbers of drift cases" leading to considerable work for state pesticide officials, the Association of American Pesticide Control Officials, which works with EPA on a state level on the application of pesticides, said in an Aug. 29 letter to acting EPA Administrator Andrew Wheeler.

"EPA should recognize the greater financial burden these registrations have caused sate lead agencies," reads the letter from the group's president, Tony Cofer. The large number of cases has required officials to work overtime, more laboratory analysis and increased travel costs, he said.

The spike in dicamba investigations has also taken away attention from other pesticide program work, he said.

EPA is nearing a decision this fall on whether to reauthorize the use of dicamba. The agency is facing a lawsuit alleging that it broke the law when it approved Bayer's Xtendimax — the brand name for dicamba — by

ignoring evidence that the herbicide easily drifted onto nearby untreated crops. Dicamba was developed by Monsanto be used on genetically modified seeds before the company was bought by Bayer.

AAPCO recommended that EPA stipulate that registrations of the herbicide be conditional year to year and mandate an early-season cutoff date. Several state regulatory boards including ones in North Dakota and Arkansas have already banned use of dicamba after certain dates.

"The unintended consequences of the off-target movement of dicamba affect every aspect of agriculture," the letter states. "AAPCO has reported to the agency damage to a wide array of agricultural, horticultural, and homeowner sites."

Reuters
EPA should revoke Monsanto weed killer approval, groups tell U.S. court
https://mobile.reuters.com/article/amp/idUSKCN1LE2G2
By Tina Bellon

(Reuters) - Environmental groups argued in federal appeals court on Wednesday the U.S. Environmental Protection Agency failed to analyze the risks Bayer AG (BAYGn.DE) Monsanto's dicamba-based weed killer posed to nearby crops before approving it in 2016.

The groups, which filed a lawsuit in February, want the court to force the EPA to vacate its approval of XtendiMax, arguing it not only harms nearby crops and plants but wildlife as well. It is not clear whether the court has the authority to revoke an EPA approval.

The United States has faced a weed-killer crisis caused by the new formulations of dicamba-based herbicides, which farmers and weed experts say have harmed crops because they evaporate and drift away from where they are applied.

"The EPA's declaration that XtendiMax would have no effect on plants and animals was arbitrary and capricious," Paul Achitoff, a lawyer for non-profit Earthjustice told a three-judge panel at the 9th U.S. Circuit Court of Appeals in Seattle during a hearing.

The arguments come at a critical time for Monsanto and other agrochemical companies that developed dicamba-based products, such as BASF SE's (BASFn.DE) Engenia and DowDuPont Inc's (DWDP.N) FeXapan. The EPA is currently deciding whether to renew dicamba's sales license, which expires on Nov. 8, for the next growing season.

Monsanto, a unit of Bayer, urged the court to dismiss the lawsuit.

Dicamba is used in part to destroy weeds that have become resistant to glyphosate, another herbicide developed by Monsanto. Monsanto denies crop damage was caused by XtendiMax and says drift occurred because farmers illegally applied older dicamba formulations or failed to follow instructions.

Bayer Chief Executive Werner Baumann during an analyst call last week said his company was in discussions with the EPA about the sales license renewal and expects the agency to decide by October.

Environmental groups, including the National Family Farm Coalition, Center for Food Safety, Center for Biological Diversity and Pesticide Action Network North America, say the EPA failed to conduct its own analysis and instead relied on statements by Monsanto executives and lawyers.

The EPA in 2016 approved new XtendiMax uses for soybean and cotton fields, concluding dicamba would have "no effect" on animals or their habitat.

But U.S. Appeals Court Judge William Fletcher questioned whether the EPA indeed relied on sufficient studies to make its decision.

"After all, you guys turned out to be wrong," Fletcher said, referring to the more than 3 million acres, or 4 percent of the U.S. soybean crop, that was destroyed by dicamba drift during the 2017 planting season, according to a university study.

(Reporting by Tina Bellon in New York; Editing by Lisa Shumaker)

Inside EPA
SAB Unveils Draft Advice On Biomass CO2 Amid Uncertain EPA Policy
https://insideepa.com/daily-news/sab-unveils-draft-advice-biomass-co2-amid-uncertain-epa-policy

EPA's science advisers have unveiled long-awaited draft advice on how the agency should estimate carbon dioxide emissions from biomass power, though it is not clear whether the advice conflicts with Trump EPA guidance generally declaring such electricity to be carbon neutral.

The Science Advisory Board's (SAB) Aug. 29 draft report on biomass CO2 renews the board's long-standing call for EPA to provide a “policy context” for how it will assess biomass CO2 emissions, arguing the choice of policy is critical both in regard to the time frame for assessing emissions and forest regrowth, as well as the policy's effects on biomass demand.

But the Trump administration is crafting very narrow greenhouse gas regulations for power plants and other stationary sources, with its recently proposed GHG rule for existing plants far less stringent than the Obama-era Clean Power Plan (CPP) it would replace.

EPA's “Affordable Clean Energy” (ACE) rule does not base its stringency on the use of biomass, though it does float the possibility that plants could co-fire with biomass to comply.

SAB's guidance likely would also apply to any Clean Air Act permits that biomass power plants must obtain, given court rulings that “major” sources of emissions must conduct a technology review to limit their GHGs.

However, it is possible that SAB's draft report could frustrate greater deployment of biomass power, to the extent that it conflicts with an April 23 guidance issued by then-Administrator Scott Pruitt finding biomass power to be generally carbon neutral.

That guide said EPA would take a carbon-neutral approach to biomass from "managed" forests because the forest sector in 2015 offset roughly 11.2 percent of gross domestic GHG emissions.

The future of the SAB effort had been considered murky after the release of Pruitt's guidance, which says the agency will treat CO2 emissions "resulting from the combustion of biomass from managed forests at stationary sources for energy production as carbon neutral."

That generally backs industry arguments that biomass energy is carbon neutral because trees regrow, re-sequestering carbon emitted from combustion. But environmentalists say that it takes decades or longer for harvested trees to regrow and re-sequester any carbon.

The debate has stymied a clear policy on how regulators should calculate CO2 emissions from biomass power for permitting and other regulatory purposes. It also delayed quick action by the SAB, which has grappled with the issue since early in the Obama administration, though it now appears that the board is pushing ahead with its advice.

The chartered SAB plans to discuss the report at its Sept. 26 meeting.

The draft report does not appear to reference Pruitt's April guidance, and instead frames its advice as a review of EPA's 2014 "framework" for assessing biomass CO2. That framework was crafted after SAB offered critical comments on a 2011 version EPA issued.

Biogenic Assessment Factors

The SAB's new report urges EPA to develop biogenic assessment factors (BAFs) that are region- and feedstock-specific, rather than calculating a BAF for a particular facility.

"There is no single answer to what these BAFs should be, as not all biogenic emissions are carbon neutral nor net additional to the atmosphere, and assuming so is inconsistent with the underlying science," the report says.

SAB repeatedly chides EPA for not explaining how it would use its biomass framework in policy, arguing that evaluating such a framework without a policy context "is not useful."

The report adds that biomass "carbon accounting will vary depending on the policy context, particularly in selection of the time horizon and geographic scope. Thus, future efforts to define specific biogenic accounting factors should be conducted in a policy-specific context, with the objectives and relevant time frame specified."

The draft also says it is “inappropriate to use default assumptions, including assuming there are no net emissions or that all emissions are additive.”

Also of note, the SAB report disagrees with a recommendation from a special panel convened to study the issue regarding the key issue of the time frame over which to measure emissions. This issue has long been a point of contention in SAB's years-long review of the issue.

The panel, as well as industry groups, favored a long time frame to account for the full carbon-related effects from changes to biomass use and demand. If demand increases, they argue, that would spur landowners to plant more forests that will eventually sequester enough carbon to offset near-term CO2 increases.

Environmentalists note that smokestack CO2 from biomass power is much higher than coal, arguing it is too speculative to assume that forest regrowth will occur over many decades. As such, they favor a shorter time frame, which would limit the amount or types of biomass that could be used in any EPA GHG policy for stationary sources.

The draft SAB report says the board “favors selecting the time horizon for calculating the BAF to comport with the policy time horizon under consideration,” noting that a shorter-term policy would be inconsistent with the panel's recommendation.

It says a time horizon “should be chosen based on the policy objective (e.g., minimizing net greenhouse gas emissions or temperature increase by a certain date),” adding that the board “supports no specific time horizon selected independent of a policy goal.” -- *Lee Logan* (llogan@iwpnews.com)

Message

From: Blake, Wendy [Blake.Wendy@epa.gov]
Sent: 8/30/2018 5:57:06 PM
To: Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]
CC: Youngblood, Charlotte [Youngblood.Charlotte@epa.gov]; Miller, Kevin [Miller.Kevin@epa.gov]
Subject: Follow-up from 8/28 Hot Issues and 8/29 Hot Topics
Attachments: 2018-07-17 judicial watch dc cir decision.pdf; Court_Document_US_DIS_DCD 1.18cv1952 (08.21.2018) (003).pdfpattern or practice claim.pdf; GLO Reg Review Agenda 8 29 18.docx

Joe –

Thanks for your email. As I mentioned at senior staff this morning, last night I compiled a list of items that GLO promised you at this week's Hot Issues and Hot Topics meetings. Below are the follow-up items that I have.

With each item listed below, I have identified the point of contact (Charlotte or me) who will provide you with the relevant materials by email. Please note that some of the documents referenced below are included as an attachment to this email. These attachments, as well as all of the other items listed below, will also be centralized in a one drive folder which Charlotte will share with you. Elise will have access to that folder as well.

Please let me know if you have any additions to the following. Also, please don't hesitate to call if you have any questions for us. We look forward to working with you.

Follow-up Action Items from 8/28 Hot Issues and 8/29 Hot Topics:

1. Provide Joe an overview of EPA's FOIA litigation docket, including high profile cases.

   Action items –

   Ex. 5 Attorney Client (AC)

2. List of document productions. GLO is working with OEX on a new document to track upcoming document productions. For now, please reference GLO's reg. review (attached), which includes in section F (starting on page 5) the information law practice group's litigation deadlines, including briefing and production deadlines. Once the new document regarding production only deadlines is finalized, Joe, Matt, and Elise will receive copies. (DONE) (reg review attached).

3. Provide copy of "to do" list stemming from August Admin. briefing and update Matt and Joe where we are with regard to those items (TO DO; POC: Wendy).

Ex. 5 Attorney Client (AC)

5. Provide copy of current awareness notification draft procedure and provide DHS documents discussed at Hot Issues (TO DO; POC: Wendy).

6. Provide copy of draft FOIA memo (DONE).

Wendy

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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued September 15, 2017 Decided July 17, 2018

No. 16-5339

JUDICIAL WATCH, INC.,
APPELLANT

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY,
APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:15-cv-01983)

Lauren M. Burke argued the cause and filed the briefs for appellant. *Paul J. Orfanedes* entered an appearance.

Sarah Carroll, Attorney, U.S. Department of Justice, argued the cause for appellee. With her on the brief was *Mark B. Stern*, Attorney.

Before: ROGERS, SRINIVASAN, and PILLARD, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* ROGERS.

Concurring opinion filed by *Circuit Judge* PILLARD.

Dissenting opinion filed by *Circuit Judge* SRINIVASAN.

ROGERS, *Circuit Judge*: For years, Judicial Watch has monitored expenditures of U.S. Government funds on "VIP" travel by submitting requests for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to the U.S. Secret Service and other agencies and reporting its findings to the public. Between 2012 and 2014, when the Secret Service failed to make requested records available in a timely manner, Judicial Watch was forced to file a lawsuit on five separate occasions in order to obtain the records. Upon such filing, the Secret Service produced non-exempt records, mooting the litigation.

In November 2015, Judicial Watch was forced again to file a lawsuit when the Secret Service failed to make available records in response to nineteen travel-related FOIA requests submitted over a thirteen-month period. This time, in addition to seeking an order that the Secret Service produce requested records, Judicial Watch sought injunctive relief so the Secret Service would not continue to violate FOIA's mandate that federal agencies "shall" make requested records "promptly available." 5 U.S.C. § 552(a)(3)(A). Judicial Watch alleged that the Secret Service "has a policy and practice of violating FOIA's procedural requirements," by "regularly failing" to either produce requested records or make a determination regarding their availability in accord with FOIA's timetables, 5 U.S.C. § 552(a)(6)(A), or within a reasonable time. Compl. ¶ 22. Four months after the lawsuit was filed, the Secret Service, much as it had done on the five prior occasions when Judicial Watch had sued, produced non-exempt records, thereby mooting the production request.

The only question now before the court is whether the complaint adequately alleged a "policy or practice" claim under FOIA. The district court ruled that Judicial Watch had failed to plead sufficiently egregious facts and granted judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). Because the court's precedent recognizes that a policy or practice claim may be predicated upon an agency's abuse of FOIA's statutory scheme, we reverse and remand to the district court for further proceedings.

I.

The Freedom of Information Act provides that federal agencies, "upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules . . . shall make the records *promptly available*." 5 U.S.C. § 552(a)(3)(A) (emphasis added). To ensure this mandate did not become a dead letter, Congress adopted a two-part approach. First, Congress imposed a set of requirements on federal agencies: It established timetables for agencies to respond to requests as well as procedures for agencies to obtain additional time, and required adoption of records management systems to facilitate "prompt" responses. Second, Congress provided members of the public whose records requests were denied a right to an administrative appeal and a right to seek judicial relief. Briefly summarized, the salient features of this two-part scheme are as follows:

First, an agency "shall determine" within twenty business days (one month) of receiving a FOIA request "whether to comply with such request," and "shall immediately notify the person making such request of such determination and the reasons therefor." *Id.* § 552(a)(6)(A). The agency may toll the response period once while seeking further information from the requester on the scope of the information sought. *Id.* In

"unusual circumstances," the agency may extend the determination deadline by ten business days (two weeks) upon explaining the circumstances to the requester. *Id.* § 552(a)(6)(B)(i). If additional time is required to address the request, the agency "shall notify the [requester] . . . and shall provide the person an opportunity to limit the scope of the request . . . or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request." *Id.* § 552(a)(6)(B)(ii).

To promote "efficient and appropriate compliance" with FOIA, *id.* § 552(j)(2)(A), agencies "shall" publish their internal organization and procedures relating to records requests, *id.* § 552(a)(1), and provide in electronic format instructions on how records may be requested, *id.* §§ 552(a)(2), (g). Agencies "shall" also maintain records systems by which requesters can obtain status updates on pending requests. *Id.* § 552(a)(7). Further, agencies "shall promulgate regulations" that "provid[e] for expedited processing of requests" when, for example, "the person requesting the records demonstrates a compelling need," and that "ensure" the agency makes such determination within ten business days. *Id.* § 552(a)(6)(E). Agencies are encouraged to "provid[e] for multitrack processing of requests." *Id.* § 552(a)(6)(D)(i). To assist in covering the costs of these requirements, agencies may impose reasonable fees for the processing of requests. *Id.* § 552(a)(4)(A).

Each agency also "shall designate" a Chief FOIA Officer, *id.* § 552(j), to monitor implementation of FOIA, keep government officials apprised of the agency's performance, develop policy recommendations, and otherwise facilitate public understanding of FOIA's exemptions, *id.* § 552(k). The officer, in turn, "shall designate" public liaisons responsible for "assisting in reducing delays, increasing transparency and

understanding of the status of requests, and assisting in the resolution of disputes." *Id.* §§ 552(k)(6), (*l*). Congress also required that agencies "shall annually report" to it on the requests received, processing times, determinations made, administrative appeals, pending cases, and related information. *Id.* §§ 552(e), (k)(4)–(5).

Second, FOIA provides procedural protections for a member of the public requesting records from an agency. Upon a denial of a request, the requester may seek reconsideration by the head of the agency. *Id.* § 552(a)(6)(A)(i). Upon exhausting the administrative appeal, the requester may seek judicial relief. *Id.* §§ 552(a)(4)(B), (a)(6)(A)(ii). Exhaustion is excused when the agency fails to make a timely determination — that is, within the timetables established in § 552(a)(6) — whether to produce records or to withhold them pursuant to a statutory exemption. *Id.* § 552(a)(6)(C)(i). Judicial relief, in turn, may extend beyond requiring production to providing injunctive relief. *Id.* § 552(a)(4)(B).

In sum, FOIA "reflect[s] 'a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language.'" *Dep't of Air Force v. Rose*, 425 U.S. 352, 360–61 (1976) (quoting S. REP. No. 813, 89th Cong., 1st Sess., 3 (1965)). It "stand[s] in sharp relief against" the prior procedures under the Administrative Procedure Act, which were "generally recognized as falling short of its disclosure goals and came to be looked upon more as a withholding statute than a disclosure statute." *EPA v. Mink*, 410 U.S. 73, 79 (1973). FOIA "seeks to permit access to official information long shielded unnecessarily from public view and attempts to create a judicially enforceable public right to secure such information from possibly unwilling official hands." *Id.* at 80. Congress's use of the word "shall" in issuing

directives to agencies in support of the overarching mandate to make records "promptly available," 5 U.S.C. § 552(a)(3)(A), instructs courts that Congress contemplated meaningful agency engagement upon receipt of a FOIA request. Agencies initially have a month to determine whether records can be made available in light of nine statutory exemptions, *id.* § 552(b)(1)–(9), and have several ways to obtain additional time to respond to requests. This engagement is premised on agencies improving records management systems to enable "prompt" responses. Congress underscored the importance it attached to prompt responses by allowing judicial recourse, bypassing administrative exhaustion, if an agency fails to meet statutory timetables for disclosure or to justify its delay in making non-exempt records available upon request. *See Mink*, 410 U.S. at 93; *McGehee v. CIA*, 697 F.2d 1095, 1101 (D.C. Cir. 1983).

The instant appeal brings into sharp focus the meaning of FOIA's mandate that agencies "shall" make requested records "promptly available" under this two-part scheme. Between July 2014 and August 2015, Judicial Watch submitted nineteen FOIA requests to the Secret Service for records on public expenditures for travel by President Obama and the First Lady, Vice President Biden, and former President Carter. Upon acknowledging receipt of and assigning tracking numbers to 17 of the 19 requests, the Secret Service took no further action and stood mute. In November 2015 — between three and eighteen months after the Secret Service had received Judicial Watch's records requests — Judicial Watch filed suit. Attached to its complaint was a chart showing as to each request that the Secret Service[1] had not made any of the requested records available

[1] The Secret Service is a "distinct" entity within the Department of Homeland Security. *See* Homeland Security Act of 2002, Pub. L. No. 107-296 § 821, 116 Stat. 2135, 2224 (codified at 6 U.S.C. § 381).

nor advised Judicial Watch whether any records were exempt from disclosure. Citing the five lawsuits it had filed against the Secret Service in similar circumstances to obtain similar records, Judicial Watch alleged that "[t]he Secret Service *regularly fails* to issue determinations . . . within the time period required by FOIA, causing [Judicial Watch] to bring suit in order to obtain the requested records." Compl. ¶¶ 7–8, 13 (emphasis added). The repeated, prolonged, and unexplained delays have prevented Judicial Watch from gathering complete records for its reports to the public on federally funded VIP travel. *See id.* ¶ 16. Further, Judicial Watch "intends to continue submitting identical or nearly identical travel-related FOIA requests as part of its on-going efforts to educate and inform the public about 'what their government is up to' and promote transparency, integrity, and accountability in government and fidelity to the rule of law." *Id.* ¶ 17.

Judicial Watch's complaint was in two counts. Count I alleged the Secret Service is "violating FOIA by failing to conduct a search reasonably calculated to uncover all records responsive to each . . . request[] and is unlawfully withholding records responsive to each request." *Id.* ¶¶ 19–20. As relief it sought an order directing the Secret Service to search and produce the non-exempt records "by a date certain." *Id.* at 6–7. Count II alleged that the Secret Service, "[o]n information and belief . . . has a policy and practice of violating FOIA's procedural requirements" by "regularly failing or refusing to produce requested records or otherwise demonstrate that [they] are exempt from production within the time period required by FOIA or at least within a reasonable period of time," *id.* ¶ 22, causing it irreparable harm, *id.* ¶ 23. It sought in relief an order enjoining the Secret Service from adhering to its policy or practice. *Id.* at 7.

In answering the complaint, the Secret Service acknowledged that it had not made "a final response to all of [Judicial Watch's] FOIA requests," Answer ¶ 14, and otherwise denied violating FOIA. It also moved for judgment on the pleadings pursuant to Rule 12(c) and to dismiss Count II with prejudice. In an accompanying memorandum, the Secret Service stated that it would, in accord with the district court's scheduling order, produce all non-exempt records by March 18, 2016. Within four months of the filing of the complaint, the Secret Service had produced to Judicial Watch's satisfaction all requested non-exempt records, including some requested two years earlier, sought in Count I. As to Count II's request for injunctive relief, the Secret Service argued that the complaint failed to allege facts sufficient to support a policy or practice claim. Judicial Watch opposed the motion as to Count II and requested discovery of the Secret Service's FOIA practices in responding to its requests. Acknowledging that the repeated and unexplained failure to respond within FOIA's timetables or a reasonable time "could be due to a host of causes," Judicial Watch stated that it was unaware of any "unusual" or "exceptional" circumstances asserted by the Secret Service to justify its repeated failures to timely respond because the Secret Service "never has — nor does it now — offer such a reason [or] justification." Pl.'s Opp'n to Mot. for J. on Pldgs., at 6–7 (Mar. 12, 2016). "As such," Judicial Watch argued, "it[s] [non-responses] could also be the result of a policy or practice." *Id.*

The district court dismissed Count I as moot once the Secret Service produced the requested records. It also granted the Rule 12(c) motion for judgment on Count II, ruling that Judicial Watch had "failed to allege sufficient facts" establishing that the Secret Service had "adopted, endorsed, or implemented some policy or practice that constitutes an ongoing failure to abide by the terms of FOIA." *Judicial Watch*

v. Dep't of Homeland Security, 211 F. Supp. 3d 143, 146–47 (D.D.C. Sept. 29, 2016) (quoting *Muttitt v. Dep't of State*, 926 F. Supp. 2d 284, 293 (D.D.C. Mar. 4, 2013)). In particular, the district court stated that Judicial Watch "points to no fact or statement to establish *why* requests were delayed or *how* the delays were the result of an either formal or informal policy or practice to violate FOIA's requirements, rather than inevitable but unintended delay attributable to a lack of resources." *Id.* at 146. It sought no explanation from the Secret Service but speculated the delays were likely due to a lack of resources.

Judicial Watch appeals the Rule 12(c) judgment on Count II. Our review is *de novo*, accepting as true, as we must, the factual allegations in the complaint. *Mpoy v. Rhee*, 758 F.3d 285, 287 (D.C. Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009)).

II.

FOIA lawsuits generally become moot once an agency has made available requested non-exempt records, whether voluntarily or after court order. *See Perry v. Block*, 684 F.2d 121, 125 (D.C. Cir. 1982) (citations omitted). This court has recognized an exception to mootness where an agency has a "policy or practice" that "will impair the party's lawful access to information in the future." *Payne Enterprises, Inc. v. United States*, 837 F.2d 486, 491 (D.C. Cir. 1988) (citing *Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 90–92 (D.C. Cir. 1986)). The First Circuit had recognized a similar exception in *Lybarger v. Cardwell*, 577 F.2d 764, 767 (1st Cir. 1978), and the Ninth Circuit has followed suit, *see Hajro v. U.S. Citizenship & Immigr. Servs.*, 811 F.3d 1086, 1103 (9th Cir. 2015). FOIA authorizes a court not only to "order the production of any agency records improperly withheld," but also to "enjoin the agency from withholding agency records."

5 U.S.C. § 552(a)(4)(B). This injunctive authority does not limit the district court's inherent injunctive powers. *See Renegotiation Bd. v. Bannercraft Clothing Co., Inc.*, 415 U.S. 1, 20 (1974).

In this circuit it is settled law that informal agency conduct resulting in long delays in making requested non-exempt records available may serve as the basis for a policy or practice claim. Our decision in *Payne* is instructive. There, for almost two years Air Force officials repeatedly refused to produce requested copies of bid abstracts for government contracts by invoking two FOIA exemptions even though the Secretary of the Air Force had repeatedly determined the exemptions were inapplicable. *Payne*, 837 F.2d at 487–90. Payne sought administrative review, which "[w]ithout exception" resulted in the production of the requested records. *Id.* at 489. Payne nonetheless filed suit challenging the agency's "practice of unjustified delay." *Id.* at 487. On appeal, this court identified the nature of a policy or practice claim:

> The fact that the practice at issue is informal, rather than crystalized in regulation or an official statement of policy, is irrelevant to determining whether a challenge to that policy or practice is moot. Courts have long recognized that there "may very well be circumstances in which prolonged delay in making information available or unacceptably onerous opportunities for viewing disclosed information require judicial intervention." So long as an agency's refusal to supply information evidences a policy or practice of delayed disclosure or some other failure to abide by the terms of the FOIA, and not merely isolated mistakes by agency officials, a party's challenge to the policy or practice cannot be mooted

> by the release of the specific documents that prompted the suit.

Id. at 491 (quoting *Lybarger*, 577 F.2d at 767).

Upon concluding that Payne's case was not moot, *id.* at 494, the court also concluded that the agency's "repeated delays" in making requested records available were "wholly unjustified" and "clear violations" of FOIA, *id.* at 488–89. "[T]hat Payne eventually obtained the information it sought provides scant comfort when stale information is of little value yet more costly than fresh information ought to be." *Id.* at 494. The court endorsed the interpretation of FOIA that:

> Congress did not intend for . . . agenc[ies] to use FOIA offensively to hinder the release of non-exempt documents. The appellants [*i.e.*, the requesting parties] have fully complied with the administrative scheme. It was the [agency]'s abuse of this scheme that forced the appellants to bring several lawsuits to obtain release of the documents. . . . These unreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.

Id. (quoting *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982)). In remanding the case to afford Payne declaratory relief, this court instructed the district court to "consider the propriety of injunctive relief," *id.* at 494–95, after "evaluat[ing] the likelihood that the Air Force will return to its illicit practice of delay in the absence of an injunction," *id.* at 495.

The court applied *Payne* in *Newport Aeronautical Sales v. Dep't of Air Force*, 684 F.3d 160 (D.C. Cir. 2012). There, the agency had repeatedly invoked a FOIA exemption to deny

requests for technical data, forcing a government contractor to request the records pursuant to the agency's more onerous disclosure scheme, which required submission of information that the contractor did not have due to the nature of its business. *Id.* at 162–63. The contractor sued, challenging the permissibility of the agency's interpretation of FOIA. This court held that the Air Force's belated disclosure of requested records after the contractor filed suit did not moot the policy or practice claim because the Air Force had persisted in its challenged practice of non-disclosure. *Id.* at 163–64 (citing *Payne*, 837 F.2d at 491).

Judicial Watch does not allege agency misconduct in invoking FOIA exemptions as occurred in *Payne* or good-faith agency error in interpreting a FOIA exemption as occurred in *Newport*. Nor does Judicial Watch point to any formal policy or other substantive response by the Secret Service explaining its failures to "promptly" produce requested non-exempt records. Instead, Judicial Watch's policy or practice claim is based on the Secret Service's repeated, unexplained, and "prolonged delay in making information available." *Payne*, 837 F.2d at 491. It alleges that the Secret Service "*regularly fails* to issue determinations in response to [Judicial Watch's] travel-related FOIA requests within the time period required by FOIA, causing [Judicial Watch] to bring suit in order to obtain the requested records." Compl. ¶ 7 (emphasis added). It points to the five lawsuits[2] it had been forced to file when the Secret Service had previously employed the same non-responsive conduct: acknowledge receipt of the FOIA requests and assign

[2] *See Judicial Watch, Inc. v. U.S. Secret Service*, No. 12-1562 (D.D.C. 2012); *Judicial Watch, Inc. v. U.S. Secret Service*, No. 13-0647 (D.D.C. 2013); *Judicial Watch, Inc. v. U.S. Secret Service*, No. 13-0950 (D.D.C. 2013); *Judicial Watch, Inc. v. U.S. Secret Service*, No. 14-0046 (D.D.C. 2014); *Judicial Watch, Inc. v. U.S. Secret Service*, No. 14-1732 (D.D.C. 2014).

them tracking numbers, remain mute until Judicial Watch filed a lawsuit, and only then undertake to make requested non-exempt records available, thereby mooting the litigation and escaping judicial review of its failures to comply with FOIA's procedural requirements.

Now seeking injunctive relief in view of the Secret Service's alleged flouting of the statutory scheme, Judicial Watch's complaint posits that the Secret Service has an informal practice, harmful to Judicial Watch's mission and work, of repeatedly withholding "nearly identical" records, without explanation, for unreasonable periods of time. *Id.* ¶¶ 7–9, 13–14, 22. Pointing to the FOIA requests underlying this lawsuit, Judicial Watch shows that the Secret Service made no determinations, timely or otherwise, whether it would make any of the records available. For example, on August 8, the Secret Service acknowledged receipt of the requests of July 21 and 28, 2014, for travel expenditures for President Obama's trips to New York City, Seattle, San Francisco, and Los Angeles, but had no further communication with Judicial Watch on these requests, or on twelve other requests. For three requests, the Secret Service provided a communication of an unidentified nature, but did not produce any requested records. Two requests were ignored entirely.

The Secret Service, in moving for judgment pursuant to Rule 12(c), has treated its non-responsiveness to Judicial Watch's requests as consistent with FOIA: When an agency fails "promptly" to produce requested non-exempt records or invoke an exemption within statutory timetables, the requesting party may file a lawsuit without exhausting the administrative remedy. *See* 5 U.S.C. § 552(a)(6)(C)(i). That is, failures to adhere to FOIA's pre-litigation requirements, including response deadlines and records management provisions needed to enable "prompt" determinations, do not

establish a FOIA violation and consequently cannot be the basis for a policy or practice claim. *See* Appellee Br. 17–19. In other words, the Secret Service concludes the text of FOIA allows for this interpretation because even where an agency repeatedly fails to conform to FOIA's procedural requirements in the first part of the statutory scheme, the requester can, under the second part of the scheme, file a lawsuit any time it seeks to gain access to agency records. That is, the Secret Service interprets FOIA the same way as any statute affording a right that may be vindicated by judicial enforcement; enacting FOIA's directives on pre-litigation requirements thus was unnecessary.

This interpretation is untenable for any number of reasons. Most significantly, "[t]he basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governor accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978); *see Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 171–72 (2004). Non-exempt records are to be made "promptly available," 5 U.S.C. § 552(a)(3)(A), for little more than payment of copying costs. The Secret Service's interpretation renders FOIA's mandate of "prompt" response superfluous, *i.e.*, a dead letter. Judicial Watch's complaint reflects that it has repeatedly been confronted with prolonged, unexplained delays by the same agency with regard to the same type of records and that six nearly identical lawsuits have not produced any change in the Secret Service's response to its proper requests until after it has filed a lawsuit. According to the complaint, only at that point has the Secret Service conducted a search to determine whether records can be made available or are exempt from disclosure, or engaged in consultations with Judicial Watch. The government points to nothing that would suggest that in providing a judicial remedy "to secure such information from

possibly unwilling official hands," *Mink*, 410 U.S. at 80, Congress intended an agency's repeated flaunting of FOIA's pre-litigation procedural requirements to be excused once the requested records are made available upon being sued. That interpretation is inconsistent with Congress's remedial purpose in enacting FOIA to enhance government transparency subject to limited statutory exemptions, using a two-part scheme that imposed specific requirements on federal agencies. Our precedent on policy or practice claims disposes of any suggestion that Congress intended the repeated filing of lawsuits to be a practical requirement for obtaining records from an agency flaunting the statute. *See Payne*, 893 F.2d at 494 (citing *Long*, 693 F.2d at 910). Filing a lawsuit hardly ensures "prompt[] availab[ility]," 5 U.S.C. § 552(a)(3)(A), as the instant case and the five other lawsuits against this agency demonstrate, *see supra* note 2, not to mention the chilling effect that litigation costs can have on members of the public much less the burden imposed on the courts.

Therefore, a plaintiff states a plausible policy or practice claim under *Payne* by alleging prolonged, unexplained delays in producing non-exempt records that could signal the agency has a policy or practice of ignoring FOIA's requirements. As in *Payne*, the plaintiff must allege a pattern of prolonged delay amounting to a persistent failure to adhere to FOIA's requirements and that the pattern of delay will interfere with its right under FOIA to promptly obtain non-exempt records from the agency in the future. Judicial Watch's complaint meets these requirements. Given the Secret Service's repeated, prolonged, and as yet unexplained delays in making requested non-exempt records available, it cannot be gainsaid that Judicial Watch alleges sufficient facts under Federal Rule of Civil Procedure 8(a)(2) and Supreme Court precedent to "draw the reasonable inference" that the Secret Service has adopted a practice of delay, contrary to FOIA's two-part scheme, by

repeatedly standing mute over a prolonged period of time and using Judicial Watch's filing of a lawsuit as an organizing tool for setting its response priorities. *Iqbal*, 556 U.S. at 678; *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

The conclusion that such "unreasonable delay in disclosing non-exempt documents" is an "abuse of [FOIA's] scheme" follows ineluctably from the recognition that "Congress did not intend for the [agency] to use the FOIA offensively to hinder the release of non-exempt documents so as to "force[] the appellant[] to bring several lawsuits to obtain release of the documents." *Payne*, 837 F.2d at 494 (quoting *Long*, 693 F.2d at 910). And it is long established in this circuit that an agency's compliance with FOIA depends upon its "good faith effort and due diligence . . . to comply with all lawful demands [for records] . . . in as short a time as is possible." *Open America v. Watergate Special Prosecution Force*, 547 F.2d 605, 616 (D.C. Cir. 1976). Congress reinforced the importance of FOIA's timetables and its overarching mandate of prompt availability when it amended FOIA in 1974. Responding to agencies' concerns about the high volume of requests and lack of resources, Congress allowed agencies only ten additional days to respond where there were "unusual circumstances." *See* 5 U.S.C. § 552(a)(6)(B). Judge Leventhal has explained:

> [T]he 1974 Amendments were deliberately drafted to *force increased expedition* in the handling of FOIA requests: "[E]xcessive delay by the agency in its response is often tantamount to denial. It is the intent of this bill that the affected agencies be required to respond to inquiries and administrative appeals within specific time limits." H. REP. No. 93-876, 93d Cong., 2d Sess. (1974). . . . The Congress even rejected a 30-

> day extension provision, narrowly drafted to take account of the special exigencies facing agencies.

Open America, 547 F.2d at 617 (Leventhal, J., concurring in the result) (emphasis added). Much as Congress has done in adopting "technology-forcing" provisions in other contexts, *see, e.g.*, *Union Elec. Co v. EPA*, 427 U.S. 246, 256–57 (1976), Congress contemplated that agencies would improve their records management systems to ensure requested records are made "promptly available," 5 U.S.C. § 552(a)(3)(A). No authority has been cited that either the Supreme Court or this court has retreated from this understanding of FOIA's text, purpose, and history. An agency's use of a lawsuit as an organizing tool for prioritizing responses renders FOIA's requirements "insignificant, if not wholly superfluous." *Duncan v. Walker*, 533 U.S. 167, 174 (2001).

The district court, however, conceived the issue of sufficiency of pleading differently. First, it treated *Payne* and *Newport* as establishing a floor for a policy or practice claim. In contrast with what it described as the "egregious, intentional agency conduct" in *Payne* and *Newport*, the district court ruled that Judicial Watch had alleged "mere delay." *Judicial Watch*, 211 F. Supp. 3d at 147. "At best, Judicial Watch's alleged facts are merely consistent with a policy or practice claim." *Id.*; *see id.* at 145 (citing *Iqbal*, 556 U.S. at 678). This court did not require egregious agency action to state a policy or practice claim. Rather, the court stated in *Payne* that even beyond a "refusal to supply information," an agency may engage in "some *other* failure to abide by the terms of the FOIA" that could be a basis for finding the agency has an unlawful policy or practice. *Payne*, 837 F.2d at 491 (emphasis added). It would be ironic if a policy or practice claim could be based on misapplication of a FOIA exemption (as in *Payne* and *Newport*), but not on an agency's total disregard of the

obligations mandated by Congress and failure to take advantage of provisions allowing additional time to respond.

Second, the district court shifted to the requesting party the burden that FOIA places on the agency to explain its delay in making requested records available. *See, e.g.*, 5 U.S.C. §§ 552(a)(4)(B), (a)(6)(A)–(C); *ACLU v. U.S. Dep't of Defense*, 628 F.3d 612, 619 (D.C. Cir. 2011). Concluding that Judicial Watch failed to show that the Secret Service had "adopted, endorsed, or implemented some policy or practice that constitutes an ongoing failure to abide by the terms of the FOIA," *Judicial Watch*, 211 F. Supp. 3d at 146 (quoting *Muttitt*, 926 F. Supp. 2d at 293), the district court focused on Judicial Watch's shortcomings in "point[ing] to no fact or statement to establish *why* the requests were delayed or *how* the delays were the result" of an agency policy or practice, "rather than an inevitable but unintended delay attributable to a lack of resources," *id.* Pretermitting whether a lack of resources could ever suffice to excuse repeated, prolonged, and as yet unexplained delay, as the district court interjected, *id.* at 147, FOIA's text and structure require that the agency "at least indicate within the relevant time period the scope of the documents it will produce and the exemptions it will claim with respect to any withheld documents." *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm'n*, 711 F.3d 180, 183 (D.C. Cir. 2013) ("*CREW I*"). This threshold requirement stands as a gateway to the transparency FOIA envisions.

The history of the Secret Service's conduct in response to Judicial Watch's FOIA requests, as alleged in the complaint, wherein Judicial Watch has been forced to file six lawsuits to obtain requested non-exempt records — all relating to the same subject matter — sufficed to state a plausible claim that the agency's practice was to utilize delay to flaunt FOIA's

procedural requirements, and that filing a lawsuit to obtain requested records was an empty gesture in terms of preventing future prolonged delays, much less obtaining future relief, because the agency would moot the litigation and escape judicial review of its compliance with FOIA. The Secret Service's alleged practice of prolonged, repeated, and unexplained delay, if allowed to continue, would harm Judicial Watch's mission to inform the public about the costs of VIP travel by unlawfully interfering with its statutory right to "promptly" obtain non-exempt records upon request. *See Newport*, 684 F.3d at 163–64.

Of course, not all agency delay or other failure to comply with FOIA's procedural requirements will warrant judicial intervention, much less injunctive relief. FOIA's provisions for extensions of response time, where for example the agency shows "exceptional circumstances exist" upon "demonstrat[ing] reasonable progress in reducing the backlog of pending requests," 5 U.S.C. § 552(a)(6)(C), indicate as much. Even assuming for purposes of argument that Congress intended the judicial remedy to be a principal means to overcome unlawful agency withholding — an interpretation of FOIA that this court has long rejected — no authority has been cited to suggest agencies may require a requester routinely resort to court to obtain responsive non-exempt records. It seems doubtful such authority would exist when agency "good faith effort and due diligence" are the touchstones underlying FOIA's statutory scheme. *Open America*, 547 F.2d at 616.

Unexplained agency delay still requires the district court to determine whether the agency's conduct in failing to conform to FOIA's procedural requirements demonstrates a lack of due diligence and is so delinquent or recalcitrant as to warrant injunctive relief because ordinary remedies, such as a production order, *see* 5 U.S.C. § 552(a)(4)(B), would be

inadequate to overcome an agency policy or practice. *See Ctr. for the Study of Servs. v. Dep't of Health & Human Servs.*, 874 F.3d 287, 292 (D.C. Cir. 2017); *Citizens for Responsibility & Ethics in Wash. v. U.S. Dep't of Justice*, 846 F.3d 1235, 1242, 1246 (D.C. Cir. 2017) ("*CREW II*"); *Newport*, 684 F.3d at 164; *Payne*, 837 F.2d at 491; *Lybarger*, 577 F.2d at 767. When injunctive relief is sought, "the necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive." *U.S. v. W.T. Grant Co.*, 345 U.S. 629, 633 (1952). Factors to be "considered are the *bona fides* of the expressed intent to comply, the effectiveness of the discontinuance [of the violation] and, in some cases, the character of the past violations." *Id.* In the FOIA context, "the court's prime consideration should be the effect on the public of disclosure or non-disclosure." *Long*, 693 F.2d at 909 (citing *W.T. Grant*, 345 U.S. at 633). And as Congress's limited reaction in amending FOIA suggests, staffing shortages and work overload may not render injunctive relief inappropriate. *See Open America*, 547 F.2d at 616; *id.* at 617 (Leventhal, J., concurring in the result). The indication by government counsel during oral argument that an agency might permissibly use litigation as an organizing tool for responding to FOIA requests, *see* Oral Arg. 25:18–26:59, is not an encouraging sign.

Our dissenting colleague's interpretation of FOIA raises the question why Congress bothered to enact FOIA at all. After all, prior to FOIA, a person could request agency records and upon failing to obtain them seek relief in court, albeit an expensive and time-consuming process. Yet neither agency practices nor lawsuits under the prior statutory scheme resulted in transparency of government operations. The Supreme Court and this court have understood that Congress's purpose in enacting FOIA was to achieve greater transparency in support

of open government, and that to accomplish this goal it placed the burden on agencies to act in good faith and exercise due diligence to make records available as quickly as possible, or invoke an exemption, and to improve their records management systems to enable prompt responses without routine judicial involvement. Our colleague's interpretation would bypass Congress's decision about how this goal can best be achieved.

In doing so, our colleague concludes Judicial Watch's complaint fails to state a claim for relief based on a policy or practice. Diss. Op. 2, 7–8. He does this by reading the complaint narrowly despite the Rule 8 stage of the proceedings, *Mpoy*, 758 F.3d at 287 (citing *Iqbal*, 556 U.S. at 678–79), ignoring factual allegations that must be accepted as true, reasonable inferences from the detailed chart accompanying the complaint, and the context in which Judicial Watch was forced to file this sixth lawsuit against the same agency for release of the same type of records. His reading renders FOIA's requirements insignificant at best and effectively reinstates the pre-FOIA scheme. When properly read, the complaint alleges that the Secret Service continues to abuse the statutory scheme and repeatedly moot litigation to escape judicial oversight, thereby denying Judicial Watch the prompt transparency that Congress intended in enacting FOIA.

Further, our colleague proceeds to address whether Judicial Watch could prevail beyond the Rule 8 pleading stage. He misreads the record and speculates on how the government might have responded had the complaint not been dismissed, Diss. Op. 10–16, thereby placing a pleading burden on Judicial Watch beyond what Rule 8 requires and flipping to the requester the burden that FOIA places on the agency to explain its delay. The record at the time the district court granted the government's Rule 12(c) motion shows that the Secret Service

had done nothing beyond acknowledging receipt and assigning tracking numbers to most of Judicial Watch's requests. The record provides no basis to assume Judicial Watch was kept informed of what, if anything, the Secret Service had done in responding to its requests, *see* Diss. Op. 13; paragraphs 8–12 of the complaint allege to the contrary. In speculating about the government's explanation, our colleague embraces the idea that taking "hundreds of days to process requests," Diss. Op. 9, is a permissible interpretation of an agency's obligations under FOIA, when the statutory structure and our precedent in *CREW I*, 711 F.3d at 186–87, are to the contrary. He twists the congressional reporting requirement, Diss. Op. 9, designed to *enable* Congress to ensure agency compliance with FOIA into evidence of congressional approval of agency failure to comply. *See, e.g.*, S. REP. 93-854, at 32–33 (May 16, 1974); H.R. REP. 104-795, at 7, 14, 27–29 (Sept. 17, 1996); *see also* S. REP. 110-59, at 2, 7 (Apr. 30, 2007). And by conjuring up the notion that Judicial Watch's requests were "complex," Diss. Op. 10–11, our colleague again fails to read the record as it must at this Rule 8 stage. Even on appeal the Secret Service has not characterized Judicial Watch's requests as complex.

Accordingly, we reverse the Rule 12(c) judgment on the request for injunctive relief and remand Count II to the district court for further proceedings. Our disposition conforms to longstanding precedent interpreting agencies' obligations of "good faith effort and due diligence" upon receiving a FOIA request. *Open America*, 547 F.2d at 616. The district court is no less obligated to determine upon a well-pleaded complaint that an agency has organized its records management systems to enable prompt determinations to produce records or to invoke an exemption, and to monitor when necessary an agency's progress in adjusting its records management systems to enable it to comply with FOIA. *See Ctr. for the Study of Servs.*, 874 F.3d at 292; *CREW II*, 846 F.3d at 1246. The

government's suggestion that Judicial Watch seeks a broad injunction requiring the Secret Service to prioritize its responses to Judicial Watch's future FOIA requests, thereby "distort[ing] the statutory scheme" and resulting in harm to "other members of the public who have an equal right to seek information from the government," Appellee Br. 21–22, is not well-taken. The Secret Service will have the opportunity on remand to explain its delays and to confirm how it intends in the future to conform to FOIA's mandate to make requested non-exempt records "promptly available." The district court, upon considering the complaint and the parties' further submissions, will determine, in the first instance, the appropriateness of discovery and tailored injunctive relief.

PILLARD, *Circuit Judge*, concurring:

I join the majority opinion in full. In view of the disagreement between my colleagues, I write separately to emphasize what I see as the alleged Freedom of Information Act (FOIA) violations, and to spell out how, because the complaint alleges a persistent "practice" of violating FOIA, the Secret Service's production of records in response to Judicial Watch's lawsuit did not render the claims moot.

Judicial Watch wants to keep the public informed of how much taxpayer money is spent on travel by the First Families and others who travel under Secret Service protection. FOIA is designed to make such a project easy and inexpensive. Under FOIA, information showing "what [the] government is up to," *EPA v. Mink*, 410 U.S. 73, 105 (1973) (Douglas, J., dissenting), is presumptively available for the asking—no lawyer needed—to any person at little or no cost. But it has not worked out that way for Judicial Watch. The organization has had to wait for many months, and to devote resources that would be unaffordable to most requesters to file half a dozen lawsuits, just to get this simple information.

Judicial Watch alleges a continuing practice of virtually complete passivity by the Secret Service in responding to the series of straightforward requests that Judicial Watch alleges it has made and plans to continue to make. In these circumstances, a complete but belated response does not moot the case. The statute "does not allow agencies to keep FOIA requests bottled up for months or years on end while avoiding any judicial oversight." *Citizens for Responsibility & Ethics in Wash. v. FEC*, 711 F.3d 180, 190 (D.C. Cir. 2013) (*CREW*). Because the pleadings show no statutorily adequate explanation for the agency's persistent practice of alleged delays in violation of FOIA, the district court retains jurisdiction over whatever further proceedings are needed to determine whether declaratory or injunctive relief is

appropriate. On remand, the district court should call on the Secret Service either to bring its FOIA process into line with the statute, or to explain to the court's satisfaction that it has already done so.

* * *

When a member of the public makes a request for government records, FOIA requires the agency to "determine within 20 days" what responsive records it has and can produce consistent with FOIA's exemptions, 5 U.S.C. § 552(a)(6)(A)(i), to "immediately" notify the requester of its determination, *id.*, and to follow up by making nonexempt records "promptly available," *id.* § 552(a)(3)(A). FOIA thus sets a default 20-day deadline for the underlying *determination*, and simply requires that the ensuing *production* of records be made to the requester "promptly" thereafter. These requirements are tied together, for Congress plainly intended production of records to follow close on the heels of the determination. As we explained in *CREW*, "promptly" under Section 552(a)(3)(A) "typically would mean within days or a few weeks of a 'determination,' not months or years." *See CREW*, 711 F.3d at 188-89.

There is no doubt that Congress intended FOIA's time limits to be mandatory. *See Open America v. Watergate Special Prosecution Force*, 547 F.2d 605, 617 (D.C. Cir. 1976) (Leventhal, J., concurring) ("Excessive delay by the agency in its response is often tantamount to denial. It is the intent of this bill that the affected agencies be required to respond to inquiries . . . within specific time limits.") (quoting H.R. Rep. No. 93-876, 93d Cong., 2d Sess. (1974)). Our dissenting colleague minimizes the importance of the 20-day deadline for the agency to make its determination by noting that, once an agency exceeds it, the requester is released from FOIA's

administrative exhaustion requirement. *See* Diss. Op. 4-5, 8. He infers from its relevance to exhaustion that the 20-day deadline is somehow not itself enforceable. *Id.* We have never so held, nor need we pass on that question today. The violations alleged here are not limited to missing the 20-day deadline, but include the Secret Service's additional failures to make the responsive records "promptly available." 5 U.S.C. § 552(a)(3)(A). Suffice it to say that no court of which we are aware has given Section 552(a)(6)(A)(i)'s 20-day default deadline the restricted role the dissent envisions, whereas at least one sister circuit reads it to support a legal challenge where an agency responded "well beyond the twenty-day limit" without "notice of any 'unusual circumstances' justifying an extension." *Hajro v. U.S. Citizenship & Immigration Servs.*, 811 F.3d 1086, 1106-07 (9th Cir. 2015).

Regardless whether ignoring the 20-day deadline is alone actionable, there is no question that substantial delays can support cognizable FOIA claims: We have held that "unreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses." *Payne Enters., Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988) (quoting *Long v. IRS*, 693 F.2d 907, 910 (9th Cir. 1982)); *cf. McGehee v. CIA*, 697 F.2d 1095, 1110 (D.C. Cir. 1983) (holding that an agency's internal procedures for processing documents may violate FOIA where the "net effect" is "significantly to increase the amount of time [the requester] must wait to obtain them"). Faced with information suggesting that "an agency's responses to a request for information have been tardy and grudging, courts should be sure they do not abdicate their own duty." *McGehee*, 697 F.2d at 1114. Allegations of an agency's unexplained delay—here, alleged failures for several months to respond to simple requests to make responsive, non-exempt records "promptly available"—suffice to state a FOIA claim.

When, as often happens, an agency voluntarily produces requested records during the course of a lawsuit, that production typically satisfies the requester and ends the case. But not always. Voluntary cessation of unlawful conduct moots a case, as a general matter, only "if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 189 (2000). Moreover, "[t]he heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness." *Id.* In the FOIA context, an ongoing agency "policy or practice" of unlawful nondisclosure may mean the voluntary release of responsive records "does not deprive the tribunal of power to hear and determine the case, *i.e.*, does not make the case moot." *Payne*, 837 F.2d at 490 (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953); citing *Cty. of L.A. v. Davis*, 440 U.S. 625, 631 (1979)); *see Newport Aeronautical Sales v. Dep't of Air Force*, 684 F.3d 160, 163-64 (D.C. Cir. 2012); *Hajro,* 811 F.3d at 1103, 1106; *Mayock v. Nelson*, 938 F.2d 1006 (9th Cir. 1991). A plaintiff plausibly alleging that its plans to request similar agency records will be stymied by an ongoing practice of unjustified delays may be entitled to injunctive or declaratory relief.

The question here is whether Judicial Watch has adequately alleged such a practice. The answer is yes.

Over a period of years, Judicial Watch routinely asked for "VIP travel" expense information it wanted to include in reports to its interested public. *See* Compl. ¶ 16, *Judicial Watch, Inc. v. Dep't of Homeland Sec.*, 15-cv-1983 (D.D.C. Nov. 10, 2015). Judicial Watch alleges that the agency failed, time and again, to make prompt disclosure. When Judicial

Watch filed this suit, the nineteen sequential requests at issue here had been pending for anywhere from seven to fifteen months without a single determination—let alone production—on any of the requested travel-expense information. *Id.* at Ex. A. Judicial Watch's complaint also references five preceding lawsuits, involving an earlier sequence of ten requests, seeking the very same kind of information as the nineteen requests at issue here. *Id.* ¶ 7. Each of those requests had likewise been pending for several months before Judicial Watch filed each related lawsuit. *See id.*

With allegations of 29 similar requests across six lawsuits met by unexplained months of waiting for the Secret Service to produce responsive records, the complaint makes out a consistent practice of delay in violation of FOIA. Even though the 20-day deadline had elapsed many times over, the Secret Service admits that it had not made the requisite "determinations." *See* 5 U.S.C. § 552(a)(6)(A)(i); Compl. ¶¶ 13-16; Answer ¶ 14, *Judicial Watch*, 15-cv-1983 (D.D.C. Dec. 22, 2015). Nor did it give plaintiff written notice of any "unusual circumstances" that might have entitled it to an additional ten working days to make its determinations. *See* 5 U.S.C. § 552(a)(6)(B)(i). The statute obligates the agency to reach out to requesters if it will not meet the initial 20-day deadline in order to negotiate potential efficiencies, such as by agreeing to an alternative timeframe for processing or by narrowing a request "so that it may be processed within [the 20-day] time limit," *see id.* § 552(a)(6)(B)(i), (ii), (iii), but there is no indication that the Secret Service made any such overtures to Judicial Watch, *see* Compl. ¶ 14; Answer ¶ 14. For most of the nineteen requests at issue in this suit, the Secret Service simply assigned a tracking number and provided no further communication to Judicial Watch, *see* Compl. ¶ 11; for some of the requests, the agency failed to do even that much, *id.* ¶ 10. The Secret Service made no production of the records

before it faced litigation—and even when each earlier lawsuit eventually dislodged some requested records, the cycle began again with ensuing requests. None of the eventual production was within a timeframe that our cases accept as "prompt" in the absence of any justification from the Secret Service. *See* 5 U.S.C. § 552(a)(3)(A); *CREW*, 711 F.3d at 189. The allegations, considered together with reasonable inferences therefrom drawn in Judicial Watch's favor, make out a persistent Secret Service practice of violating FOIA's requirements for making nonexempt government records promptly available to the public.

At the pleading stage, we lack critical context about the alleged delays and so cannot simply assume and unquestioningly accept that they are justified. To be sure, what counts as prompt production varies "depending on the circumstances." *CREW*, 711 F.3d at 188. But if we were to hold that the circumstances alleged here, without more, satisfied the Secret Service's statutory duties under FOIA, the roles Congress assigned the courts as the primary enforcer of FOIA and agencies as the proactive stewards of FOIA's implementation would be substantially undermined.

Consider the character of the requests themselves. The requested records are generally in the form of receipts—evidencing, for example, expenditures for flights, rental cars, and hotels—subject to only routine redactions under FOIA's exemptions. *See, e.g.*, U.S. Secret Service, Response to FOIA Request Number 20131414 (June 12, 2014), http://www.judicialwatch.org/wp-content/uploads/2014/10/2323_Responses.pdf.[1] It is a familiar fact of life to the

[1] These records were produced in response to one of Judicial Watch's travel-related FOIA requests, *see* Compl. ¶¶ 21-24, *Judicial Watch v. U.S. Secret Service*, 14-cv-0046 (D.D.C. Jan. 13, 2014), that was the subject of an earlier Judicial Watch suit; the current complaint refers to that request

hundreds of millions of people in the United States who travel each year for their work that employers collect and process travel expense information regularly; any adequately functioning organization should be able to produce travel expense information with dispatch. There is no suggestion that the requests at issue in this case involve any subtle relevance questions about where or how to search, or cumbersome inter-agency collaboration to identify what information is kept, and where it might be found. *Cf. McGehee*, 697 F.2d at 1098-99. The Secret Service presumably already keeps and electronically tracks government-paid travel expense information for any number of internal reasons. And, by now, Judicial Watch's repeated requests themselves may provide an additional reason for it to do so: FOIA obligates agencies to take initiative—even in the absence of a further request—to facilitate public access to commonly sought information, such as by publishing it in advance, *see* 5 U.S.C. § 552(a)(2)(D), and fast-tracking simple requests, *id.* § 552(a)(6)(D); *see also* U.S. Dep't of Homeland Sec., *2018 Chief FOIA Officer Report to the Attorney General of the United States* 22-23 (Mar. 2018), https://www.dhs.gov/sites/default/files/publications/2018%20Chief%20FOIA%20Officer%20Report.pdf (*2018 DHS Chief FOIA Officer Report*) (describing "Steps Taken to Increase Proactive Disclosures," and asserting that the Secret Service has begun posting at least some travel expense information in advance of requests). For all one can glean from the pleadings, Judicial Watch's requests are wholly mundane.

The dissent, however, assumes the requests are "complex," Diss. Op. 11, and finds their processing time reasonable in light of the average "complex" request processing times listed in a Secret Service FOIA report. *See*

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and lawsuit, among others, in alleging the persistent practice of slow responses. *See* Compl. ¶ 7.

id. (citing U.S. Dep't of Homeland Sec., *2015 FOIA Report to the Attorney General of the United States* 5, Table V.A. (Feb. 2016), https://go.usa.gov/xXQVvf). That FOIA report, however, was not incorporated in any pleading. It was not even mentioned in briefing. At the pleading stage, as the district court correctly recognized, *Judicial Watch v. Dep't of Homeland Sec.*, 211 F. Supp. 3d 143, 145 n.1 (D.D.C. 2016), we confine our review to the allegations, *see Banneker Ventures, LLC v. Graham*, 798 F.3d 1119, 1133 (D.C. Cir. 2015). In any event, the FOIA report says nothing about how these requests compare with those the Secret Service itself denominated as "complex," in terms of the difficulty and time needed to process them. We are here required to make the reasonable inference in Judicial Watch's favor that its VIP-travel expense requests are wholly straightforward; it is open to the agency on remand to seek to show otherwise.

In sum, Judicial Watch has plausibly alleged a persistent practice of delay that violates FOIA's mandate to make responsive records "promptly available." *See* 5 U.S.C. § 552(a)(3)(A). At the pleading stage, no more is required to support the district court's jurisdiction to consider, in view of the agency's potential justifications, any need for equitable relief.

Our dissenting colleague sees no allegations of delay that could violate FOIA. *See* Diss. Op. 12. His main point is that agencies cannot be expected to respond *post haste* to every one of the thousands of FOIA requests that agencies today receive. But to assume at the pleading stage that an agency faces hurdles and can offer rationales that were never pleaded or proved contravenes both Federal Rule of Civil Procedure 12(c) and FOIA itself. We are well aware that FOIA processing is no picnic: It can be painstaking and sometimes highly technical for requestors, agencies, and courts alike. But FOIA

nonetheless requires each federal agency to swiftly disclose all nonexempt information, even as it must accurately sort and withhold information that falls within the statute's exemptions. Needless to say, busy agencies, ever pressed to do more with limited resources, lack incentives to get that done. That is precisely why Congress enacted FOIA's timeframes and authorized district courts to enjoin agencies from improperly delaying public access to non-exempt records.

The statute places the burden on the agency, not the FOIA requester, to justify delays in processing. Once an agency has been sued in district court for improperly withholding records, "the burden is on the agency to sustain its action." 5 U.S.C. § 552(a)(4)(B). *But see Judicial Watch*, 211 F. Supp. 3d at 147; Diss. Op. 13. FOIA requires an agency that has not made prompt production to explain its delinquency: It allows additional processing time only "[i]f the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request." *See* 5 U.S.C. § 552(a)(6)(C)(i). The statute spells out that "exceptional circumstances" do "not include a delay that results from a predictable agency workload of requests" unless the agency affirmatively shows that it is making "reasonable progress in reducing its backlog of pending requests." *Id.* § 552(a)(6)(C)(ii). It is emphatically not permissible under FOIA for a court simply to assume that an agency's circumstances are "exceptional." There is no ground on this record for relieving the Secret Service of its burden of justification and simply presuming the Secret Service is systemically entitled to the "additional time" referred to in Section 552(a)(6)(C)(ii).

A few additional points: The dissent contends that, by requiring agencies to issue reports on the number of delayed requests and to provide tracking numbers to requesters, FOIA

expressly tolerates across-the-board, prolonged waits for production of nonexempt information. *See* Diss. Op. 3, 9. But nothing about FOIA's reporting and tracking mechanisms suggests they excuse violations of the statute's "determination" deadline or its expectation that, once a determination is made, a requester will be "immediately" informed and responsive records will be produced "promptly." FOIA excuses slow processing of nonexempt information only when the agency has carried its burden to justify withholding records, 5 U.S.C. § 552(a)(4)(B), and to explain how its delays are warranted by "exceptional" circumstances, *id.* § 552(a)(6)(B), (C)(i). In short, the statute does not condone agency personnel sitting behind accumulating mounds of FOIA requests and requiring each requester to "take a number" and wait many months or years for the agency to comply. It is innovation-forcing, requiring agencies to consider "adjustments to . . . practices, policies, personnel, and funding as may be necessary to improve its implementation of" the statute, including "the timely processing of requests for information." *See id.* § 552(j)(2)(C), (3)(D); *see also 2018 DHS Chief FOIA Officer Report*, at 26-27 (discussing "Steps Taken to Greater Utilize Technology").

Recognizing that Judicial Watch has stated a policy or practice claim here imposes no new or untenable burdens on agencies. Our circuit has recognized the "policy or practice" doctrine for thirty years. *See Newport Aeronautical Sales*, 684 F.3d at 164 (recognizing that, "even though a party may have obtained relief as to a *specific request* under the FOIA, this will not moot a claim that an agency *policy or practice* will impair the party's lawful access to information in the future") (emphasis in original) (citing *Payne*, 837 F.2d at 489). District courts, moreover, have many tools at their disposal to focus and streamline inquiry into whether the agency's production times are justified. *See generally* Fed. R. Civ. P. 26(b)(2)(c);

McGehee, 697 F.2d at 1112-13 (discussing reliance on agency affidavits at the summary judgment stage in FOIA exemption dispute).

In considering the propriety of injunctive or declaratory relief, the district courts should be mindful of their "duty to prevent . . . abuses" of FOIA. *Payne*, 837 F.2d at 494. They should assess whether an agency is acting with due diligence and making reasonable progress in reducing backlogs, including by availing itself of tools to improve its efficiency.

* * *

Congress in FOIA expressed a national commitment to open government. A democratic society requires an informed citizenry—not only to check against corruption and to hold government accountable, but also to dispel misconceptions and fallacies that secrecy feeds. As widely emulated as it has been here and abroad, FOIA is not the only—or necessarily the best—way to make the workings of government as open as practicable to the people in whose name its officials wield power and resources. *See generally* David E. Pozen, *Freedom of Information Beyond the Freedom of Information Act*, 165 U. Pa. L. Rev. 1097 (2017). Nevertheless, as Congress enacted and we have applied it, FOIA supports Judicial Watch's "policy or practice" claim. I thus join the opinion of the court holding that the Secret Service did not defeat the district court's jurisdiction to consider whether equitable relief might still be warranted even though—after repeatedly failing for months to respond to simple requests—it provided the information in full after the lawsuit was filed.

SRINIVASAN, *Circuit Judge*, dissenting: The Freedom of Information Act serves the important aim of promoting the timely release of requested government records. Ordinarily, when an agency completes its review of a request and releases responsive records during the pendency of a FOIA action, the case becomes moot. The case is not moot, however, if the agency has a general, ongoing policy or practice of violating FOIA. In that event, the court can enjoin the unlawful agency policy or practice going forward.

The complaint in this case claims that the Secret Service has a policy or practice of unlawfully withholding the release of requested records in violation of FOIA. The question we face is whether the complaint's allegations, if true, establish a policy or practice of violating FOIA. My colleagues conclude that the answer is yes. I respectfully disagree.

This case involves nineteen requests for records submitted to the Secret Service by Judicial Watch. The complaint's salient allegations are that (i) the agency failed to determine whether it would produce the requested records within a twenty-day period set out in the statute, (ii) several months had elapsed without any production of records by the time this suit was filed, and (iii) the agency, in past cases involving the same sorts of requests by Judicial Watch, ultimately produced the records after the filing of a suit. Do those allegations make out a policy or practice of FOIA violations? In my view, they do not.

With regard to the statute's default twenty-day period for determining whether to produce requested records, an agency's failure to make that determination within twenty days is not an actionable violation of FOIA. Nor was it necessarily a violation of FOIA that the requests were still pending before the agency when the suit was filed. Indeed, the statute expressly contemplates that an agency could take several months to process a FOIA request, and agencies regularly—

and lawfully—take that long to determine whether to produce requested records. And while it may be true that the Secret Service has previously produced records after Judicial Watch filed suit (and did so again in this case), the mere fact that an agency produces records following the initiation of judicial proceedings tells us nothing about whether the non-production of the documents before that point violated the statute. In short, the allegations in the complaint, even if true, are consistent with lawful conduct under FOIA.

The complaint in this case therefore fails to allege a policy or practice of violating FOIA. By deciding otherwise and allowing this action to go forward, the court today enables FOIA suits to proceed past the pleadings in a broad range of situations in which an agency's practices are fully in keeping with the statute's requirements. Agencies often (and lawfully) take significantly longer than twenty days to process a FOIA request. But an agency that does so, under the court's rationale today, would routinely be subject to an ostensibly viable claim that it has a policy or practice of violating the statute. The statute, in my respectful view, does not countenance that result.

I.

A.

To understand why the complaint in this case fails to allege a policy or practice of violating FOIA, it is necessary to review in some detail the statute's provisions governing the processing of a request for records. Upon a proper request for records submitted by "any person," FOIA generally calls for a federal agency to make the requested records "promptly available" to the requester unless the records fit within one of the statutory exemptions. *See* 5 U.S.C. § 552(a)(3)(A). Depending on the nature of a request, identifying and examining responsive records, and determining whether an exemption applies, can

take considerable time. FOIA thus prescribes no fixed timeframe within which an agency must produce non-exempt records. Rather, the statute establishes a set of procedures for agencies (and requesters) to follow in furtherance of the general mandate to make non-exempt records promptly available.

Whenever the agency will take longer than ten days to process a request, the statute requires the agency to assign the requester an "individualized tracking number." *Id.* § 552(a)(7)(A). The tracking number enables the requester to obtain "information about the status of [her] request" through a "telephone line or Internet service" set up by the agency. *Id.* § 552(a)(7)(B). The "status" information available to the requester must include "an estimated date on which the agency will complete action on the request." *Id.* § 552(a)(7)(B)(ii). A requester, then, can readily ascertain when the agency anticipates "complet[ing] action on the request." *Id.*

How long might that take? As a default matter, FOIA provides that an agency "shall . . . determine within 20 [business] days . . . whether to comply with [a] request" for records, and "shall immediately notify" the requester "of such determination and the reasons therefor." *Id.* § 552(a)(6)(A)(i). That "determination" marks the culmination of an agency's processing of a FOIA request—i.e., the determination by the agency whether it will produce the requested records or instead will withhold any production of records (because, for instance, a FOIA exemption applies or there are no responsive records).

The statute does not envision that an agency invariably will be able to process a request within the twenty-day period. That "timeline is not absolute." *Citizens for Responsibility & Ethics in Wash. (CREW) v. FEC*, 711 F.3d 180, 184 (D.C. Cir. 2013). It is instead only a "default." *Id.* at 189. After all, "it

would be a practical impossibility for agencies to process all FOIA requests completely within twenty days." *Id.* (brackets and internal quotation marks omitted).

For instance, in the event of certain "unusual circumstances" specified in the statute, the agency can extend the time period for processing a request by an additional ten business days (or thirty days total). 5 U.S.C. § 552(a)(6)(B)(i). (Unusual circumstances exist when a request: requires accessing records in an off-site location, involves a "voluminous amount" of records, or implicates the interests of multiple agencies or components. *Id.* § 552(a)(6)(B)(iii).) The statute, moreover, affirmatively contemplates that those "unusual circumstances" could cause the agency to take longer than thirty days to process a request. In that event, the agency must give the requester the opportunity to limit the scope of her request or work with the agency to develop an alternative time frame for processing it. *Id.* § 552(a)(6)(B)(ii).

In addition, apart from the enumerated "unusual circumstances," the statute separately allows an agency to show that "exceptional circumstances" (as opposed to "unusual circumstances") exist, and that the agency "is exercising due diligence in responding to the request." *Id.* § 552(a)(6)(C)(i). In that event, the agency is allowed "additional time to complete its review of the records." *Id.* "Exceptional circumstances" can "include a delay that results from a predictable agency workload of requests" if "the agency demonstrates reasonable progress in reducing its backlog of pending requests." *Id.* § 552(a)(6)(C)(ii). The statute thus expressly envisions that an agency could have a backlog of FOIA requests preventing it from processing a new request within twenty days, and that the agency would be allowed additional time as long as it is making reasonable progress in reducing the backlog.

The "exceptional circumstances" determination is made by a court after a requester initiates the statute's process of judicial review. *See id.* § 552(a)(6)(C). FOIA vests district courts with jurisdiction to conduct a de novo review of an agency's processing of a request, and to enjoin the agency from any "improper[] withh[olding]" of responsive records. *Id.* § 552(a)(4)(B). Ordinarily, a requester must exhaust her remedies with the agency before bringing the matter to court. *See Wilbur v. CIA*, 355 F.3d 675, 677 (D.C. Cir. 2004). But a requester is deemed to have constructively exhausted her administrative remedies if an agency takes longer than the default twenty-day period to process her request. 5 U.S.C. § 552(a)(6)(C); *see CREW*, 711 F.3d at 182, 185.

At that point, the requester, if she wishes, can proceed directly to court rather than continue to pursue the matter within the agency. Once in court, the agency has the burden to justify any decision to withhold responsive documents, 5 U.S.C. § 552(a)(4)(B), or to show that, due to exceptional circumstances (potentially including a backlog of FOIA requests), the agency needs additional time to process a request, *id.* § 552(a)(6)(C).

B.

If an agency produces the requested records while the matter is pending in court, the aim of the requester's claim for the records would have been realized and her claim generally becomes moot. *See Payne Enters., Inc. v. United States*, 837 F.2d 486, 490-91 (D.C. Cir. 1988). In the ordinary case, then, an agency's production of the requested records will occasion a dismissal of the requester's suit.

As our court recognized in *Payne*, however, an agency's production will not "moot a claim" if "an agency policy or practice will impair the party's lawful access to information in

the future." *Id.* at 491 (emphasis omitted). A requester thus can avoid dismissal on mootness grounds by plausibly alleging: first, that the "agency's refusal to supply information evidences a policy or practice of delayed disclosure or some other failure to abide by the terms of the FOIA," and, second that the agency's policy or practice will continue to injure the requester in the future. *Id.* In other words, a requester can maintain her action, notwithstanding the agency's production of the requested records, if the agency follows a policy or practice of unlawfully withholding records under FOIA and might continue to do so absent judicial intervention. Otherwise, an agency could have a policy of unlawfully refusing to release responsive documents, produce the documents when (and only when) sued in order to moot a given case, and then resume its unlawful withholding policy thereafter.

We have recognized the viability of a requester's policy-or-practice claim on just two prior occasions. Both cases involved an agency's allegedly unlawful withholding of documents based on an erroneous assertion of a FOIA exemption. *See id.* at 487; *Newport Aeronautical Sales v. Dep't of Air Force*, 684 F.3d 160, 163-64 (D.C. Cir. 2012). In each case, we allowed the requester to proceed on a policy-or-practice claim notwithstanding the agency's production of the requested documents. We did so because of the risk that the agencies would continue to withhold responsive records in the future in reliance on an inapplicable statutory exemption.

II.

Unlike the requesters in *Payne* and *Newport*, Judicial Watch does not contend that the Secret Service has a policy or practice of withholding requested records based on the agency's erroneous invocation of a FOIA exemption. Rather, Judicial Watch alleges that the Secret Service "has a policy and

practice of . . . regularly failing or refusing to produce requested records or otherwise demonstrate that requested records are exempt from production within the time period required by FOIA or at least within a reasonable period of time." Compl. ¶ 22. Judicial Watch's claim of an unlawful agency practice thus pertains solely to the time taken by the agency to process its records requests: there is no allegation that the agency is acting unlawfully in any other way, such as by refusing to produce records in invalid reliance on an inapplicable exemption.

In its complaint, Judicial Watch alleges the following facts in support of its claim that the Secret Service has a policy or practice of violating FOIA. Between July 2014 and August 2015, Judicial Watch submitted the nineteen FOIA requests at issue in this case. The statute's default twenty-day period elapsed without any determination by the Secret Service whether it would comply with the requests. By the time Judicial Watch filed suit (in November 2015), the agency had yet to complete its processing of the requests. And, on five previous occasions in which the Secret Service had failed to make a determination on Judicial Watch's request within twenty days, the agency produced the requested records after Judicial Watch filed suit. Compl. ¶¶ 7-9, 13-14.

Those factual allegations, in my view, do not state a claim that the Secret Service has a policy or practice of violating FOIA. The complaint advances two potential theories of how the Secret Service has engaged in a policy or practice of violating FOIA: first, the agency repeatedly failed to make determinations on Judicial Watch's requests "within the time period required by FOIA," Compl. ¶ 22—i.e., the default twenty-day period, § 552(a)(6)(A); and second, the agency failed to produce responsive documents over a sixteen-month

period between the submission of the first request and the filing of the suit. Neither of those theories states a claim for relief.

A.

Judicial Watch first argues that the Secret Service repeatedly failed to make determinations on its requests within twenty days, as with the nineteen requests at issue in this case and the five previous cases identified in the complaint. But the lapse of the default twenty-day period is not itself an actionable violation of FOIA. A repeated lapse of the twenty-day period, then, cannot form the predicate of a viable policy-or-practice claim.

The failure to process a FOIA request within twenty days, while not itself an actionable FOIA violation, does have a consequence under the statute. In that event, the requester can bypass the normal requirement to seek administrative review of an adverse determination on her request and instead proceed directly to district court. *See* 5 U.S.C. § 552(a)(6)(A)(i)-(ii), (C)(i); *see CREW*, 711 F.3d at 185, 189-90. The court then would conduct a de novo review of the agency's processing of the request. *See* 5 U.S.C. § 552(a)(4)(B).

The court would not, though, grant judgment in the requester's favor merely because the default twenty-day period had elapsed without a determination by the agency. Rather, the statute presupposes that the court could recognize that the agency should be given additional time to process the request. That would be warranted if, as we have seen, the agency shows it "is exercising due diligence in responding to the request" and is making "reasonable progress in reducing [a] backlog of pending requests." *Id.* § 552(a)(6)(C)(i),(ii). Given that the agency can lawfully take additional time to process a request, the mere lapse of the twenty-day period does not establish that the agency has violated FOIA.

Other provisions in the statute reinforce that a lapse of the twenty-day period cannot itself amount to a FOIA violation. The requirement to provide a tracking number for any request "that will take longer than ten days to process," *id.* § 552(a)(7)(A), presupposes that an agency might often require more than twenty days to complete its review. Otherwise, a tracking number would have relevance only for a request that the agency anticipates will take more than ten days but less than twenty days, an implausible reading of the statute.

Indeed, FOIA expressly contemplates that an agency could take hundreds of days to process requests. The statute calls for each agency to submit an annual report to the Attorney General setting out, among other things, the number of requests to which the agency made a determination within specified ranges of business days. Each agency must, for example, identify the number of requests for which it made a "determination within a period up to and including 20 days, and in 20-day increments up to and including 200 days." *Id.* § 552(e)(1)(G)(i). The agency must also specify the number of requests it processed within a period of 200-300 business days, 300-400 business days, and greater than 400 business days. *Id.* § 552(e)(1)(G)(ii)-(iv). Congress thus expressly envisioned that an agency might, with some regularity, take several hundred days or more—not just twenty days—to process a request.

Judicial Watch then errs in supposing that a lapse of the default twenty-day timeframe for processing a request constitutes an actionable violation of FOIA. It follows that the complaint cannot state a viable policy-or-practice claim based on the Secret Service's failure to make a determination within the twenty-day period for the requests at issue.

B.

Judicial Watch's complaint also states that the Secret Service has a policy or practice of failing to produce requested records "within a reasonable period of time." Compl. ¶ 22. That contention perhaps could be construed to allege that, even if the lapse of the twenty-day period does not itself establish a FOIA violation, the Secret Service's failure to make determinations within a "reasonable" time (beyond twenty days) infringed FOIA's overarching mandate to make records "promptly available." *Id.* § 552(a)(3)(A). That, however, is a legal conclusion, which we do not accept as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The legal conclusion instead must rest on plausible factual allegations that, if true, would establish the unlawfulness of the agency's action. *Id.*

Judicial Watch alleges no such facts here. Judicial Watch contends that, by the time it filed suit in November 2015, the Secret Service had yet to produce records responsive to nineteen requests submitted between July 2014 and August 2015. *See* Compl. ¶¶ 8, 14. The requests had been pending for between 54 and 329 business days. *Id.* Ex. A. The complaint contains no allegations suggesting why those time periods might be considered unreasonably—much less unlawfully—long. Rather, even assuming Judicial Watch's allegations are true, the Secret Service might well have been working through the nineteen requests in a reasonable and lawful manner. Indeed, the statute, as explained, expressly envisions that agencies may take hundreds of days or more to process requests. *See* 5 U.S.C. § 552(e)(1)(G)(i)-(iv).

Consider in that regard how the response times for the requests in this case stack up when compared with the Secret Service's general processing of FOIA requests in 2015, the year the complaint was filed. The Secret Service processed

roughly 1200 requests that year. U.S. Dep't of Homeland Security, *2015 Freedom of Information Act Report to the Attorney General of the United States* 13, tbls. VII.C(1)-(2) (Feb. 2016), https://go.usa.gov/xXQvf (hereinafter *2015 DHS FOIA Report*). Almost all (roughly 90%) of the requests processed in 2015 were categorized as "complex." *Id.* (1050 complex requests versus 145 simple requests). And the average processing time for those requests was 317 days, with the response time for roughly one out of every four of the requests exceeding 300 business days. *Id.* at 12-13, tbls. VII.B, VII.C(2).

Considered in that context, the time for which the nineteen requests in this case had been pending when Judicial Watch filed its suit (54 to 329 business days) is in step with the Secret Service's general handling of FOIA requests. Nor is the Secret Service some sort of conspicuous outlier among DHS components in its processing times. *See id.* at 12 tbl. VII.B. (Contrary to my colleagues' suggestion, Maj. Op. 22; Conc'g Op. 7-8, I do not necessarily assume that the requests in this case would be categorized as "complex," although almost all requests processed by the Secret Service were so classified. Rather, in identifying a suitable comparison point to help highlight that processing times of 54 to 329 days do not alone demonstrate a FOIA violation, it is appropriate to reference the average processing time for the largest group of requests for which there is available data, a group that makes up some 90% of all requests.)

Insofar as a FOIA requester can make out a viable policy-or-practice claim based solely on an agency's response times, then, Judicial Watch needed to allege something more than that: it submitted multiple FOIA requests, it filed suit when permitted by the statute, and its requests had been pending for some 54 to 329 business days at that time. Those allegations

are consistent with lawful conduct by the agency. They thus do not show a policy or practice of violating FOIA.

C.

My colleagues in the majority nonetheless conclude that Judicial Watch's complaint states a valid policy-or-practice claim. They reason that the complaint "alleg[es] prolonged, unexplained delays in producing non-exempt records that could signal the agency has a policy or practice of ignoring FOIA's requirements." Maj. Op. 15.

Which of "FOIA's requirements" is the Secret Service plausibly alleged to have ignored? The only "requirement" on which the complaint relies is the default twenty-day period for processing a request. For the reasons already set out, however, the lapse of that period does not amount to an actionable violation of FOIA. If a breach of the twenty-day period were itself an actionable violation of FOIA, then a requester could immediately file suit after the twenty-day period passes—on day twenty one, for instance—and qualify right away for the entry of judgment in her favor and an award of attorneys' fees as a substantially-prevailing party. *See* 5 U.S.C. § 552(a)(4)(E). That cannot be correct.

As for my colleagues' assertion that Judicial Watch experienced "prolonged" delays in obtaining responsive records, Maj. Op. 15, there is no explanation of why the response periods alleged in the complaint might cross the line from permissible to unlawfully "prolonged." The lapse of the default twenty-day period, as we have seen, does not itself establish that the agency's response was unlawfully prolonged. If so, then at what point (beyond twenty days) did the agency's response times for the requests in this case become unlawfully prolonged? My colleagues do not say. And it is unclear how a district court is to make that determination.

For instance, are the response times "prolonged" because, for three of the nineteen requests in the case, more than 300 business days had elapsed as of the complaint without a determination by the agency? *See* Compl. Ex. A. The Secret Service was doing no worse on that metric with regard to the nineteen requests at issue than it did for all requests it processed in 2015. *See DHS 2015 FOIA Report* 13, tbl. VII.C(2) (253 of the roughly 1200 total responses took more than 300 business days to process). And if an agency violates FOIA whenever it takes more than 300 business days to respond to a request, Customs and Border Patrol would have violated the statute on that basis alone more than 20,000 times in 2015. *See id.*

In an effort to bolster the idea that the Secret Service's response times in this case at some point became unduly prolonged, my concurring colleague would infer that the requests at issue are "wholly straightforward." Conc'g Op. 8. The complaint, though, alleges (or says) nothing about the comparative complexity of Judicial Watch's requests. At any rate, regardless of whether the Secret Service ultimately prevails in its competing assertion that Judicial Watch's requests are "labor intensive," Campbell Decl. at ¶ 11 (D.D.C. Mar. 18, 2016), ECF No. 16-1, neither the concurring opinion nor the court's opinion identifies when (beyond twenty days) response times become sufficiently "prolonged" such that the time periods alleged in a complaint alone are enough to make out a policy-or-practice claim.

In addition to asserting that the Secret Service's response times were unduly "prolonged," my colleagues also say that the response times were "unexplained." Maj. Op. 15. In that regard, my colleagues presumably rely on Judicial Watch's indication that, for a number of the requests in the case, the Secret Service made no communication to Judicial Watch beyond giving a tracking number. *See* Compl. ¶ 11 & Ex. A.

But the purpose of requiring an agency to give an "individualized tracking number" for requests that will take more than ten days to process is to arm the requester with an efficient means of obtaining "information about the status of [her] request," including an estimated date on which the agency will finish processing the request. 5 U.S.C. § 552(a)(7)(B). That is an important form of communication by the agency to the requester, and there is no indication that it was unavailable to Judicial Watch (or any allegation that it was somehow deficient).

If a particular request implicates one of FOIA's three enumerated "unusual circumstances" and the agency will take more than thirty business days to process it, the statute calls for the agency to give the requester an opportunity either to limit the request's scope or to arrange for an alternative timeframe for processing it. *Id.* § 552(a)(6)(B)(ii); *see* Conc'g Op. 5. But the requirement to engage in that dialogue arises only if one of the enumerated "unusual circumstances" exists. And there is no suggestion by Judicial Watch—much less any allegation in the complaint—that any of those circumstances might exist in this case (or, for that matter, that the agency fell short in any resulting obligation to initiate the contemplated dialogue).

My colleagues, finally, assume that the Secret Service has a practice of responding to Judicial Watch's requests only "after it has filed a lawsuit." Maj. Op. 14. "[O]nly at that point," my colleagues submit, "has the Secret Service conducted a search to determine whether records can be made available or are exempt from disclosure, or engaged in consultations with Judicial Watch." *Id.*

I assume it would violate FOIA for an agency to adhere to a practice of refusing to process a request unless the requester brings a lawsuit. I do not read the complaint to allege that the

Secret Service has any such policy, however. To be sure, the complaint references five prior cases in which the Secret Service produced records after Judicial Watch filed suit, and the agency in this case produced records responsive to the nineteen requests after Judicial Watch brought this action. *See* Compl. ¶¶ 7, 9, 14. But the fact that the agency eventually produced records *after* a lawsuit of course hardly means that it produced the records only *because* of the lawsuit, much less that it did *no work at all* to process the request until the suit was filed. *See Iqbal*, 556 U.S. at 680-82.

Indeed, assuming (as we must) that the Secret Service gave Judicial Watch a tracking number upon receiving the requests, *see* Compl. ¶ 10, the agency also would have "provide[d] information about the status of [the] request[s]" including an "estimated date" by which it would "complete action" on them, 5 U.S.C. § 552(a)(7)(B). That means the agency necessarily would have to work on the requests regardless of any (as yet unfiled) suit. The complaint itself thus negates any notion that the agency did no work on the requests until Judicial Watch filed suit.

The complaint therefore does not allege—and at least does not plausibly allege—that it is the Secret Service's policy to withhold processing or production of documents unless the requester sues: to say that documents were produced after a suit is not to say that there would have been no processing or production absent the suit. *Cf. Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 556-57 (2007) (while parallel conduct may be consistent with an illicit agreement, allegations about parallel conduct do not substantiate otherwise conclusory allegation of illicit agreement). Judicial Watch in fact conceded in the district court that the time taken by the agency to process the requests could have been due to a "host of causes," including

agency backlog. Pl.'s Opp'n to Mot. J. on Pldgs. 6-7 (D.D.C. Mar. 12, 2016), ECF No. 14.

My colleagues reason that, regardless of whether the Service Service's response times are caused by agency recalcitrance or justifiable backlog, the delay has the effect of making it a "practical requirement" for Judicial Watch to sue in order to obtain records. Maj. Op. 15. But the Secret Service's conduct, even assuming the truth of the allegations in the complaint, has not required Judicial Watch to sue.

Rather, the statute affords requesters a choice: if twenty days comes and goes without a determination, the requester may check the tracking information and decide to wait until the estimated completion date arrives, or she may choose to involve a court in an effort to set a different timeline for production. That is how the statute is designed to work. And nothing in the complaint suggests that the process did not work that way here. The remedial process, along with the other provisions of the statute, aim to advance FOIA's ultimate mandate of prompt production of non-exempt records. An agency does not violate that mandate when the statutorily-prescribed process works as it was supposed to.

* * * * *

The evident result of the court's holding today is that any requester who alleges that she made more than one request for records, that she received no determination within twenty days, and that she obtained no records before suing, can state a policy or practice claim based on agency delay. That would be so even though the agency may be well on its way to production, and even though there is no plausible allegation of agency recalcitrance. In any such instance, disclosure of the requested records in accordance with a court-ordered schedule would not moot the case. Rather, a district court would be charged with

examining how "an agency has organized its records management systems" and "monitor[ing] when necessary an agency's progress in adjusting its records management systems." Maj. Op. 22. That holding implicates not only the Secret Service's handling of the requests in this case, but also the processes of numerous governmental agencies who routinely take longer than twenty days to process requests given the practical impossibility of invariably meeting that timeframe. *See CREW*, 711 F.3d at 189.

In my view, neither the terms, structure, nor purpose of FOIA demands that result. I of course do not take lightly FOIA's highly important mandate that agencies promptly disclose non-exempt records. Nor do I discount the possibility that various agencies are not processing FOIA requests as quickly as they might. The annual reports required by Congress presumably would shed light on poorly performing agencies. FOIA also provides for an investigatory proceeding by the Office of Special Counsel whenever a court issues written findings that "circumstances surrounding [an agency's] withholding raise questions whether agency personnel acted arbitrarily or capriciously." 5 U.S.C. § 552(a)(4)(F)(i). And if an agency has a practice of unlawfully withholding the disclosure of responsive records—say, by persistently invoking an inapplicable exemption—it will be subject to an injunction barring the practice. *See Payne*, 837 F.2d at 490-92.

In this case, however, the Secret Service's actions, as alleged in the complaint, do not reflect a policy or practice of violating FOIA. Rather, the allegations are consistent with lawful conduct on the agency's part. As a result, the case became moot when the agency finished processing the requests and disclosed responsive documents pursuant to the schedule ordered by the district court. I thus respectfully dissent from my colleagues' disposition of this appeal.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ENVIRONMENTAL INTEGRITY PROJECT 1000 Vermont Ave. NW, Suite 1100 Washington, DC 20005, and **CHESAPEAKE CLIMATE ACTION NETWORK** 6930 Carroll Ave, Suite 720 Takoma Park, MD 20912 *Plaintiffs*, v. **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY** 1200 Pennsylvania Ave., NW Washington, DC 20460 *Defendant*.	Civil Action No. 18-1952 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

STATEMENT OF THE CASE

1. Plaintiffs Environmental Integrity Project (EIP) and Chesapeake Climate Action Network (CCAN) ("Plaintiffs") file this complaint for declaratory and injunctive relief to remedy violations of the Freedom of Information Act (FOIA or "Act"), 5 U.S.C. § 552, including the failure of Defendant U.S. Environmental Protection Agency (EPA or "Defendant") to respond to Plaintiffs' March 2, 2018 FOIA request (EPA-HQ-2018-005041) for records of former Administrator Scott Pruitt and his accompanying staff's travel expenditures, as well as Plaintiff EIP's March 27, 2018 FOIA request (EPA-HQ-2018-005878) for records of former Administrator Gina McCarthy's travel expenditures and EPA communications with third parties regarding said

expenditures, and EIP's April 13, 2018 FOIA request (EPA-HQ-2018-006648) for email attachments potentially shared with third parties relating to 30 specific events on Mr. Pruitt's calendar, within 20 working days as mandated by the statute, and to produce the records improperly withheld by Defendant.

2. Plaintiffs also seek an end to Defendant's FOIA policy or practice of "political awareness review," which results in the unlawful delay of the disclosure of public documents deemed "politically charged" or potentially embarrassing by the current Administration. Plaintiff EIP has numerous ongoing FOIA requests that have been affected by this policy, including the requests at issue in this Complaint.

3. According to public records and statements from former and current EPA staff, EPA recently implemented FOIA policies or practices with the purpose of "intentionally delaying the release of documents under FOIA relating to [Pruitt's] tenure at EPA." *See* Letter from Ranking Member Elijah E. Cummings to EPA Administrator Scott Pruitt (June 11, 2018), Ex. A.

4. The political "awareness review" process specifically requires FOIA staff to allow senior political appointees an opportunity to review and approve all FOIA responses processed by the EPA Office of the Administrator (AO), such as Plaintiffs' FOIA requests at issue here, prior to the release of any records. *Id.; see also* July 24, 2017 Email from Ryan Jackson Implementing the AO Centralization Project ("Jackson memo"), Ex. B.

5. Although Mr. Pruitt has since resigned as EPA Administrator, it is unclear whether this impermissible policy or practice remains in place at EPA. A July 15, 2018 letter from EPA Principal Deputy General Counsel Kevin S. Minoli to the House Oversight Committee, in which Mr. Minoli defends the "awareness review" process generally (but without mentioning any of the details revealed by the internal emails discussed above), suggests that the policy remains in effect

and that EPA has no intention of ending this policy. *See* Letter from Kevin S. Minoli to Ranking Member Elijah E. Cummings (July 15, 2018), Ex. C, at 2.

6. Under the D.C. Circuit's "policy-or-practice" doctrine first articulated in *Payne Enterprises, Inc. v. United States*, 837 F.2d 486 (D.C. Cir. 1988), a FOIA plaintiff is entitled to declaratory and injunctive relief if it can "plausibly demonstrate that: (1) the agency in question has adopted, endorsed, or implemented a policy or practice that constitutes an ongoing 'failure to abide by the terms of the FOIA'; and (2) the plaintiff will 'suffer continuing injury due to this practice.'" *Nat'l Sec. Counselors v. C.I.A.*, 898 F. Supp. 2d 233, 253 (D.D.C. 2012) (quoting *Better Gov't Ass'n v. Dep't of State,* 780 F.2d 86, 91 (D.C. Cir. 1986)).

7. EPA has implemented a policy or practice of political "awareness review" that constitutes an ongoing violation of FOIA.

8. Plaintiffs are nonprofit, public interest organizations dedicated to the effective enforcement of environmental laws and accountability in government who regularly submit FOIA requests for records regarding the operations of EPA that have been adversely affected by this policy, including the FOIA requests at issue in this Complaint.

9. EPA is likely to continue its impermissible policy or practice of using political "awareness review" to unreasonably delay the disclosure of non-exempt records, or withhold them entirely, absent the intervention of this Court.

10. Thus, Plaintiffs respectfully request this Court to issue an Order: (1) declaring Defendant's failure to timely respond to Plaintiffs' FOIA requests and improper withholding of records to be unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)-(B); (2) requiring Defendant to immediately identify any records responsive to Plaintiffs' requests, and to provide such records promptly to Plaintiffs; and (3) if the Agency determines that the remaining records are exempt

from disclosure, order Defendant to make an appropriate determination and filing that provides the legal and factual basis justifying such exemptions as soon as reasonably possible.

11. Plaintiffs also respectfully seek an Order from this Court (1) declaring that EPA's political "awareness review," implemented for the express purpose of improperly delaying or withholding nonexempt documents from FOIA requesters, is an improper policy or practice that clearly violates FOIA; (2) enjoining EPA from its unlawful policy or practice of requiring political "awareness review" as a means of unduly delaying disclosure for "politically charged" FOIA requests processed by EPA AO; and (3) assigning an independent observer, selected by this Court, to monitor EPA's FOIA compliance moving forward to ensure that EPA is implementing the ordered remedies in good faith.

JURISDICTION

12. This action arises under the citizen suit provision of the Freedom of Information Act. 5 U.S.C. § 552 (a)(4)(B).

13. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.

14. This Court is a proper venue for all FOIA actions. 5 U.S.C. § 552(a)(4)(B); *In re Scott*, 709 F.2d 717, 720 (D.C. Cir. 1983).

15. Furthermore, FOIA provides that this Court may issue a declaratory judgment, provide injunctive relief from withholding records and to order production of such records, and grant other equitable relief as the Court may deem just and proper. 5 U.S.C. § 552(a)(4)(B); *Payne Enterprises*, 837 F.2d at 494 ("The FOIA imposes no limits on courts' equitable powers in enforcing its terms.") (citing *Renegotiation Bd. v. Bannercraft Clothing Co., Inc.*, 415 U.S. 1, 20 (1974) ("With the express vesting of equitable jurisdiction in the district court by § 552(a), there

is little to suggest, despite the Act's primary purpose, that Congress sought to limit the inherent powers of an equity court")).

16. Because "[t]his circuit's case law reflects the wide latitude courts possess to fashion remedies under FOIA, including the power to issue prospective injunctive relief," *Citizens for Responsibility & Ethics in Wash. v. U.S. Dep't of Justice*, 846 F.3d 1235, 1242 (D.C. Cir. 2017), "district courts have ample authority to award declaratory and prospective injunctive relief to FOIA requesters who successfully sustain policy-or-practice claims." *Muckrock, LLC v. Central Intelligence Agency*, No. 14-cv-997 (KBJ).

17. This Court has jurisdiction to hear this claim because Plaintiffs have exhausted their administrative remedies, as a result of EPA's failure to provide any response to Plaintiffs within 20 working days of Plaintiffs' requests as required by law. 5 U.S.C. § 552(a)(6)(A)(i). Under FOIA, a requester "shall be deemed to have exhausted his administrative remedies with respect to such request of the agency fails to comply with the applicable time limit provisions…" 5 U.S.C. § 552(a)(6)(C)(i).

18. This Court may award attorney fees and litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E).

PARTIES

19. Plaintiff EIP is a nonpartisan, nonprofit organization founded in 2002 by former EPA enforcement attorneys to advocate for more effective enforcement of environmental laws. EIP's three main organizational objectives are: (1) to illustrate through objective facts and figures how the failure to enforce or implement environmental laws increases pollution and affects the public's health; (2) to hold federal and state agencies, as well as individual corporations, accountable for failing to enforce or comply with environmental laws; and (3) to help local

communities in key states obtain the protection of environmental laws. Consistent with its mission, EIP regularly submits FOIA requests for records that may indicate how outside interests may be influencing EPA's implementation or interpretation of its statutory responsibility to protect health and the environment.

20. Plaintiff CCAN is a grassroots, nonprofit organization dedicated exclusively to fighting the effects of global warming in the states of Maryland, Virginia, and Washington, DC. CCAN's main organizational objectives are to build and mobilize a powerful, diverse grassroots movement within the Chesapeake Bay region to call for state, national, and international policies that will put the region on the path to climate stability, to inspire action in neighboring states and regions nationwide, and to protect the most vulnerable communities in the region from the worst impacts of climate change.

21. Defendant EPA is a government agency responsible for protecting human health and the environment. Defendant EPA has possession, custody, and control of the records which Plaintiffs seek and has implemented the impermissible policy of practice at issue in this matter. Defendant EPA is headquartered at 1200 Pennsylvania Avenue NW, Washington, DC 20460.

LEGAL BACKGROUND

22. FOIA's "basic purpose reflect[s] a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language." *Dept. of the Air Force v. Rose*, 425 U.S. 352, 360-61 (1976) (quoting S. Rep. No. 89-813, at 3 (1965)). "Without doubt, timely disclosure of information of potential public interest was among Congress's central aims in enacting FOIA," and Congress expressly understood that because "information is often useful only if it is timely… excessive delay by the agency in its response is often tantamount to denial." *Daily*

Caller v. U.S. Dep't of State, 152 F. Supp. 3d 1, 13 (D.D.C. 2015) (quoting H.R. Rep. No. 93–876, at 6 (1974)). Accordingly, FOIA states that "[u]pon any determination by an agency to comply with a request for records, the records shall be made **promptly available** to such person making the request" 5 U.S.C. § 552(a)(6)(C)(i) (emphasis added); *see also* 40 C.F.R. § 2.104(f) ("Once an office makes a determination to grant a request in whole or in part, it will release the records or parts of records…").

23. FOIA requires that an agency "shall determine within 20 [working] days… after the receipt of any [FOIA] request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor; the right of such person to seek assistance from the FOIA Public Liaison of the agency; and in the case of adverse determination – the right of such person to appeal…[or] to seek dispute resolution services from the FOIA Public Liaison. . . ." 5 U.S.C. § 552(a)(6)(A)(i). In "unusual circumstances" the time limits may be extended by written notice, within the statutorily provided response period, which must "set[] forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched." 5 U.S.C. § 552 (a)(6)(B)(i). This extension notice may not "specify a date that would result in an extension for more than ten working days" unless defendant invokes a narrow exception, wherein the agency reasonably asks the requester to narrow the scope of his or her inquiry. *Id.* Thus, the statute mandates that an agency shall respond with a determination no more than 30 working days after receiving a FOIA request.

24. FOIA additionally provides that "[a]ny person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph." 5 U.S.C. § 552(6)(C)(i); *see also Citizens for*

Responsibility & Ethics in Washington v. Fed. Election Comm'n, 711 F.3d 180, 189–90 (D.C. Cir. 2013) ("To reiterate, if the agency does not adhere to FOIA's explicit timelines, the 'penalty' is that the agency cannot rely on the administrative exhaustion requirement to keep cases from getting into court").

25. The controlling precedent on policy or practice claims in the D.C. Circuit is *Payne Enterprises, Inc. v. United States*, 837 F.2d 486 (D.C. Cir. 1988). To state a viable claim for relief under *Payne*'s "policy-or-practice" doctrine, a plaintiff must "plausibly demonstrate that: (1) the agency in question has adopted, endorsed, or implemented a policy or practice that constitutes an ongoing 'failure to abide by the terms of the FOIA'; and (2) the plaintiff will 'suffer continuing injury due to this practice.'" *Nat'l Sec. Counselors v. C.I.A.*, 898 F. Supp. 2d 233, 253 (D.D.C. 2012) (quoting *Better Gov't Ass'n v. Dep't of State,* 780 F.2d 86, 91 (D.C. Cir. 1986)).

FACTUAL BACKGROUND

March 2, 2018 FOIA Request (The "Travel Vouchers Request")

26. On March 2, 2018, Plaintiffs EIP and CCAN jointly submitted a FOIA request to Defendant EPA, via the federal government's FOIAonline website, seeking records of travel expenditures for all travel outside of Washington, DC by former Administrator Pruitt, as well as any and all EPA staff accompanying the Administrator, from August 18, 2017, to March 2, 2018 ("Travel Vouchers Request"). *See* March 2, 2017 FOIA Request and Confirmation, Ex. D.

27. The Travel Vouchers Request noted that EPA had previously provided similar records of travel expenditures for Administrator Pruitt and accompanying staff from June 5 through June 12, 2017, in response to a prior FOIA request submitted by Plaintiff EIP. *See* Ex. D.

28. The request attached those previously released records, and stated that requesters would accept disclosure of travel expenditures in a similar format as those earlier records. *See* Ex. D. The request also included an offer to clarify or limit the request further, if necessary. *Id.*

29. EPA confirmed that it received the request on March 2, 2018, and assigned the request tracking number EPA-HQ-2018-005041. *Id.*

30. On March 23, 2018, EIP attorney Sylvia Lam received an email from EPA attorney advisor Jonathan Newton which provided a link to 612 pages of records previously disclosed to the Washington Post in response to its May 26, 2017 FOIA request, as well as links to several databases and search engines not relevant to Plaintiffs' request. Email from Jonathan Newton, Attorney Advisor, EPA to Sylvia Lam, Attorney, EIP (March 23, 2018), Ex. E.

31. Only 68 of the 612 pages provided were responsive to Plaintiffs' request. *See* April 10 & 18, 2018 Emails from Sylvia Lam to EPA employees Newton, Creech, and No, Ex. F.

32. On April 10, 2018, Ms. Lam emailed Mr. Newton informing him of the above, and confirming that Plaintiffs had still not received either (1) records of travel expenditures for Administrator Pruitt from February 15 to March 2, 2018, or (2) records of travel expenditures for staff accompanying the Administrator from August 18, 2017 to March 2, 2018. Ms. Lam requested an estimated date by which EPA would provide the remainder of the responsive records, and once again offered to clarify the request if necessary. *Id.* EPA did not respond to this email.

33. EIP attorneys followed up on Ms. Lam's April 10 email on April 18, April 25, and May 3, through both email and direct phone conversation with EPA attorney Christopher Creech. *Id.*; *see also* April 25 & May 3 Emails from Sanghyun Lee to Christopher Creech, Ex. G. On all three occasions, Mr. Creech informed EIP attorneys that EPA was in the process of reviewing the requested records to determine whether they were responsive to a Congressional request for similar

information, and that EPA expected that the records would be provided to Plaintiffs shortly after the production to Congress, but was not able to provide any time estimate for production. *Id.*

34. On June 1, 2018, Ms. Lam received an email from EPA, which stated that based on an average processing time for FOIA requests processed by EPA's AO of 388 working days, the new estimated completion date for Plaintiffs' FOIA request was August 28, 2019. Email from Newton to Lam & Reply from Lee to Newton, Ex. H.

35. This email made no reference to EIP's repeated efforts to communicate with EPA regarding the outstanding records, or EPA's numerous statements that EPA expected to release the remainder of the records shortly after determining whether they would be produced in response to a Congressional request. *Id.* Instead, the email again directed EIP to a number of search engines and databases on EPA's website with no relation to the subject of Plaintiffs' request. *Id.*

36. On June 5, 2018, EIP responded by email to dispute EPA's classification of this request as "complex," given that the request's scope was narrow, clearly defined, and for records routinely gathered and compiled in agency databases in the same format as records recently located and disclosed by EPA. *Id.* EPA did not respond to this email.

37. As of the time of this filing, Plaintiffs have not received (1) records of travel expenditures for Mr. Pruitt from February 15 to March 2, 2018; (2) records of travel expenditures for staff accompanying Mr. Pruitt from August 18, 2017 to March 2, 2018; or (3) any determination from EPA as to whether and when it will respond to the remainder of Plaintiffs' request and its justifications therefor, or any other communications regarding their request.

38. As of the time of this filing, EPA has also not addressed Plaintiffs' dispute over the classification of their request as "complex" or clarified its repeated contradictory statements on its

expected disclosure schedule, effectively requiring Plaintiffs to expend resources to prosecute this action in order to obtain disclosure of these responsive, non-exempt records in a timely fashion.

March 27, 2018 FOIA Request (The "McCarthy Request")

39. On March 27, 2018, Plaintiff EIP submitted a FOIA request to EPA, via the federal government's FOIAonline website, seeking (1) all communications from January 1, 2018 to March 27, 2018 between EPA employees and any third party regarding travel expenditures by former EPA Administrators Lisa Jackson and/or Gina McCarthy, and (2) travel vouchers identifying the cost of airfare, lodging, and any other travel-related expenses for former EPA Administrator Gina McCarthy and any staff serving on her personal security detail (PSD) during her tenure as Administrator (July 18, 2013 through January 20, 2017) ("McCarthy Request"). *See* McCarthy Request and Confirmation, Ex. I.

40. EPA confirmed that it received the request on March 27, 2018, and assigned the request tracking number EPA-HQ-2018-005878. *Id.*

41. EPA did not respond to the request or seek an extension within the statutorily prescribed 20-day deadline, which was April 24, 2018. *See* 5 U.S.C. § 552(a)(6).

42. On April 25, 2018, EIP senior attorney Adam Kron emailed EPA requesting an update as to whether and when EPA would respond, and offering to clarify the scope of the request if necessary. *See* April 25, 2018 Email exchange between Kron, Farren, and Reeder, Ex. J. EPA responded to Mr. Kron that "the Agency is focused on work on the backlog and/or the request is still in review. At this time, we cannot provide a date as to when the documents will be provided." *Id.*

43. On May 3, 2018, Mr. Kron received an email from EPA FOIA official Chandra Kennedy entitled "Final Disposition," which stated that EIP's request "has been processed with the following final disposition: Partial grant/partial denial." *See* May 3-30, 2018 Email Exchange between Adam Kron, Chandra Kennedy, and Melissa Reeder, Ex. K.

44. Ms. Kennedy's email did not state which records EPA had determined to release, which records (if any) EPA was withholding or its justifications therefor, or which portion of EIP's request EPA had been denied or EPA's justification therefor, and did not inform EIP of its right to appeal the partial denial, as FOIA requires. *Id.*; 5 U.S.C. § 552(a)(6)(A)(i).

45. On May 4, 2018, through FOIAonline, EPA produced 241 pages of documents related to Administrator McCarthy's travel vouchers for the period of October 2014 to January 20, 2017. *Id.* At this time, EPA marked EIP's request as "closed." *Id.*

46. On May 16, 2018, Melissa Reeder from EPA's Office of the Chief Financial Officer (OCFO) provided Mr. Kron with additional responsive records of Administrator McCarthy's travel prior to October 2014, which Mr. Kron requested because they had not been included in EPA's May 4 release. *Id.*

47. Neither the May 4 nor May 16 releases included (1) any records of communications between EPA employees and third parties regarding travel expenditures by former EPA Administrators Lisa Jackson and/or Gina McCarthy, (2) any records of travel expenditures for Administrator McCarthy's PSD staff; or (3) any explanation or justification as to why the request was closed with no reference to the outstanding records requested. *Id.*; *see also* Ex. I.

48. On five occasions between May 4 and May 30, Mr. Kron emailed Ms. Kennedy and Ms. Reeder requesting an explanation as to why EIP's request had been marked as "closed"

with no reference to the outstanding records of EPA's communications with third parties or records of travel expenses for Administrator McCarthy's PSD staff. Ex. K.

49. On each of the five dates, Mr. Kron specifically requested that EPA clarify what portion of EIP's request was being denied and EPA's justification therefor, and whether the missing records were being withheld, and if so, EPA's justifications therefor. *Id.* EPA did not respond to or acknowledge any of these requests for clarification. *Id.*

50. As of the date of this filing, Plaintiff EIP has not received (1) any records of communications from January 1, 2018 to March 27, 2018 between EPA employees and third parties regarding travel expenditures by former Administrators Jackson and/or McCarthy; (2) any records of travel expenses for members of Administrator McCarthy's PSD staff; or (3) any response clarifying whether these records are being withheld, justifying EPA's partial denial, or explaining why EPA has closed the request without acknowledging these outstanding records.

51. EPA's repeated failure to provide either the responsive documents requested, or any explanation for the partial denial and closure of EIP's request in spite of the outstanding records, has effectively required Plaintiffs to expend resources to prosecute this action in order to obtain disclosure of these responsive, non-exempt records in a timely fashion.

April 13, 2018 FOIA Request (The "Attachments Request")

52. On March 30, 2018, EIP received records of Administrator Pruitt's calendar in response to an August 14 FOIA request submitted to EPA for all records of Administrator Pruitt's schedule of meetings with outside parties from May 19, 2017 to August 14, 2017. Thirty of these calendar entries indicated that they had included attachments that may have either been produced

or otherwise provided by outside parties, but which were not included in this disclosure. *See* April 13, 2018 Attachments Request and Confirmation, Ex. L.

53. On April 13, 2018, Plaintiff submitted an additional FOIA request to EPA via the federal government's FOIAonline website, seeking: (1) any attachments that may have been provided by EPA to outside parties, including those records produced internally by EPA staff but then subsequently shared with outside parties, prior to meetings or events with Administrator Pruitt, from May 19, 2017, to August 21, 2017; and (2) any attachments that may have been produced or otherwise provided by outside parties to EPA prior to meetings with Administrator Pruitt, from May19, 2017, to August 21, 2017 ("Attachments Request"). 5 U.S.C. § 552; Ex. L.

54. The Attachments Request attached all of the relevant excerpts of the calendar records in question. Ex. L. The request also included a table individually listing all 30 calendar entries included in the scope of the request, including date, time, subject, and page number on the excerpt, as well as the file names of all of the attachments sought associated with those calendar entries. *Id.* at 2-5. The request offered to clarify and limit the request further, if necessary. *Id.* at 6.

55. EPA confirmed that it received the request on April 13, 2018, and assigned the request tracking number EPA-HQ-2018-006648. Ex. L at 8.

56. On May 24, 2018, EIP Attorney Sanghyun Lee sent an email to EPA HQ's FOIA office requesting an update as to whether and when EPA would respond to Plaintiff's request, and offering to clarify the scope of the request if necessary. Email from Sanghyun Lee to EPA HQ, Ex. M. Mr. Lee did not receive a response to this email.

57. On June 1, 2018, EPA informed EIP by email that based on an average processing time of 388 working days for "complex FOIA requests processed by AO… the new estimated

completion date for this FOIA is October 9, 2019." *Id.* June 1, 2018 Email from Nicole Rementer to Lee & June 5, 2018 Reply from Lee to Rementer and Newton, Ex. N.

58. This email was identical to the one received by Ms. Lam, also on June 1, 2018, Ex. H, as well as nearly identical to the one previously received by Ms. Lam on March 23, Ex. E, in reference to the Travel Vouchers request. This email directed EIP to the same search engines and databases on EPA's website bearing no relation to the subject of Plaintiff's request. Ex. N.

59. On June 5, 2018, Mr. Lee responded by email to dispute EPA's classification of EIP's narrowly defined request as "complex." In particular, Mr. Lee noted that EIP's request had not only precisely identified the records requested using their exact file names, but had in fact done the majority of EPA's work for EPA by including a table listing the calendar entries/emails to which the records had been attached, and where they could almost certainly be located, including all relevant details such as date, time, subject matter, and page number on the excerpts. *Id.*

60. EPA did not respond to the June 5, 2018 email.

61. As of the time of this filing, Plaintiff has not received any responsive records from EPA, any determination as to whether and when EPA will comply with EIP's FOIA request and produce the responsive records, or any response addressing EIP's dispute over the classification of its simple request as "complex," effectively requiring EIP to expend resources to prosecute this action in order to obtain disclosure of these responsive, non-exempt records in a timely fashion.

EPA Has Implemented an Impermissible FOIA Policy or Practice

62. Internal documents demonstrate that EPA has recently implemented a new political "awareness review" policy or practice for FOIA requests processed by EPA AO. *See* Ex. B.

63. These records state that this "awareness review" occurs after FOIA staff have processed records and reviewed them for redactions under FOIA's nine enumerated exemptions, and requires FOIA staff to allow senior political appointees an opportunity to review and approve all FOIA responses processed by the EPA AO prior to the release of any records. *Id.*

64. Though internal emails show this policy was informally in place as early as June 6, 2017, *see* June 6, 2017 Email from Jonathan Newton to EPA FOIA Coordinators, Ex. O, the policy was formally implemented as a part of EPA's new "AO Centralization" project by EPA Chief of Staff Ryan Jackson in an email and memo distributed to EPA staff on July 24, 2017. Ex. B.

65. While agency FOIA policies intended to make senior officials aware of impending productions are not necessarily new or improper *per se*, the "awareness review" policy implemented by EPA substantially diverges from acceptable FOIA practices by explicitly forbidding career staff from disclosing responsive records until a political staff member has reviewed and approved of the disclosure.

66. The FOIA Expert Assistance Team (FEAT) was originally created in 2013 to "provide[] legal counsel on all issues pertaining to selected FOIA requests that have been determined to be [the] most complex and/or potentially sensitive requests received across the Agency." *See* Ex. C, at 1. Some notable major FEAT FOIAs include "requests related to the spill of polluted water from Gold King Mine, EPA's response to Volkswagen's use of defeat devices, and drinking water contamination in Flint, Michigan." *Id.* at 2.

67. Under the current Administration, the FEAT team has been directed to take additional steps in its political awareness review that results in the delay or withholding of records that are "politically charged."

68. The Jackson memo, for example clearly indicates that the political "awareness review" occurs after EPA's FEAT office and authorized senior officials have already reviewed the requests and determined that documents should be released. Ex. B. at 3-5.

69. This is confirmed by an August 3, 2017 email from FEAT Director Becky Dolph, which states that per Mr. Jackson's orders, EPA staff were instructed that "no AO requests are to be issued without the opportunity for an awareness review." *See* Email from Becky Dolph to Ryan Jackson (August 3, 2017), Ex. P.

70. Ms. Dolph's email was sent after a chain of emails from Elizabeth Bowman, former Associate Administrator for Public Affairs, and Mr. Jackson reprimanded career EPA FOIA staff for fulfilling a request from Kevin Bogardus of E&E news without their approval. *Id.* at 3.

71. Within a week of this exchange, Acting Director of the Office of the Executive Secretariat (OEX) Brian T. Hope sent an email to EPA attorneys reemphasizing that Mr. Jackson had ordered "all AO FOIA releases reviewed by the FEAT team prior to distribution for awareness by the political team." *See* Email from Brian Hope to EPA Attorneys (August 8, 2017), Ex. Q. This email also noted that upon "conclusion of [FEAT's] review, they will forward the proposed release for the political team's awareness review." *Id.*

72. According to Mr. Jackson's July 24 email, the AO Centralization Project was implemented to "enhance the Agency's ability to provide effective and efficient FOIA production." Ex. B at 2.

73. However, the evidence suggests that the "awareness review" serves no legitimate purpose except to unlawfully delay, or in some cases prevent entirely, Plaintiffs' access to non-exempt public records in violation of FOIA's purpose of government transparency and statutory requirements.

74. A June 11, 2018 letter from Representative Elijah E. Cummings, Ranking Member of the House Committee on Oversight and Government, for example, notes that empirical evidence from EPA's annual FOIA reports and independent sources indicate that the rate, quality, and efficiency of EPA AO's FOIA responses have in fact "slowed dramatically" since this policy was introduced. Ex. A at 5.

75. EPA's FOIA reports, for example, show that EPA granted full requests at a lower rate, denied full requests at a higher rate, and rejected requests for not being "reasonably described" at four times the rate in Fiscal Year 2017 as compared to Fiscal Year 2016.[1] Ex. A at 5.

76. A February 25, 2018 review of EPA's FOIA compliance in Fiscal Year 2017, conducted by the nonpartisan watchdog organization Project on Government Oversight, found that requests to EPA's AO accounted for 89% of these denials, at least some of which appeared to have little justification in law, and that the closure rate for FOIA requests processed by AO specifically from January 20, 2017 to December 29, 2017 was over 60% below the closure rate for **all** EPA FOIA requests during that same period. [2] Ex. A at 5.

77. On July 13, 2018, Ranking Member Cummings submitted a letter to House Oversight Committee Chairman Trey Gowdy requesting a subpoena of EPA for records relating to its policy or practice of political "awareness review." *See* Subpoena Request from Ranking

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[1] Environmental Protection Agency, EPA FOIA Annual Report for Fiscal Year 2017 (Mar. 2018) (online at www.epa.gov/sites/production/files/2018-03/documents/2017_foia_annual_report.pdf); Environmental Protection Agency, EPA FOIA Annual Report for Fiscal Year 2016 (Mar. 2017) (online at www.epa.gov/sites/production/files/2017-01/documents/2016_foia_annual_report.pdf).
[2] Project on Government Oversight, EPA Drags Its Feet with Records Requests Aimed at Scott Pruitt's Office (Feb. 25, 2017). Available at: http://www.pogo.org/blog/2018/02/epa-drags-its-feet-with-foia-records-requests-aimed-at-scott-pruitts-office.html

Member Cummings to Committee Chairman Gowdy (July 13, 2018), Ex. R. This request included excerpts from Mr. Jackson's transcribed interview with the Oversight Committee.

78. In his interview, Mr. Jackson stated that the additional levels of review described above were applied to "FOIA requests… for documents that deal with individuals that work in the office of the Administrator[.]" *Id.* at 2.

79. Mr. Jackson admitted that these additional levels of review also applied to requests flagged as "complex" or "politically charged" by political staff in EPA AO's public affairs office, including himself and Elizabeth B. White, Director of the Executive Secretariat. *Id.*

80. When pressed to specify what characteristics would categorize a request as "politically charged," Mr. Jackson was unable to articulate any intelligible standard. *Id.* at 2-3.

81. Mr. Jackson stated that the determination turned on whether he and other political staff at EPA public affair personally believed there was a good "reason" for the request, or if they believed it was "pretty much a fishing expedition." *Id.*

82. Mr. Jackson stated that "FOIA is not meant to allow open ended requests," and that an agency is not required to respond to a FOIA request that has "no real… reason," is "just a fishing expedition," or is "simply submitted… to see what [the agency] will produce." *Id.* at 3.

83. Mr. Jackson specifically cited the Sierra Club's request for external communications as an example of a "politically charged" request that, in his opinion, had "no real FOIA… reason" and was arguably "[not] even a proper request," despite also admitting that "[t]here is a huge legitimate public interest" in such communications. *Id.*

84. Mr. Jackson, however, personally expedited a similar request for external communications, submitted the same month by Michael Formica, Assistant Vice President of the National Pork Producers Council. *Id.* at 6.

85. Mr. Jackson instructed Deputy Chief of Staff Byron Brown "to be responsive to [Mr. Formica's] FOIA request." *See* June 30-July 11, 2017 Email Exchange between Jackson, Formica, and Brown, Ex. S.

86. Afterwards, EPA assigned eight employees to meet with Mr. Formica in-person to help facilitate his request. *Id.*

87. Mr. Jackson could not provide the Oversight Committee with any rational explanation for why he had decided to expedite Mr. Formica's request specifically. Ex. R at 6-8.

88. Former EPA Deputy Chief of Staff Kevin Chmielewski has alleged that the political awareness review, among other policies or practices, was implemented for the express purpose of "intentionally delaying the release of documents under FOIA[.]" Ex. A at 1.

89. Mr. Chmielewski has also alleged that, under the direction of Mr. Pruitt, he and Pruitt's political aides "met routinely in Pruitt's office to 'scrub,' alter or remove from Pruitt's official calendar numerous records because they might 'look bad.'"[3]

90. A CNN review comparing Pruitt's public calendar with internal EPA schedules and emails found that over two dozen potentially controversial meetings, events, or calls had been completely omitted or altered on the calendar provided to the public. *Id.*

91. This strongly corroborated Mr. Chmielewski's account. *Id.*

92. It is unclear whether these alleged alterations were made as a part of the "awareness review," or whether FOIA requests for Mr. Pruitt's calendar were classified as "politically charged" requests.

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[3] Scott Bronstein, Curt Devine, and Drew Griffin. "Whistleblower: EPA's Pruitt kept secret calendar to hide meetings." CNN. July 3, 2018.
https://www.cnn.com/2018/07/02/politics/scott-pruitt-whistleblower-secret-calendar/index.html

FIRST CLAIM FOR RELIEF
(Failure to Respond to Plaintiffs' FOIA Requests within Statutory Time Limits)

93. Plaintiffs re-allege and incorporate by reference all preceding paragraphs.

94. Defendant's failure to timely respond to Plaintiffs' FOIA requests is a violation of the FOIA requirement that an agency "shall determine within 20 [working] days . . . after the receipt of any [FOIA] request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor . . . ." 5 U.S.C. § 552(a)(6)(A)(i). FOIA then requires that "each agency, upon any request for records…make the records promptly available…" 5 U.S.C. § 552(a)(3)(A).

SECOND CLAIM FOR RELIEF
(Agency Records Improperly Withheld)

95. Plaintiffs re-allege and incorporate by reference all preceding paragraphs.

96. Defendant has improperly withheld responsive records requested by Plaintiffs which are possessed by EPA, readily accessible by the Agency, and not otherwise exempt under FOIA._In the case of the McCarthy Request, Defendant has not even offered any justification for its withholdings in spite of repeated requests for a disposition letter.

97. Plaintiffs have exhausted their administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i).

98. Defendant's disregard of its duty to release the documents requested has harmed and will continue to harm Plaintiff until EPA is compelled to comply with FOIA.

THIRD CLAIM FOR RELIEF
VIOLATIONS OF THE FREEDOM OF INFORMATION ACT
(EPA's Discretionary Political "Awareness Review" Unreasonably Delays FOIA Requests and is an Impermissible Policy or Practice that Violates FOIA)

99. Plaintiffs re-allege and incorporates by reference all preceding paragraphs.

100. EPA has adopted and is engaged in a practice and/or policy of intentionally delaying the disclosure of non-exempt documents under its newly implemented political "awareness review" process, which bars EPA staff from disclosing responsive records until a political staff member has reviewed and approved of the disclosure.

101. This policy was formally implemented by EPA Chief of Staff Ryan Jackson in an email and memo distributed to EPA staff on July 24, 2017, describing the specifics of the program. *See* Ex. B.

102. Mr. Jackson's memo, as well as other internal emails, clearly indicate that this "awareness review" by political staff occurs *after* career FOIA officials, the FEAT Team, and authorized senior officials of EPA offices have all already reviewed requests and determined documents should be released. Ex. B; Ex. O; Ex. P; Ex. Q.

103. While the Jackson memo states that the purpose of this political awareness review is to centralize FOIA processing in AO to increase efficiency, data from independent sources as well as EPA's own reporting indicates that the rate, quality, and efficiency of EPA AO's FOIA responses has in fact decreased on almost every measurable metric since this policy was introduced. Ex. A at 5.

104. EPA's political "awareness review" policy serves no legitimate purpose except to unlawfully delay Plaintiffs' access to non-exempt public records in violation of FOIA's purpose

of government transparency and statutory requirements. This impermissible policy has impaired, and will continue to impair Plaintiffs' lawful access to non-exempt information in the future.

105. EPA's repeated failures to abide by the terms of FOIA are not attributable to an unpredictable increase in FOIA requests, or any other causes of delay.

106. EPA's impermissible policy or practice of warrants declaratory and injunctive relief under *Payne Enterprises*, 837 F.2d at 494; *see also Muttitt v. U.S. Cent. Command*, 813 F. Supp. 2d 221, 229-31 (D.D.C. 2011).

107. EPA is likely to continue its impermissible policy or practice of using political review as a tactic to unreasonably delay the disclosure of non-exempt records, in violation of FOIA's mandate, absent the intervention of this Court.

108. FOIA imposes no limits on courts' equitable powers in enforcing its terms, and this Court should exercise its equitable powers to compel EPA to comply with the clear requirements.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

109. Declare Defendant's failure to timely respond to Plaintiffs' FOIA requests and improper withholding of records to be unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)-(B);

110. Order Defendant to immediately identify any records responsive to Plaintiffs' requests, and to provide such records promptly to Plaintiffs;

111. Order Defendant to respond to Plaintiffs' FOIA requests, and to provide Plaintiffs with all other responsive records identified in Plaintiffs' FOIA requests as soon as reasonably possible. In the alternative, if the Agency determines that all or some of the remaining records are

exempt from disclosure, order Defendant to make an appropriate determination and filing that provides the legal and factual basis justifying such exemptions as soon as reasonably possible;

112. Declare that Defendant's policy or practice of using political "awareness review" for the impermissible purpose of delaying disclosure of non-exempt, "politically charged" records is a clear violation of FOIA;

113. Enjoin Defendant from its continued use of this unlawful policy or practice;

114. Assign an independent observer to monitor EPA's FOIA compliance to ensure that EPA is implementing the ordered remedies in good faith;

115. Retain jurisdiction to ensure compliance with this Court's decree;

116. Award Plaintiff its costs of this action, including reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E); and

117. Grant such other relief as this Court may deem just and proper.

Respectfully submitted this 21st day of August, 2018,

/s/ Sylvia Lam
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Counsel for Plaintiffs

CIVIL COVER SHEET

JS-44 (Rev. 6/17 DC)

I. (a) PLAINTIFFS

Environmental Integrity Project; and
Chesapeake Climate Action Network

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

United States Environmental Protection Agency

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Sylvia Lam, Environmental Integrity Project
1000 Vermont Avenue, NW Suite 1100
Washington, DC 20005
(202) 888-2701

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION
(PLACE AN x IN ONE BOX ONLY)

- ○ 1 U.S. Government Plaintiff
- ○ 3 Federal Question (U.S. Government Not a Party)
- ◉ 2 U.S. Government Defendant
- ○ 4 Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) **FOR DIVERSITY CASES ONLY!**

	PTF	DFT		PTF	DFT
Citizen of this State	○ 1	○ 1	Incorporated or Principal Place of Business in This State	○ 4	○ 4
Citizen of Another State	○ 2	○ 2	Incorporated and Principal Place of Business in Another State	○ 5	○ 5
Citizen or Subject of a Foreign Country	○ 3	○ 3	Foreign Nation	○ 6	○ 6

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

○ **A. *Antitrust***

- ☐ 410 Antitrust

○ **B. *Personal Injury/ Malpractice***

- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Medical Malpractice
- ☐ 365 Product Liability
- ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Product Liability

○ **C. *Administrative Agency Review***

- ☐ 151 Medicare Act

Social Security
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

Other Statutes
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 890 Other Statutory Actions (If Administrative Agency is Involved)

○ **D. *Temporary Restraining Order/Preliminary Injunction***

Any nature of suit from any category may be selected for this category of case assignment.

(If Antitrust, then A governs)

○ **E. *General Civil (Other)*** **OR** ○ **F. *Pro Se General Civil***

Real Property
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent, Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

Personal Property
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

Bankruptcy
- ☐ 422 Appeal 27 USC 158
- ☐ 423 Withdrawal 28 USC 157

Prisoner Petitions
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Conditions
- ☐ 560 Civil Detainee – Conditions of Confinement

Property Rights
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent – Abbreviated New Drug Application
- ☐ 840 Trademark

Federal Tax Suits
- ☐ 870 Taxes (US plaintiff or defendant)
- ☐ 871 IRS-Third Party 26 USC 7609

Forfeiture/Penalty
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

Other Statutes
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 430 Banks & Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions
- ☐ 470 Racketeer Influenced & Corrupt Organization
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Satellite TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

G. *Habeas Corpus/ 2255*	H. *Employment Discrimination*	I. *FOIA/Privacy Act*	J. *Student Loan*
☐ 530 Habeas Corpus – General ☐ 510 Motion/Vacate Sentence ☐ 463 Habeas Corpus – Alien Detainee	☐ 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	☒ 895 Freedom of Information Act ☐ 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	☐ 152 Recovery of Defaulted Student Loan (excluding veterans)
K. *Labor/ERISA (non-employment)*	**L. *Other Civil Rights (non-employment)***	**M. *Contract***	**N. *Three-Judge Court***
☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 740 Labor Railway Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	☐ 441 Voting (if not Voting Rights Act) ☐ 443 Housing/Accommodations ☐ 440 Other Civil Rights ☐ 445 Americans w/Disabilities – Employment ☐ 446 Americans w/Disabilities – Other ☐ 448 Education	☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholder's Suits ☐ 190 Other Contracts ☐ 195 Contract Product Liability ☐ 196 Franchise	☐ 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN

☒ 1 Original Proceeding ○ 2 Removed from State Court ○ 3 Remanded from Appellate Court ○ 4 Reinstated or Reopened ○ 5 Transferred from another district (specify) ○ 6 Multi-district Litigation ○ 7 Appeal to District Judge from Mag. Judge ○ 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

Citizen Suit under FOIA 5 U.S.C. § 552 to compel USEPA to respond to requests for records, deliver requested records, ar

VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23 **DEMAND $** **JURY DEMAND:** Check YES only if demanded in complaint **YES** ☐ **NO** $

VIII. RELATED CASE(S) IF ANY (See instruction) **YES** ☐ **NO** $ If yes, please complete related case form

DATE: 8/21/2018 **SIGNATURE OF ATTORNEY OF RECORD** /s/ Sylvia Lam

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.

III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.

IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.

VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.

VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

FOIA Summons
1/13

CLEAR FORM

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Environmental Integrity Project et al.
Plaintiff

v.

United States Environmental Protection Agency
Defendant

Civil Action No. 18-1952

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Sylvia Lam
Environmental Integrity Project
1000 Vermont Ave., NW
Suite 1100
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 18-1952

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

Print Save As... Reset

FOIA Summons
1/13

CLEAR FORM

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Environmental Integrity Project et al.
Plaintiff

v.

United States Environmental Protection Agency
Defendant

Civil Action No. 18-1952

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Jessie K. Liu
c/o Civil Process Clerk
United States Attorney's Office
555 4th Street, NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Sylvia Lam
Environmental Integrity Project
1000 Vermont Ave., NW
Suite 1100
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 18-1952

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

Print Save As... Reset

FOIA Summons
1/13

CLEAR FORM

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Environmental Integrity Project et al.
Plaintiff

v.

United States Environmental Protection Agency
Defendant

Civil Action No. 18-1952

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Jeff Sessions
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Sylvia Lam
Environmental Integrity Project
1000 Vermont Avenue, NW
Suite 1100
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 18-1952

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

Print Save As... Reset

EXHIBIT A

TREY GOWDY, SOUTH CAROLINA
CHAIRMAN

ONE HUNDRED FIFTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143
MAJORITY (202) 225–5074
MINORITY (202) 225–5051
http://oversight.house.gov

June 11, 2018

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Administrator Pruitt:

I am writing regarding very troubling reports that you may be avoiding producing records under the Freedom of Information Act (FOIA) relating to your tenure as Administrator of the Environmental Protection Agency (EPA). Given the vast number of allegations against you, the American people deserve more transparency regarding your actions—not less.

According to one of your former top Republican aides, you intentionally sought to delay producing records relating to your tenure by directing your front office staff to respond first to old requests from the Obama Administration. Other Republican political appointees on your senior staff confirmed your new "first in, first out" policy, which appears to contradict EPA regulations and Department of Justice guidance.

In addition, according to internal EPA documents, you have instituted a new process requiring senior political appointees to review FOIA responses before they are released—a practice our Committee has condemned on a bipartisan basis in the past. Your actions are particularly troubling in light of multiple reports that you have retaliated against EPA staff who disclose waste, fraud, and abuse.

Under your tenure, EPA's front office is now responding more slowly, withholding more information, and rejecting more requests, according to EPA's own data and independent sources. Combined with your refusal to produce documents requested by Congress, your actions in delaying records under FOIA raise concerns about a fundamental lack of transparency at EPA.

Withholding Records From Administrator's Office

On April 10, 2018, Kevin Chmielewski, your former Deputy Chief of Staff for Operations and a campaign aide to President Donald Trump, informed staff from my office and several other congressional offices that you appear to be intentionally delaying the release of documents under FOIA relating to your tenure at EPA.

Mr. Chmielewski stated that you directed your staff not to respond to FOIA requests regarding your tenure until requests from the Obama Administration had been completed. According to Mr. Chmielewski, during a meeting of your front office senior staff, you directed staff to justify this tactic using the talking point of "first in, first out."

On May 18, 2018, Millan Hupp, your former Director of Scheduling and Advance, confirmed Mr. Chmielewski's account that the Administrator directed this "first in, first out" policy during a senior staff meeting. During a transcribed interview with Republican and Democratic Committee staff, she had this exchange:

Q: Did the Administrator ever announce at a staff meeting that the Administrator's office should treat FOIA requests as first in, first out?
A: I have heard discussions about that, yes.
Q: With the Administrator?
A: He has made mention of it, yes.[1]

Ms. Hupp confirmed that you discussed responding to FOIA requests from the Obama Administration rather than requests for information about your own tenure:

Q: When he or someone else discussed first in, first out, did anyone indicate that first in, first out meant that the office should fulfill the old requests from the previous administration before you work to fulfill the current requests of this administration?
A: That was the nature of the discussions I was exposed to. I was not part of the decision-making.
Q: Can you describe that discussion?
Q: I don't recall ever having any lengthy in-depth discussions about this as this is not part of my job description, but anything that I heard on it was related to first in, first out.
Q: And who do you recall [having] those discussions with?
A: I mean, I recall the Administrator bringing it up.[2]

In a separate transcribed interview on May 22, 2018, your former Senior Advisor, Sarah Greenwalt, informed Committee staff that she disagreed with the first in, first out policy and recommended against it:

Q: What was, practically speaking, a better way to handle FOIAs?
A: Not first-in, first-out.
Q: I mean—
A: To evaluate them as they come in, recognizing that some FOIAs are larger than others and more time-consuming and more complicated than others.
Q: Was your suggestion to do those first or later?

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[1] House Committee on Oversight and Government Reform, Interview of Millan Hupp (May 18, 2018).

[2] *Id.*

> Q: My suggestion was to balance everything, the deadlines that we have with the responsibility to work with those requesters to try to get them the information in as timely a way as we can.[3]

The orders you apparently gave to delay producing documents relating to your tenure appear to directly contradict EPA's own FOIA regulations, as well as guidance issued by the Department of Justice. EPA regulations require the agency to use "multitrack processing" in which simple requests are processed more quickly than complex requests. EPA regulations provide that if the agency determines that a request would be placed in the slower track, the agency would provide the requester with the opportunity to narrow the scope of the request.[4] Guidance issued by the Department of Justice encourages agencies to use multi-track processing so that simple requests are processed more quickly and do not get stuck behind older, more complex requests.[5]

New Political Review Process Established to Filter FOIA Responses

According to internal EPA documents, the agency has established a new process in which political appointees review FOIA responses before they are released instead of allowing career employees to handle these matters.[6] According to one report, your political appointees were "chastising career employees who released documents in accordance with FOIA without letting them screen the records first."[7]

On June 6, 2017, Attorney-Advisor Jonathan Newton sent an email instructing FOIA coordinators at EPA to send pending FOIA releases for review by three Trump Administration political appointees. The email stated: "please send copies of pending FOIA releases to Ryan Jackson, Liz Bowman, and Amy Graham, 48 hours before the release."[8]

In July 2017, Mr. Jackson sent a memo to the heads of six EPA offices inside and outside the Office of the Administrator. The memo stated:

> By this memorandum, I am asking you to implement a pilot project centralizing all incoming Freedom of Information Act requests directed to the Immediate Office of the

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[3] House Committee on Oversight and Government Reform, Interview of Sarah Greenwalt (May 22, 2018).

[4] 40 C.F.R. § 2.104.

[5] Department of Justice, *OIP Guidance for Further Improvement* (2012) (online at www.justice.gov/oip/blog/foia-guidance-10).

[6] *EPA Clamps Down on Document Requests Linked to Pruitt*, Politico (May 6, 2018) (online at www.politico.com/story/2018/05/06/pruitt-epa-document-requests-570289). These documents were produced following litigation by the Natural Resources Defense Council, after EPA failed to provide them in response to a FOIA request.

[7] *Id.*

[8] Email from Jonathan Newton, Attorney Advisor, Office of the Executive Secretariat, to Staff, Environmental Protection Agency (June 6, 2017) (online at https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/Newton%20email.pdf).

> Office of the Administrator, the Office of Public Affairs (OPA), the Office of Policy (OP), and the Office of Congressional and Intergovernmental Relations (OCIR) consistent with the attached project description.[9]

Mr. Jackson attached to his memo a document entitled "AO FOIA Centralization Pilot Project Description." This document describes a process in which a "FOIA Expert Assistance Team (FEAT) Team" within the Office of General Counsel would review FOIA requests, develop a strategy for responding, and "ensure appropriate consultation with senior officials in the relevant offices through the lifecycle of a request," including "a pre-production awareness review opportunity for material to be released and ensuring the official authorizing a response is authorized to do so under the applicable agency guidance and delegations."[10]

On August 2, 2017, Becky Dolph, Director of the FEAT Team, sent an email to Mr. Jackson, writing, "As we are implementing the pilot, I have instructed my staff that no AO requests are to be issued without the opportunity for an awareness review by you, OPA and the senior leadership of any other affected offices."[11]

On August 8, 2017, Brian Hope, the Acting Director of the Office of the Executive Secretariat, sent an email to several attorneys in your office, writing:

> Ryan Jackson has just issued instructions to have all AO FOIA releases reviewed by the FEAT team prior to distribution for awareness review by the political team. Please send Becky Dolph all proposed releases that are currently in the awareness review process, as well as all future proposed releases. At the conclusion of her team's review, they will forward the proposed release for the political team's awareness review.[12]

Ms. Greenwalt told Committee staff in her interview that she reviewed responses to FOIA requests and identified potential additional redactions as part of EPA's awareness review as part of her duties as the Senior Advisor for Water and Cross-Cutting Issues.[13]

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[9] Email from Ryan Jackson, Chief of Staff, to Kevin Minoli, Acting General Counsel, Samantha Dravis, Associate Administrator for Policy, et al., Environmental Protection Agency (July 24, 2017) (online at https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/R.%20Jackson%20Email%20with%20Memo.pdf).

[10] Environmental Protection Agency, *AO FOIA Centralization Pilot Project Description* (July 21, 2017) (online at https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/AO%20Pilot%20Project%20Description.pdf).

[11] Email from Becky Dolph, Director, FOIA Expert Assistance Team Office, to Ryan Jackson, Chief of Staff, Environmental Protection Agency (Aug. 2, 2018) (online at https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/B.%20Dolph%20Email.pdf)

[12] Email from Brian Hope, Acting Director, Office of the Executive Secretariat, to Jonathan Newton, Frederick No, et al., Environmental Protection Agency (Aug. 8, 2017) (online at https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/B.%20Hope%20Email.pdf).

[13] House Committee on Oversight and Government Reform, Interview of Sarah Greenwalt (May 22, 2018).

Slowing of FOIA Responses

According to multiple sources of data over the past several years, FOIA responses from your office have slowed dramatically under your tenure as Adminstrator.

For example, the nonpartisan watchdog organization Project on Government Oversight has reported that only 16.6% of FOIA requests to your office, the Office of the Administrator, were closed from January 20, 2017, to December 29, 2017, compared to a closure rate of 78.76% for all EPA requests during that same period.[14]

In addition, according to EPA's FOIA report for Fiscal Year 2017, EPA granted full requests at a lower rate in 2017 than in the last year of the Obama Administration in 2016, and it also denied full requests at a higher rate than in the last year of the Obama Administration.[15]

According to this data, EPA also rejected requests for not being "reasonably described" in 2017 at four times the rate as in 2016. In 2016, EPA rejected 114 requests for not being reasonably described, which represented 1% of the requests processed that year. In 2017, EPA rejected nearly 5% of requests for this same reason, and most of those (89%) were requests for information from EPA headquarters.[16]

In one example, the open government organization American Oversight filed a FOIA request for all "emails between Scott Pruitt and Ryan Jackson (Chief of Staff), John Reeder (Deputy Chief of Staff), or Mike Flynn (Acting Deputy Administrator) from June 1, 2017, to June 15, 2017."[17] EPA responded that this request did not "reasonably define a set of records to search" and did not "provide details such as the subject matters, titles or key terms."[18]

It is difficult to understand why that EPA could not locate the records described by American Oversight. According to the FOIA Guide issued by the Department of Justice, courts have recognized "that a description of a requested record is sufficient if it enables a professional agency employee familiar with the subject area to locate the record with a 'reasonable amount of effort.'"[19]

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[14] Project on Government Oversight, *EPA Drags Its Feet with Records Requests Aimed at Scott Pruitt's Office* (Feb. 25, 2017) (online at www.pogo.org/blog/2018/02/epa-drags-its-feet-with-foia-records-requests-aimed-at-scott-pruitts-office.html).

[15] Environmental Protection Agency, *EPA FOIA Annual Report for Fiscal Year 2017* (Mar. 2018) (online at www.epa.gov/sites/production/files/2018-03/documents/2017_foia_annual_report.pdf); Environmental Protection Agency, *EPA FOIA Annual Report for Fiscal Year 2016* (Mar. 2017) (online at www.epa.gov/sites/production/files/2017-01/documents/2016_foia_annual_report.pdf).

[16] *Id.*

[17] American Oversight, *FOIA Request* (EPA-HQ-2017-008848) (June 23, 2017).

[18] *American Oversight v. U.S. Environmental Protection Agency*, Case No. 18-cv-364 (TJK) (Feb. 16, 2017) (online at www.americanoversight.org/document/complaint-american-oversight-v-epa-epa-pruitt-emails).

[19] Department of Justice, *Guide to the Freedom of Information Act* (July 24, 2013) (online at www.justice.gov/oip/doj-guide-freedom-information-act-0).

Conclusion and Request for Documents

Your actions injecting politics into the FOIA process mark a stark departure from previous practice. In 2015, the EPA Inspector General issued a report concluding that political appointees in the Obama Administration had very little involvement in the FOIA process. The report stated: "All interviewees said that political appointees are rarely involved in the FOIA response process and only participate when the appointees themselves have responsive records to provide."[20]

When allegations of political interference did arise during the previous Administration, both Democrats and Republicans made clear that civil servants should be allowed to do their jobs without interference. For example, during a hearing before our Committee in 2011, our current Chairman, Rep. Trey Gowdy, criticized an official from the Department of Homeland Security for having political appointees review FOIA responses. He asked the witness, "Would you concede that slow walking or taking your time in complying with an otherwise legitimate FOIA request could be interference?"[21]

Based on the information set forth above, I request that you produce, by June 25, 2018, the following documents covering the period between, January 20, 2017, to the present:

1. all documents and communications referring or relating to the order in which FOIA requests should be processed at EPA;

2. all documents and communications referring or relating to any process used by EPA to prioritize responses to FOIA requests;

3. all documents and communications referring or relating to FOIA requests that were rejected for being not reasonably described;

4. all documents and communications referring or relating to the process for determining whether a FOIA request is reasonably described;

5. all documents and communications referring or relating to the process for handling FOIA requests for information from the Office of the Administrator;

6. all responses provided to FOIA requests for information from the Office of the Administrator;

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[20] Office of the Inspector General, Environmental Protection Agency, *Response to Congressional Request Concerning Political Interference in Release of Documents Under the Freedom of Information Act* (Aug. 20, 2015) (online at www.epa.gov/sites/production/files/2015-09/documents/20150820-15-p-0261.pdf).

[21] House Committee on Oversight and Government Reform, *Hearing on Why Isn't the Department of Homeland Security Meeting the President's Standard on FOIA?*, 112th Cong. (Mar. 31, 2011) (online at www.gpo.gov/fdsys/pkg/CHRG-112hhrg67719/pdf/CHRG-112hhrg67719.pdf).

7. documents and communications referring or relating to reviews by Trump Administration political appointees to review FOIA requests or responses; and

8. documents and communications referring or relating to any review of FOIA requests or responses by White House employees.

Thank you for your prompt attention to this request.

Sincerely,

Elijah E. Cummings
Ranking Member

cc: The Honorable Trey Gowdy, Chairman

EXHIBIT B

From: Hope, Brian
To: Newton, Jonathan; No, Fredrick; Farren, Victor; Ferris, Lena
Subject: Fw: FOIA processing in the Office of the Administrator
Date: Monday, July 24, 2017 12:53:48 PM
Attachments: AO FOIA Centralization Pilot Project Description, 07.21.17, final.docx
AO FOIA Centralization Pilot Project, Cover Memo for Employee Communicat....docx
AO FOIA Centralization Project, Qs and As, 07.21.2017.docx
AO FOIA Centralization Pilot Project, Direction, 07.21.2017.docx
AO FOIA Centralization Pilot Project, Initial Implementation Plan.docx

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FYI

From: Jackson, Ryan
Sent: Monday, July 24, 2017 11:46 AM
To: Minoli, Kevin; Baptist, Erik; Fine, Steven; Dravis, Samantha; Lyons, Troy; Bowman, Liz; Hope, Brian
Cc: Darwin, Henry; Brown, Byron; Dolph, Becky
Subject: FOIA processing in the Office of the Administrator

Due to the large amount of FOIA requests we are receiving, I am concerned that we are getting flooded without a new process to address this new problem. Working with the OGC, I am issuing the memo detailing a new process within the Office of the Administrator for responding to FOIAs with attachments on Q&A, next steps for the specific offices involved, and a general description of the new process. The attachments also include a memo for you to send to your offices regarding the new process.

(b)(5) deliberative

I would like to especially thank Becky for her consistent work to inform us of new FOIAs and her work in organizing this project and taking on this added workload. She's a hero for this.

Thank you,

Ryan.

MEMORANDUM

FROM: Ryan Jackson, Chief of Staff

TO: Kevin Minoli, Acting General Counsel
Steve Fine, Acting Assistant Administrator, Office of Environmental Information
Samantha Dravis, Associate Administrator for Policy
Troy Lyons, Associate Administrator for OCIR
Liz Bowman, Acting Associate Administrator for Public Affairs
Brian Hope, Acting Director, Office of the Executive Secretariat

SUBJECT: Office of the Administrator FOIA Centralization Pilot Project

By this memorandum, I am asking you to implement a pilot project centralizing all incoming Freedom of Information Act requests directed to the Immediate Office of the Office of the Administrator, the Office of Public Affairs (OPA), the Office of Policy (OP) and the Office of Congressional and Intergovernmental Relations (OCIR) consistent with the attached project description.

This pilot project is anticipated to enhance the Agency's ability to provide effective and efficient FOIA production in response to the many FOIA requests directed to these four offices. Additionally, the pilot project will generate information on the benefits of increased centralization of FOIA processing responsibilities at the EPA and the resources necessary for such centralization. This information will be used in making near-term decisions regarding the potential increased centralization of FOIA at the Agency.

While I realize that the project will take time for full implementation, I ask that your offices begin those implementation efforts immediately. I have attached a cover memo and attachments for you to use to communicate this project with your staff and ask that you disseminate this information Monday.

Thank you for your willingness to assist in our efforts aimed at enhancing the overall efficacy of the Agency's FOIA program.

Attachments

cc: Henry Darwin
Byron Brown

Ryan Jackson
Chief of Staff
U.S. Environmental Protection Agency
(202) 564-6999

AO FOIA Centralization Pilot Project Description

All new incoming FOIA requests pertaining to OEX, OPA, OCIR, and OP will be assigned to OGC's FOIA Expert Assistance Team (FEAT). Three FTE will be added to OGC/the FEAT and will be dedicated to managing these requests as "FEAT FOIAs." As such, the FEAT will immediately review an incoming request; develop a strategy for processing that request; and then provide guidance, assistance, and direction to existing staff in OEX, OPA, OCIR, and OP, who will be responsible for reviewing records consistent with the guidance and direction provided and for certain logistics associated with production of records to the requester. The FEAT will ensure appropriate consultation with senior officials in the relevant offices through the lifecycle of a request, including providing a pre-production awareness review opportunity for material to be released and ensuring the official authorizing a response is authorized to do so under the applicable agency guidance and delegations.

For FOIA requests pending in each of the four offices at the initiation of the pilot, the FEAT Director and senior manager of the affected office will review the status of each of the requests, identify requests for which FEAT oversight would be helpful in responding to and processing the requests to conclusion and agree to a path forward for all pending requests.

This Pilot Project will generate information on the benefits of increased centralization of FOIA processing responsibilities at the EPA and the resources necessary for such centralization. That information will be used to inform a near-term decision regarding increased centralization of the EPA's existing de-centralized approach to processing FOIA requests.

To complement this project, OEI and OGC will hold FOIA management training meetings in each of EPA's program offices to ensure consistency with Agency procedures. OEI and OGC also will coordinate with the RAs to conduct new training with the Regions to ensure Agency-wide consistency.

<u>Current Status of FOIA Processing within the AO</u>:

- The AO Immediate Office, the Office of Public Affairs (OPA), the Office of Policy (OP) and the Office of Congressional and Intergovernmental Relations (OCIR) each receive a substantial number of FOIA requests weekly

- Each currently has many pending requests
  - Current estimates of pending requests:
    - OEX (handles AO Immediate Office FOIAs): 391
    - OPA: 107
    - OCIR: 97
    - OP: 45

- Since 1/1/2017, all four offices have seen a substantial increase in incoming FOIA requests
  - OEX alone has seen an 189% increase of incoming requests in the last 5 months

- Affected offices currently do not have sufficient staff to effectively and efficiently manage their caseloads

Centralized Management Pilot Project:

- All incoming FOIA requests for OEX, OPA, OCIR, and OP will be managed as "FEAT FOIAs" and be assigned directly to the OGC FOIA Expert Assistance Team (FEAT) Office

- FEAT staff (combination of attorneys and Government Information Specialists) will review every OEX, OPA, OCIR and OP incoming request to immediately determine whether the request is a proper request under FOIA and/or whether clarification or narrowing of the request was needed

- FEAT staff will then work with the program office staff in OEX, OPA, OP and OCIR to reach out to the requester, agree on scope of request and the search to be conducted, work with the program staff and OEI to collect responsive documents and then oversee the document review process, ensuring quality and consistency of document review
  - Existing staff in OEX, OPA, OCIR, and OP will be responsible for reviewing records consistent with the guidance and direction provided by the FEAT and for certain logistics associated with production of records to the requester
  - To ensure expeditious and efficient processing of requests, any disagreement between the FEAT Team Member and staff from OEX, OPA, OP and OCIR regarding any of the above aspects of the case will be elevated to the Director of the FEAT and the appropriate management official within the relevant office within 24 hours of the disagreement
    - Should the disagreement not be resolved at that level, it will be elevated to the Principal Deputy General Counsel (or, currently, the Acting General Counsel), who will consult and inform the Chief of Staff, as appropriate, and provide final resolution of the disagreement

- FEAT will coordinate with OEX, OPA, OP, and OCIR senior career management to ensure that they were aware of the documents being proposed for production and were prepared to sign off on those productions

- Prior to release of any documents to the public, FEAT will ensure that senior Agency leadership were given the opportunity for an awareness review of the documents to be released

- Following senior leadership awareness review, documents will be released to the requester and posted to FOIAonline

Benefits of FEAT Management of AO Requests:

- FEAT has established track record of effective oversight and management of the Agency's most complex and voluminous requests

- Management of the FOIAs would be the lead responsibility of FEAT Team Members, allowing AO program staff in affected offices to focus on document review and processing

- Application of the four hallmarks of the FEAT's success to all covered requests:
  1. Personal communication with requesters;
  2. Coordination of similar requests;
  3. Internal coordination with senior leadership prior to release of documents; and
  4. Proactive posting of materials when appropriate in lieu of producing through FOIA to reduce burden on Agency

Resources Necessary to Implement AO FOIA Centralization Pilot Project

- FEAT will receive three additional FTE and funding to support them in order to implement the Pilot Project as described
  - These three FTE will be an addition to OGC's existing FTE ceiling, and will be unencumbered by an existing employee when provided to OGC, however, OGC agrees to prioritize filling the positions with existing agency employees who encumber positions that count against the EPA's overall FTE number so as not to increase the number of employees currently on board at the agency
  - Staff currently engaged in FOIA in the affected offices are essential to the success of the pilot and will continue to devote the same amount of their time engaged in FOIA, focusing their work on FOIA processing with the oversight of the FEAT
  - Based on experience once the Pilot is underway, the FEAT Director may engage with the leadership of any of the four offices regarding a need for additional staff resources from their office

EXHIBIT C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

July 15, 2018

The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Ranking Member Cummings:

In a letter from you in your capacity as the Ranking Member of the Committee on Oversight and Government Reform (Committee) to the Honorable Trey Gowdy, Chairman of the Committee, you raised questions regarding the Environmental Protection Agency's (EPA's) process for responding to Freedom of Information Act (FOIA) requests. The letter highlighted the role of EPA's FOIA Expert Assistance Team (FEAT) in that process. I write to provide information as to the origin and role of the FEAT, and to offer to brief Committee staff on the same.

In 2013, EPA's FOIA program was routinely the subject of litigation, public criticism, and Congressional oversight (including oversight by this Committee). Then-Acting Administrator of EPA Robert Perciasepe turned to me and my counterpart in the Office of Environmental Information and gave us the following task: make the FOIA process at EPA better. In response, the FOIA Expert Assistance Team, affectionately known as the FEAT, was created. The purpose of the FEAT was to provide strategic direction and project management assistance on the most challenging or complex FOIA requests. Here is how the FEAT was described in its original Functional Statement:

> Under the supervision of the Senior Counsel, this unit provides legal counsel on all issues pertaining to selected FOIA requests that have been determined to be [the] most complex and/or potentially sensitive requests received across the Agency. Utilizing an extraordinary breadth of FOIA knowledge and experience, together with in-depth organizational and external awareness, the team provides advice and guidance to the highest echelons of management within the Agency.

Throughout its history, there have been three ways a FOIA request became a "FEAT FOIA": a request from the lead office, a request from the Office of the Administrator, and an independent decision by the FEAT Director. The FEAT would engage on approximately 3% of EPA's FOIA requests each year, with the level of engagement on each request adjusting to the specific needs presented by that request. Among the first FEAT "deployments" – where DC-based experts travel to locations across the agency to help lead a response to a FOIA request – was the Team's engagement with EPA's Region 10 in response to requests related to Bristol Bay, Alaska. Other major "FEAT FOIAs" include requests related to the spill of polluted water from Gold King Mine, EPA's response to Volkswagen's use of defeat devices, and drinking water contamination in Flint, Michigan.

In addition to work on specific FOIA requests, the FEAT also helped keep senior leaders informed of new requests that the agency received each week, coordinated inter-agency review with the Executive Office of the President (EOP) where the EOP had equities in the responsive documents, and made senior leaders aware of impending FOIA productions. There are multiple benefits to making senior leaders – political and career – aware of productions before they are actually produced: the Office of Congressional and Intergovernmental Affairs can determine if the documents are also responsive to a Congressional request for information and, if so, ensure Congress receives the documents at the same time or slightly before the requestor; the Office of Public Affairs can prepare any communications materials deemed necessary based on the documents to be produced; when the documents are from or about a particular employee, keeping that employee informed throughout the process when appropriate, including at the response stage, can significantly increase their confidence in and respect for the FOIA Program into the future; and, while not meant as a quality control tool, to the extent a mistake is identified, it can be corrected. This "awareness review" process does not itself violate FOIA and can be completed without causing undue delay.

In early 2017, the FEAT began to take on a new responsibility: providing programmatic training and support to an office that was struggling to meet its FOIA responsibilities. FEAT members were "embedded" with OGC's External Civil Rights Compliance Office and OGC's Ethics Office to help those offices gain experience and confidence in their FOIA abilities. Based in part on that experience, EPA Chief of Staff Ryan Jackson asked the FEAT to assist the Administrator's Office (AO) in improving its FOIA program. The AO had seen a 415% increase in the number of incoming FOIA requests compared to 2016 and the volume had overwhelmed the small staff that was designated to respond to such requests. The AO Centralization Pilot Project was designed to see if the FEAT could "deploy" to an office within EPA, assess the strengths and weaknesses of the office's current FOIA program, and build a consolidated cadre of employees who would be focused exclusively on FOIA and other information requests. The expectation was that by centralizing and prioritizing the responsibility for FOIA requests, the office would produce more timely responses with fewer errors that necessitated less resources.

After multiple lean events and prototype exercises, the FEAT and representatives from the AO Immediate Office (OEX), the Office of Public Affairs (OPA), the Office of Policy (OP) and the Office of Congressional and Intergovernmental Relations (OCIR) (collectively referred to as AO4) began to implement the AO FOIA Centralization Pilot Project on April 31, 2018. With the support of the Chief of Staff, the FEAT hired three new employees to support this effort, and AO4 offices recruited new information experts as well. Currently, the FEAT is coordinating the centralized FOIA efforts for the 1,453 FOIA requests pending with the AO4 offices (as of June 18, 2018).

Through the Pilot Project, the FEAT and the AO4 Offices have built a foundation for a dramatically improved FOIA program. The team painstakingly categorized 1,442 requests and assigned a project lead for each. There was no existing categorization scheme for the team to turn to, so as they reviewed the requests they developed a unique taxonomy for classifying all existing and incoming requests. They also began the practice of stamping each document processed as part of the pilot with a unique identifier so that every document can be tracked at all stages of the response process.

These behind the scenes efforts enabled two key advancements that generated tangible results for requestors. First, on June 6, 2018, every one of the 1,163 requestors with a request pending in the AO4 received an update on their specific request that included a tracking number, where the request currently stood in the que of pending requests, and an estimated response date. Many of those dates were months into the future, and so the letters offered the assistance of EPA's FOIA Public Liaison and the Office of Government Information Services, and committed to providing interim releases, if possible. That commitment is meaningful, because the second advancement is that release to one requestor now means release to all. The agency often receives multiple requests for the same information. Because the team has now identified every pending request as relating to one or more standardized subject areas, and because when the team reviews a document it also identifies that document as relating to one or more of the same standardized subject areas, the team can instantly identify all pending requests to which a document is responsive and send the production to each of those requestors as well. That innovation alone has incredible potential to reduce the time it takes the AO to respond to requests. While much more progress must be made, since implementation, the team has completed its response to 100 requests and provided interim responses to 341 additional requests.

EPA's FOIA program is far from perfect. The number of requests that are pending for more than the statutory or agreed upon time for responding has increased. As a result, EPA now faces over 70 lawsuits under FOIA – a 500% increase over the pre-2017 high. Ultimately, the head of an agency sets the tone and the commitment of EPA's senior leaders will be essential for the program to improve. The work of the FEAT and the AO4 Team, however, has laid a foundation from which EPA's FOIA program could be a model of what a FOIA program should be, not an example of what a FOIA program should not be. I invite you, other members of the Committee, and Committee staff to visit our offices to see first-

hand the effort that is being made and the work that has been done to put the agency on the cusp of that future. If you have further questions or would like to schedule a briefing, you may contact me at minoli.kevin@epa.gov or (202) 564-8064, or your staff may contact Neil Bigioni, Acting Director, National FOIA Office, at bigioni.neil@epa.gov or (202) 564-2281, or Kristien Knapp, Office of Congressional and Intergovernmental Relations at knapp.kristien@epa.gov or (202) 564-3277.

Sincerely,

Kevin S. Minoli
Principal Deputy General Counsel &
Designated Agency Ethics Official

cc: The Honorable Trey Gowdy
Chairman, Committee on Oversight and Government Reform

EXHIBIT D

1000 Vermont Avenue, NW
Suite 1100
Washington, DC 20005
Main: 202-296-8800
Fax: 202-296-8822
www.environmentalintegrity.org

March 2, 2018

Via FOIAonline submission.

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Re: Freedom of Information Act request for EPA records of Travel Expenditures for Administrator Pruitt and for any EPA Staff Accompanying the Administrator from August 18, 2017 through March 2, 2018

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, the Environmental Integrity Project and Chesapeake Climate Action Network (collectively referred to as "Requesters") hereby request the following records held by the U.S. Environmental Protection Agency (EPA):

Records Requested

- Records of travel expenditures for all travel outside of Washington, DC by Administrator Pruitt, from August 18, 2017 to March 2, 2018.
- Records of travel expenditures for all travel outside of Washington, DC by any and all EPA staff accompanying Administrator Pruitt, including, but not limited, to any EPA staff assigned to security detail for the Administrator, from August 18, 2017 to March 2, 2018.

Scope of Records

The term "travel" includes both commercial travel and non-commercial travel, including, but not limited to, travel by chartered aircraft and travel aboard U.S. Government aircraft.

Format of Records

EPA has provided records of travel expenditures for Administrator Pruitt and accompanying staff from June 5 through June 12, 2017 in response to a separate August 3, 2017 FOIA request submitted by EIP. *See* Attachment A. Requesters will accept disclosure of travel expenditures in a similar format as the earlier records provided by EPA.

Claims of Exemption from Disclosure

If you regard any documents as exempt from required disclosure under FOIA, please exercise your discretion to disclose them nevertheless, keeping in mind that FOIA "is the most prominent expression of a profound national commitment to ensuring an open Government" and that "[a]ll agencies should adopt a presumption in favor of disclosure." President Barack Obama, Memorandum For the Heads of Executive Departments and Agencies: Freedom of Information Act, 74 Fed. Reg. 4, 863 (Jan. 26, 2009).

In the alternative, after careful review for the purpose of determining whether any of the information is exempt from disclosure, please provide all reasonably non-exempt portions of records and communications as required by FOIA.

Should you elect to invoke an exemption, please provide the required full or partial denial letter and sufficient information to determine whether or not there may be grounds to appeal EPA's decision. In accordance with the minimum requirements and regulations of due process, this information should include:

- Basic factual material, including the originator, date, length, and addresses of the withheld items.
- Explanations and justifications for denial, including the identification of the exemption applicable to the withheld information or portions of the information found to be subject to exemption, and how each exemption applies to the withheld material.

Waiving Request for Fee Waiver

This FOIA request meets the case-by-case requirements for a fee waiver, by satisfying each of the six factors which must be met to qualify for a fee waiver under EPA regulations found at 40 C.F.R. § 2.107. However, although we are entitled to a fee waiver, we are waiving any request for a waiver of fees.

Opportunity to Provide Clarification

If I can provide any additional information or answer any questions that can help to clarify or limit this request, please do not hesitate to contact me at (202) 888-2701 or via email at slam@environmentalintegrity.org.

Thank you for your assistance with this FOIA request, and I look forward to hearing from you.

Sincerely,

Sylvia Lam
Attorney

Environmental Integrity Project
1000 Vermont Avenue NW
Suite 1100
Washington, DC 20005
(202) 888-2701

Anne Havemann
General Counsel
Chesapeake Climate Action Network

Enclosure:
Attachment A: EPA Records of Travel Expenditures for Administrator Pruitt and Staff from June 5 through June 12, 2017

From: Sylvia Lam
To: Sanghyun Lee
Subject: FW: FOIA Request EPA-HQ-2018-005041 Submitted
Date: Tuesday, August 21, 2018 9:40:38 AM

From: foia_hq@epa.gov <foia_hq@epa.gov>
Sent: Friday, March 2, 2018 1:08 PM
To: Sylvia Lam <slam@environmentalintegrity.org>
Subject: FOIA Request EPA-HQ-2018-005041 Submitted

This message is to confirm your request submission to the FOIAonline application: View Request. Request information is as follows:

- Tracking Number: EPA-HQ-2018-005041
- Requester Name: Sylvia Lam
- Date Submitted: 03/02/2018
- Request Status: Submitted
- Description: Please see attached FOIA request letter.

EXHIBIT E

From: newton.jonathan@epa.gov
To: Sylvia Lam
Subject: RE: FOIA REQUEST EPA-HQ-2018-005041
Date: Friday, March 23, 2018 3:26:51 PM

RE: FOIA REQUEST EPA-HQ-2018-005041

Dear Sylvia Lam,

Thank you very much for your interest in the Environmental Protection Agency. This correspondence references the above Freedom of Information Act (FOIA) request, which seeks information about the EPA Administrator's travel, schedule, or both. Many people or entities have requested information about these records. We appreciate your patience as we process these requests.

1. **Interim Response**

   Today we are releasing 612 pages of records to you. The release contains materials responsive to your FOIA request. This release may include additional records that you have not requested; however, the records may be of interest to you. We are releasing these records proactively to you at no cost. Please find the records here: https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d28134aaec.

   This release includes documents that have been partially withheld. The reasons for the withholdings are printed over the redactions. Should you wish to appeal any withholding determination, you will have the opportunity to do so. We will provide you with appeal rights at the time of the final production.

   Records Released on 03.23.2018:

1. EPA Admin Travel 02.21.2017-03.19.2017 (4-page PDF)
2. EPA Admin Travel 03.20.2017-06.01.2017 (29-page PDF)
3. EPA Admin and Staff Travel 06.02.2017-06.18.2018 (58-page PDF)

4. EPA Admin and Staff Travel 06.15.2017-08.29.2017 (33-page PDF)
5. EPA Admin Travel 08.30.2017-02.14.2018 (68-page PDF)
6. EPA Admin Calendar 02.12.2017-04.07.2017 (171-page PDF)
7. EPA Admin Calendar 02.12.2017-05.19.2017 (145-page PDF)
8. EPA Admin Calendar 05.19.2017-06.19.2017 (104-page PDF)

1. **Unusual Circumstances and Extension of Time**

To complete your request, EPA will need to search for and collect the requested records from multiple EPA offices that are separate from the Office of the Administrator (AO). As a result of these unusual circumstances, an extension of time to respond to your request is necessary under 40 C.F.R. § 2.104(d).

The AO has received an unprecedented amount of FOIA requests during fiscal year 2017. In fiscal year 2016, AO received only 203 FOIA requests, whereas in fiscal year 2017, AO received 1,043 FOIA requests. This is a 413% increase in FOIA requests from fiscal years 2016 to 2017. We are still processing these requests.

For your information, we use multiple tracks to process requests, but within those tracks we work in an agile manner. The time needed to complete our work on your request will necessarily depend on a variety of factors, including the complexity of our records search, the volume and complexity of any material located, and the order of receipt of your request.

In fiscal year 2017, the average processing time for complex FOIA requests processed by AO was 388 working days. Using this number as instructive to estimate the time to process your request, the new estimated completion date for this FOIA is 8/28/2019.

2. **Opportunity to Discuss and Modify**

EPA's FOIA regulations state:

Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter. If known, you should include any file designations or descriptions for the records that you want. The more specific you are about the records or type of records that you want, the more likely EPA will be able to identify and locate records responsive to your request.

40 C.F.R. § 2.102(c).

We would like to provide you the opportunity to discuss the request with us and clarify or narrow the request. As indicated in 40 C.F.R. § 2.102(c), if you would like to speak with us about your request, please include or be prepared to discuss any specific information about the records you seek, including time-period, authors, or a more detailed description of the records' subject matter.

1. **Publicly Available Information and Next Steps**

The following are sources of publicly available information that you can access immediately:

- Our website: https://www.epa.gov/home/advanced-search
- FOIAonline for records previously released through FOIA requests: https://foiaonline.regulations.gov/foia/action/public/search/
- Environmental Topics Information repositories: https://www.epa.gov/environmental-topics/z-index
- Technical/scientific/educational publications: https://www.epa.gov/nscep
- Staff Manuals and Guidance: https://www.epa.gov/foia/national-online-foia-library#admin
- Policy Statements: https://www.epa.gov/foia/national-online-foia-library#statement
- Superfund sites and data: https://www.epa.gov/foia/national-online-foia-library#superfund

If it is possible for us to do so, we will provide you with interim releases as they become available.

If you wish to clarify your request further so that EPA can process your request in a shorter amount of time, or if this release satisfies your request and you would like to close your request, the Office of the Administrator is happy to work with you.

Additionally, you may seek assistance from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; by email, ogis@nara.gov; by telephone, (202) 741-5770 or (877) 684-6448; or by fax: (202) 741-5769.

If you have any additional questions about your request, please contact Christopher Creech at creech.christopher@epa.gov or (202) 564-4286, or Fredrick No at no.fredrick@epa.gov or (202) 564-2793.

Please direct media related inquiries to press@epa.gov.

Thank you,

EPA Office of the Administrator

EXHIBIT F

From: Sylvia Lam
To: "No, Fredrick"; "Creech, Christopher"
Subject: RE: FOIA request EPA-HQ-2018-005041
Date: Wednesday, April 18, 2018 4:04:00 PM

Fredrick and Christopher,

I am following up to see whether you've had a chance to review my email below.

Thank you,

Sylvia Lam
Attorney
Environmental Integrity Project
1000 Vermont Avenue, NW, Suite 1100
Washington, DC 20005
(202) 888-2701

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From: Sylvia Lam [mailto:slam@environmentalintegrity.org]
Sent: Tuesday, April 10, 2018 2:21 PM
To: Newton, Jonathan <Newton.Jonathan@epa.gov>
Subject: FOIA request EPA-HQ-2018-005041

Dear Jonathan,

On March 2, I submitted the attached FOIA request to EPA through FOIAonline. This request asked for records of travel expenditures for all travel outside of Washington, DC by Administrator Pruitt and accompanying staff, from August 18, 2017 through March 2, 2018. EPA assigned to the request tracking number EPA-HQ-2018-005041. On March 23, I received an email from you (also attached) that provided a link to 612 pages of records disclosed to the Washington Post in response to its May 26, 2017 FOIA request. This message is to follow up on the March 23 email from you.

1. Only 68 of those pages were responsive to EIP and CCAN's March 2, 2018 FOIA request (the 68-page PDF containing travel vouchers for Administrator Pruitt from August 30, 2017 through February 14, 2018). There is a separate 33-page PDF labeled "EPA Admin and Staff Travel 06.15.2017-08.29.2017." However, this PDF does not contain any travel vouchers for staff nor any travel vouchers for the Administrator from August 18 (the start of the time period for our request) onward.

2. Given this, here is a list of the outstanding records for FOIA request EPA-HQ-2018-005041:
    a. Records of travel expenditures for Administrator Pruitt from February 15, 2018 through March 2, 2018; and
    b. Records of travel expenditures for staff accompanying Administrator Pruitt, including, but not limited to, staff assigned to security detail for the Administrator, from August 18, 2017 through March 2, 2018.

3. Please let me know whether and when EPA will respond to and provide the rest of the records responsive to FOIA request EPA-HQ-2018-005041.

If you need any clarification regarding the scope or subject matter of this FOIA request, please do not hesitate to contact me at (202) 888-2701 or via email at slam@environmentalintegrity.org.

Thank you,

Sylvia Lam
Attorney
Environmental Integrity Project
1000 Vermont Avenue, NW, Suite 1100
Washington, DC 20005
(202) 888-2701

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EXHIBIT G

From: Sanghyun Lee
To: "Creech.Christopher@epa.gov"
Cc: Sylvia Lam
Subject: RE: FOIA request EPA-HQ-2018-005041
Date: Wednesday, April 25, 2018 1:45:00 PM

Hello Christopher,

I hope this email finds you well. My name is Sunny Lee – I'm an attorney with the Environmental Integrity Project. I just wanted to follow up on Sylvia Lam's email to you on April 10, 2018, regarding the current status/timeline re: FOIA request EPA-HQ-2018-005041.

To briefly recap:

1. On March 2, Sylvia submitted a request for records of travel expenditures of all travel outside of Washington, D.C., by Administrator Pruitt and accompanying staff for dates August 18, 2017, to March 2, 2018.

2. On March 23, Jonathan Newton provided Sylvia (via email) a link to 612 pages of records previously disclosed to the Washington Post in response to its own May 26, 2017 FOIA request.

3. Only 68 of those pages were responsive to EIP and CCAN's FOIA request (specifically, the PDF containing travel vouchers for the Administrator from August 30, 2017, through February 14, 2018).

4. As of today, records still outstanding for FOIA request EPA-HQ-2018-005041 include:

    a. Records of travel expenditures for Administrator Pruitt from February 15, 2018, through March 2, 2018; and

    b. Records of travel expenditures for staff accompanying Administrator Pruitt, including (but not limited to) staff assigned to security detail for the Administrator, from August 18, 2017, through March 2, 2018.

5. On March 14, you left a message on Sylvia's voicemail indicating that the requested records may be in the process of being produced in response to the Congressional request, and that you expect that such records could be provided soon after the production of records to Congress. Sylvia called you back later that day and asked whether you could (1) confirm that these same records would indeed include all the records responsive to EIP and CCAN's request, and (2) provide the Agency's timeline for response.

I am following up on Sylvia's inquiries through this email. Please let me know your response to her questions above, and whether and when EPA will respond to and provide the remainder of the responsive records for FOIA request EPA-HQ-2018-005041.

Thank you in advance – I realize you all are quite busy, and I appreciate your assistance with this matter. If you need any clarification regarding the scope of this FOIA request, please feel free to contact me at (202) 263-4441, or via email at slee@environmentalintegrity.org.

All best,

Sanghyun Lee
Attorney
Environmental Integrity Project
1000 Vermont Avenue NW, Suite 1100
Washington, DC 20005
(202) 263-4441

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From: Sanghyun Lee
To: Creech.Christopher@epa.gov
Cc: Sylvia Lam
Subject: re: EPA-HQ-2018-005041 May 3 Call Recap
Date: Thursday, May 03, 2018 2:31:00 PM

Hi Christopher,

It was a pleasure speaking with you earlier. Just wanted send this email to quickly recap our phone conversation and current status of our FOIA request, and make sure that we're on the same page.

My understanding is that EPA is currently still in the process of determining whether any of the requested records will be produced in response to a Congressional request, and that EPA hopes the records will be provided shortly after the production to Congress but does not currently have a time estimate for when this might be.

If something's incorrect with my understanding, please let me know. Otherwise, please let me know of any progress/developments on our request – and as always, if you need any clarification regarding the scope of our request, please don't hesitate to contact me either via email or at the number below.

Thank you again, I appreciate your assistance in this matter.

All best,

Sanghyun Lee
Attorney
Environmental Integrity Project
1000 Vermont Avenue NW, Suite 1100
Washington, DC 20005
(202) 263-4441

CONFIDENTIAL LEGAL COMMUNICATION / WORK PRODUCT: The information transmitted is intended only for the person or entity to whom it is addressed, and may contain privileged and confidential attorney-client communications and/or confidential attorney work product. If you receive this message in error, please send a reply e-mail to the sender and delete the material from any and all computers and/or electronic devices. Unintended transmissions shall not constitute waiver of the attorney-client or any other privilege.

EXHIBIT H

From: Sanghyun Lee
To: Rementer.Nicole@epa.gov; newton.jonathan@epa.gov
Subject: RE: FOIA Request: EPA-HQ-2018-005041
Date: Tuesday, June 05, 2018 5:16:00 PM

Hello Ms. Rementer,

This message is in response to the June 1, 2018 email received by Sylvia Lam from EPA, seen below. This EPA email appears to be a boilerplate email sent to all FOIA requesters who have submitted requests to the Office of the Administrator, and estimates completion dates for all requests 388 working days from the date the request was submitted, regardless of content or scope.

I recognize that EPA's Office of the Administrator has had considerable difficulty in keeping up with its FOIA obligations. It is our understanding, however, that this backlog is largely a direct result of EPA's new policy, implemented shortly after Administrator Pruitt took office, to have political appointees at OA review all FOIA requests that appear related to the Administrator.

Although this boilerplate response does not appear to be tailored in any way to our request, aside from the completion date based solely on the date the request was submitted, EIP will continue its attempt to accommodate EPA as much as possible in its request.

I. CLARIFICATION

EPA's June 1 email states that "If you wish to clarify your request, so that once we reach the request in the queue, it might be processed in a shorter amount of time, please contact Nicole Rementer." Because the June 1 letter is boilerplate, we assume this statement does not apply to our request and that clarification is unnecessary at this time. Our request sought records of travel expenditures for all travel outside of Washington, DC by Administrator Pruitt and accompanying staff, from August 18, 2017 through March 2, 2018. Our previous correspondences with EPA attorney Christopher Creech have already confirmed that currently outstanding records for this request include:

a. Records of travel expenditures for Administrator Pruitt from February 15, 2018 through March 2, 2018; and

b. Records of travel expenditures for staff accompanying Administrator Pruitt, including, but not limited to, staff assigned to security detail for the Administrator, from August 18, 2017 through March 2, 2018.

These records are easily accessible, routinely gathered, and are of the exact same format as those produced by EPA to EIP for several recent FOIA requests. However, if EPA has any specific questions about this request, we will be happy to answer them.

II. TIMEFRAME FOR RESPONSE

Given how narrow and clearly defined our request is, we also disagree with EPA's

assessment that this is a "complex FOIA request" that will require AO nearly 388 working days to process. Because these records are easily accessible, routinely gathered, and of the same format as records that have previously been located and produced by EPA to EIP for recent requests, it should be a relatively simple matter for EPA to retrieve these documents and determine whether or not it will disclose them.

III. NO RESPONSIVE DOCUMENTS FOUND IN LINKS PROVIDED

In the spirit of further accommodation, we have conducted searches for the records requested on EPA's website, newsroom, prior releases on FOIAonline, and frequently requested records, as linked to by EPA's June 1 boilerplate email. Searches at all these locations for "travel vouchers," "travel expenditures," and "travel expenses" did not yield the requested records. None of the links provided led to records that would be responsive to EIP's FOIA request. Four of the links provided are not relevant to our request (MyProperty, NSCEP, Superfund, and the January 19, 2017 EPA website).

If you have any further questions for me, please feel free to contact me at any time. We assume, because your June 1 email was boilerplate, that EPA is not suggesting that any clarification is necessary at this time. However, if EPA has any specific questions about this request, we will be happy to answer them.

All best,

Sanghyun Lee
Attorney
Environmental Integrity Project
1000 Vermont Avenue NW, Suite 1100
Washington, DC 20005
(202) 263-4441

CONFIDENTIAL LEGAL COMMUNICATION / WORK PRODUCT: The information transmitted is intended only for the person or entity to whom it is addressed, and may contain privileged and confidential attorney-client communications and/or confidential attorney work product. If you receive this message in error, please send a reply e-mail to the sender and delete the material from any and all computers and/or electronic devices. Unintended transmissions shall not constitute waiver of the attorney-client or any other privilege.

From: newton.jonathan@epa.gov <newton.jonathan@epa.gov>
Sent: Friday, June 1, 2018 2:03 PM
To: Sylvia Lam <slam@environmentalintegrity.org>
Subject: FOIA Request: EPA-HQ-2018-005041

This email is about your Freedom of Information Act (FOIA) request, EPA-HQ-2018-005041; it is assigned to the Office of the Administrator for processing.

The Office of the Administrator has experienced a significant increase in FOIA requests since the start of this administration. As of May 7, 2018, your FOIA request, EPA-HQ-2018-

005041, is currently 1111 in the queue. We are processing all FOIAs within the scope of our resources, given the sharp increase in requests. If possible, we will provide you with interim releases as they become available.

In fiscal year 2017, the average processing time for complex FOIA requests processed by AO was 388 working days. Using this number as instructive to estimate the time to process your request, the new estimated completion date for this FOIA is August 28, 2019.

The following are some sources of publicly available information that you can access immediately and which may contain information responsive to your request:
• Our website: https://www.epa.gov/home/advanced-search
• The EPA newsroom: https://www.epa.gov/newsroom
• FOIAonline for records previously released through FOIA requests: https://foiaonline.regulations.gov/foia/action/public/search/
• Frequently requested records: https://www.epa.gov/foia/national-online-foia-library#request
• MyProperty: https://www3.epa.gov/enviro/facts/myproperty/
• Technical/scientific/educational publications: https://www.epa.gov/nscep
• Superfund sites and data: https://www.epa.gov/foia/national-online-foia-library#superfund
• Historical material reflecting the EPA website as it existed on January 19, 2017 https://19january2017snapshot.epa.gov/

If you wish to clarify your request, so that once we reach the request in the queue, it might be processed in a shorter amount of time, please contact Nicole Rementer, Rementer.Nicole@epa.gov. If you are no longer interested in the requested records, please let us know so that we can remove your request from the queue. Please be sure to include your tracking number, EPA-HQ-2018-005041, in the email subject to ensure a timely response.

In addition to seeking assistance from the contact above, you may seek assistance from the EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). OGIS's services are described on their website, https://www.archives.gov/ogis. You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; email: ogis@nara.gov; telephone: (202) 741-5770 or (877) 684-6448; or fax: (202) 741-5769.

Thank you,

Nicole Rementer

EXHIBIT I

1000 Vermont Avenue, NW
Suite 1100
Washington, DC 200005
Main: 202-296-8800
Fax: 202-296-8822
www.environmentalintegrity.org

March 27, 2018

Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Via FOIAOnline

Re: Freedom of Information Act request for records related to articles reporting on travel expenditures by former Administrators Lisa Jackson and Gina McCarthy

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 551 et seq., I am writing on behalf of the Environmental Integrity Project (EIP) to request records held by the Environmental Protection Agency (EPA).

EIP seeks records related to two recent news articles regarding travel expenses by former Administrators Lisa Jackson and Gina McCarthy. Both news articles reported on "[i]nternal EPA documents provided to the *Washington Free Beacon*." *See* Elizabeth Harrington, *Obama EPA Administrators Spent Eight Times More Than Pruitt on International Travel*, Washington Free Beacon, March 21, 2018, *available at* http://freebeacon.com/issues/obama-epa-administrators-spent-eight-times-pruitt-international-travel/; Lukas Mikelionis, *Obama's EPA appointees spent as much, or more, on travel than Trump's Pruitt, data show*, Fox News, March 22, 2018, *available at* http://www.foxnews.com/politics/2018/03/22/obamas-epa-appointees-spent-as-much-or-more-on-travel-than-trumps-pruitt-data-show.html.

EIP specifically requests the following records:

1. All communications from January 1, 2018, to the present between EPA employees and any third party regarding travel expenditures by former Administrator Lisa Jackson and/or former Administrator Gina McCarthy;

2. Travel vouchers that identify the cost of airfare, lodging, and other travel-related expenses for former Administrator Gina McCarthy and any staff serving on her personal security between the date of her confirmation as EPA Administrator (July 18, 2013) and the date of her departure from EPA (January 20, 2017).

For the purposes of this request, the term "communications" means any correspondence (handwritten, typed, or electronic) including but not limited to emails, letters, memoranda, and notes of phone calls or other dialogue and any attachments to such correspondence. The term "third party" means any person who is not an employee of the federal government.

If you regard any documents as exempt from required disclosure under FOIA, please exercise your discretion to disclose them nevertheless. Should you elect to invoke an exemption, please provide the required full or partial denial letter and sufficient information to determine whether or not there may be grounds to appeal EPA's decision. In accordance with the minimum requirements and regulations of due process, this information should include:

- Basic factual material, including the originator, date, length, and addresses of the withheld items; and
- Explanations and justifications for denial, including the identification of the exemption applicable to the withheld information or portions of the information found to be subject to exemption, and how each exemption applies to the withheld material.

Additionally, should you elect to invoke an exemption for a record, please provide all reasonably non-exempt portions of such record that are not specifically exempted from disclosure.

If EPA estimates that the costs of completing this request will exceed $100, please contact me with the estimated costs at your earliest convenience. As provided in the attached fee waiver request, this FOIA request meets the case-by-case requirements for a fee waiver by satisfying each of the six factors which must be met to qualify for a fee waiver under EPA regulations found at 40 C.F.R. § 2.107.

If I can provide any additional information or answer any questions that can help to clarify or limit this request, please do not hesitate to contact me at (202) 263-4451 or akron@environmentalintegrity.org. Thank you for your assistance with this request.

Sincerely,

Adam Kron
Senior Attorney
Environmental Integrity Project

Adam Kron

From: foia_hq@epa.gov
Sent: Tuesday, March 27, 2018 1:06 PM
To: Adam Kron
Subject: FOIA Request EPA-HQ-2018-005878 Submitted

This message is to confirm your request submission to the FOIAonline application: View Request. Request information is as follows:

- Tracking Number: EPA-HQ-2018-005878
- Requester Name: Adam Kron
- Date Submitted: 03/27/2018
- Request Status: Submitted
- Description: Please see attached FOIA request.

EXHIBIT J

Adam Kron

From: Adam Kron
Sent: Wednesday, April 25, 2018 4:05 PM
To: Reeder, Melissa
Cc: Kennedy, Chandra; Farren, Victor
Subject: RE: FOIA Request No. EPA-HQ-2018-005878

Thank you, Ms. Reeder (and to Mr. Farren for connecting my inquiry with the appropriate office) –

Adam

Adam Kron
Senior Attorney
Environmental Integrity Project
1000 Vermont Avenue NW, Suite 1100
Washington, D.C. 20005
(202) 263-4451
Fax: (202) 296-8822

From: Reeder, Melissa [mailto:Reeder.Melissa@epa.gov]
Sent: Wednesday, April 25, 2018 3:59 PM
To: Adam Kron <akron@environmentalintegrity.org>
Cc: Kennedy, Chandra <Kennedy.Chandra@epa.gov>; Farren, Victor <Farren.Victor@epa.gov>
Subject: RE: FOIA Request No. EPA-HQ-2018-005878

Good morning,
In regards to Freedom of Information Request # EPA-HQ-2018-005878, the Agency is focused on work on the backlog and/or the request is still in review. At this time we cannot provide you a date as to when the documents will be provided.

Sincerely,
Melissa Reeder
US EPA
OC-FSD-CFC
513-487-2009

From: Farren, Victor
Sent: Wednesday, April 25, 2018 3:53 PM
To: Reeder, Melissa <Reeder.Melissa@epa.gov>
Cc: Kennedy, Chandra <Kennedy.Chandra@epa.gov>
Subject: FW: FOIA Request No. EPA-HQ-2018-005878

Good afternoon,

I just received this status update request and provided the response below. Can someone please reach out to the requester?

Thanks,

Victor J. Farren
Attorney-Advisor
U. S. Environmental Protection Agency
Office of the Executive Secretariat
(202) 564-0808

From: Farren, Victor
Sent: Wednesday, April 25, 2018 3:51 PM
To: 'Adam Kron' <akron@environmentalintegrity.org>
Subject: RE: FOIA Request No. EPA-HQ-2018-005878

Mr. Reeder,

This request was not assigned to my office. I will find out who is working on it and ask them to reply directly to you.

Regards,

Victor J. Farren
Attorney-Advisor
U. S. Environmental Protection Agency
Office of the Executive Secretariat
(202) 564-0808

From: Adam Kron [mailto:akron@environmentalintegrity.org]
Sent: Wednesday, April 25, 2018 3:44 PM
To: Farren, Victor <Farren.Victor@epa.gov>
Subject: FOIA Request No. EPA-HQ-2018-005878

Mr. Farren:

I'm seeking information regarding FOIA Request No. EPA-HQ-2018-005878, which I submitted on March 27, 2018. Could you let me know whether and when EPA will respond to the request?

If you have any questions or need clarification regarding the scope or subject matter of this request, please do not hesitate to contact me at (202) 263-4451 or via email at akron@environmentalintegrity.org.

Thank you for your help,

Adam Kron
Senior Attorney
Environmental Integrity Project
1000 Vermont Avenue NW, Suite 1100
Washington, D.C. 20005
(202) 263-4451
Fax: (202) 296-8822

EXHIBIT K

Adam Kron

From: Kennedy, Chandra <Kennedy.Chandra@epa.gov>
Sent: Wednesday, May 30, 2018 3:21 PM
To: Adam Kron; Reeder, Melissa
Subject: RE: Final Disposition, Request EPA-HQ-2018-005878

Follow Up Flag: Follow up
Flag Status: Completed

Hello Mr. Kron – The request has been sent to have your request public and should be available by tomorrow.

From: Adam Kron [mailto:akron@environmentalintegrity.org]
Sent: Wednesday, May 30, 2018 12:19 PM
To: Kennedy, Chandra <Kennedy.Chandra@epa.gov>; Reeder, Melissa <Reeder.Melissa@epa.gov>
Subject: RE: Final Disposition, Request EPA-HQ-2018-005878

Hi Ms. Kennedy and Ms. Reeder,

Thanks for looking into making the request public. Do you have an update on that? And does EPA intend to provide a disposition letter and answers to the two questions below regarding the categories of outstanding documents?

Thanks again for your attention to this,

Adam Kron
Senior Attorney
Environmental Integrity Project
1000 Vermont Avenue NW, Suite 1100
Washington, D.C. 20005
(202) 263-4451
Fax: (202) 296-8822

From: Kennedy, Chandra [mailto:Kennedy.Chandra@epa.gov]
Sent: Tuesday, May 22, 2018 2:54 PM
To: Adam Kron <akron@environmentalintegrity.org>; Reeder, Melissa <Reeder.Melissa@epa.gov>
Subject: RE: Final Disposition, Request EPA-HQ-2018-005878

Hello Mr. Kron,

I'll work on making sure your request is made public. Once I'm able to make it public I'll send you an email to let you know it's been corrected.

Regards,
Chandra Kennedy

And one additional question: I've noticed that the public link to EIP's FOIA request does not contain the request itself: https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d2818817f0. When I login to my individual FOIAOnline account, I can see the request, but not otherwise. I haven't found this to be the case for other FOIA requests I've submitted. Can you let me know why the request does not appear to the public on FOIAOnline?

From: Adam Kron [mailto:akron@environmentalintegrity.org]
Sent: Tuesday, May 22, 2018 2:41 PM
To: Reeder, Melissa <Reeder.Melissa@epa.gov>
Cc: Kennedy, Chandra <Kennedy.Chandra@epa.gov>
Subject: RE: Final Disposition, Request EPA-HQ-2018-005878

Hi Ms. Reeder,

Thank you for providing the data for the pre-October 2014 trips. Can you provide answers to the three questions I asked below? Specifically:

(1) Will EPA provide a final disposition letter regarding which records were denied and the reasons for denial?

(2) Why has EPA not produced these two categories of records that we sought in the FOIA request?

a. All communications from January 1, 2018, to the present between EPA employees and any third party regarding travel expenditures by former Administrator Lisa Jackson and/or former Administrator Gina McCarthy; and

b. Travel vouchers that identify the cost of airfare, lodging, and other travel-related expenses for any staff serving on Administrator McCarthy's personal security between the date of her confirmation as EPA Administrator (July 18, 2013) and the date of her departure from EPA (January 20, 2017).

(3) Has EPA produced all travel vouchers for trips taken by Administrator McCarthy from October 2014 onward? As noted below, we have found reference to trips on EPA's website that were not included in the travel vouchers that EPA produced. These include:

a. 11/20/2014, Cookstoves Future Summit, New York, NY: https://archive.epa.gov/epapages/newsroom_archive/speeches/cfab603cfd5adfb185257dea004bbafd.html;

b. 8/26/2015, American Center, Tokyo, Japan: https://19january2017snapshot.epa.gov/speeches/administrator-gina-mccarthy-remarks-us-climate-action-american-center-tokyo-japan-prepared_.html;

c. 12/8/2015, COP21, Paris, France: https://archive.epa.gov/epa/newsreleases/epa-administrator-gina-mccarthy-traveling-cop21-paris.html; https://web.archive.org/web/20170116151101/https://www.epa.gov/speeches/administrator-gina-mccarthy-remarks-us-center-cop21-paris-prepared.

Can you confirm either that no vouchers exist for these trips or that EPA has denied the request with respect to these records? Otherwise, we request that EPA produce vouchers for these and any other post-October 2014 trips not yet produced.

And one additional question: I've noticed that the public link to EIP's FOIA request does not contain the request itself: https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d2818817f0. When I login to my individual FOIAOnline account, I can see the request, but not otherwise. I haven't found this to be the case for other FOIA requests I've submitted. Can you let me know why the request does not appear to the public on FOIAOnline?

Thanks again for your assistance,

Adam

Adam Kron
Senior Attorney
Environmental Integrity Project
1000 Vermont Avenue NW, Suite 1100
Washington, D.C. 20005
(202) 263-4451
Fax: (202) 296-8822

From: Reeder, Melissa [mailto:Reeder.Melissa@epa.gov]
Sent: Wednesday, May 16, 2018 8:02 AM
To: Adam Kron <akron@environmentalintegrity.org>
Cc: Kennedy, Chandra <Kennedy.Chandra@epa.gov>
Subject: RE: Final Disposition, Request EPA-HQ-2018-005878

Please find attached data export for trips pre-October 2014.

From: Adam Kron [mailto:akron@environmentalintegrity.org]
Sent: Friday, May 11, 2018 2:46 PM
To: Reeder, Melissa <Reeder.Melissa@epa.gov>
Cc: Kennedy, Chandra <Kennedy.Chandra@epa.gov>
Subject: RE: Final Disposition, Request EPA-HQ-2018-005878

Hi Ms. Reeder,

Thanks for your email. I appreciate the explanation and have a few follow-up questions.

(1) Will EPA provide a final disposition letter regarding which records were denied and the reasons for denial? If so, when can we expect the letter?

(2) While we are interested in knowing of all records that were denied (and the reasons for denial), why has EPA not produced these two categories of records that we sought in the FOIA request?

   a. All communications from January 1, 2018, to the present between EPA employees and any third party regarding travel expenditures by former Administrator Lisa Jackson and/or former Administrator Gina McCarthy; and

   b. Travel vouchers that identify the cost of airfare, lodging, and other travel-related expenses for any staff serving on Administrator McCarthy's personal security between the date of her confirmation as EPA Administrator (July 18, 2013) and the date of her departure from EPA (January 20, 2017).

(3) Has EPA produced all travel vouchers for trips taken by Administrator McCarthy from October 2014 onward? I ask because I have found reference trips on EPA's website that were not included in the travel vouchers produced. These include:

   a. 11/20/2014, Cookstoves Future Summit, New York, NY: https://archive.epa.gov/epapages/newsroom_archive/speeches/cfab603cfd5adfb185257dea004bbafd.html;

b. 8/26/2015, American Center, Tokyo, Japan: https://19january2017snapshot.epa.gov/speeches/administrator-gina-mccarthy-remarks-us-climate-action-american-center-tokyo-japan-prepared_.html;

c. 12/8/2015, COP21, Paris, France: https://archive.epa.gov/epa/newsreleases/epa-administrator-gina-mccarthy-traveling-cop21-paris.html; https://web.archive.org/web/20170116151101/https://www.epa.gov/speeches/administrator-gina-mccarthy-remarks-us-center-cop21-paris-prepared.

Can you confirm either that no vouchers exist for these trips or that EPA has denied the request with respect to these records? Otherwise, we request that EPA produce vouchers for these and any other post-October 2014 trips not yet produced.

Finally, regarding the pre-October 2014 trips that were processed in EPA's legacy travel system, we request that EPA produce the data that is available for export. While our FOIA request sought "travel vouchers," the data presumably is an archive of such vouchers. Even though the archived data is no longer in the original voucher format, it is responsive to the request.

Thanks again for your assistance with this matter,

Adam

Adam Kron
Senior Attorney
Environmental Integrity Project
1000 Vermont Avenue NW, Suite 1100
Washington, D.C. 20005
(202) 263-4451
Fax: (202) 296-8822

From: Reeder, Melissa [mailto:Reeder.Melissa@epa.gov]
Sent: Friday, May 11, 2018 7:11 AM
To: Adam Kron <akron@environmentalintegrity.org>
Cc: Kennedy, Chandra <Kennedy.Chandra@epa.gov>
Subject: RE: Final Disposition, Request EPA-HQ-2018-005878

Good morning Mr. Kron,

I apologize for the delay in responding to your inquiry. Trips prior to October 2014 were processed in the Agencies legacy travel system. The data is available for an export; however, in your request you specifically asked for "vouchers" and that information cannot be provided as requested in a "voucher" format. Therefore, the responsive documents that were available were provided.

If you have any further questions, please let me know.

Thanks,
Melissa Reeder
US EPA
OC-FSD-CFC
513-487-2009

From: Kennedy, Chandra
Sent: Wednesday, May 09, 2018 4:00 PM
To: Reeder, Melissa <Reeder.Melissa@epa.gov>
Subject: FW: Final Disposition, Request EPA-HQ-2018-005878

FYI

From: Adam Kron [mailto:akron@environmentalintegrity.org]
Sent: Wednesday, May 9, 2018 2:26 PM
To: Kennedy, Chandra <Kennedy.Chandra@epa.gov>
Subject: RE: Final Disposition, Request EPA-HQ-2018-005878

Hi Ms. Kennedy,

I'm following up on my email from Friday to see whether you can share the disposition letter regarding this request.

In the meantime, I've reviewed the records and have noticed that the earliest record EPA produced is from October 2014, although the time period sought by the FOIA request was July 18, 2013, to January 20, 2017. Furthermore, I've noticed that there are several instances of post-October 2014 travel by Administrator McCarthy noted in EPA's news releases but not covered by the produced records. Given that the request is now marked as "closed" and the disposition is "partial grant/partial denial," I'm interested to know whether the partial denial pertains to the records not produced or if those records were excluded (or not located) for another reason.

I'd also be happy to discuss by phone.

Thank you for your assistance,

Adam

Adam Kron
Senior Attorney
Environmental Integrity Project
1000 Vermont Avenue NW, Suite 1100
Washington, D.C. 20005
(202) 263-4451
Fax: (202) 296-8822

From: Adam Kron
Sent: Friday, May 4, 2018 11:01 AM
To: kennedy.chandra@epa.gov
Subject: RE: Final Disposition, Request EPA-HQ-2018-005878

Ms. Kennedy,

Thanks for your email. I've been able to access the records, but I don't see a letter from EPA regarding the disposition of partial grant/partial denial. Is that disposition available?

Thanks,

Adam

From: kennedy.chandra@epa.gov [mailto:kennedy.chandra@epa.gov]
Sent: Thursday, May 3, 2018 6:40 PM
To: Adam Kron <akron@environmentalintegrity.org>
Subject: Final Disposition, Request EPA-HQ-2018-005878

EPA-HQ-2018-005878 has been processed with the following final disposition: Partial grant/partial denial.

Records were released to the public as a result of this request. You may retrieve these records immediately using the following link: View Records.Over the next 2 hours, these records are also being added to FOIAonline's search pages, further enabling you to retrieve these documents associated with your FOIA request at any time.

EXHIBIT L

1000 Vermont Avenue NW
Suite 1100
Washington, DC 200005
Main: 202-296-8800
Fax: 202-296-8822
www.environmentalintegrity.org

April 13, 2018

Via FOIAonline submission.

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Re: Freedom of Information Act request for EPA records and attachments for Administrator Pruitt's meetings with outside parties from May 19, 2017, to August 21, 2017

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, the Environmental Integrity Project (EIP) hereby submits this request for records held by the U.S. Environmental Protection Agency (EPA).

Background

On March 30, 2018, EPA produced records of Administrator Pruitt's calendar in response to EIP's FOIA request for records of Mr. Pruitt's meetings with outside parties from May 19, 2017 through August 14, 2017 (FOIA Request No. EPA-HQ-2017-010504). These records show that 30 of these calendar entries include attachments that may have either been produced or otherwise provided by outside parties.

Records Requested

This FOIA request seeks:

- Any attachments that may have been provided by EPA to outside parties, including those records produced internally by EPA staff but then subsequently shared with outside parties, prior to meetings or events with Administrator Pruitt, from May 19, 2017, to August 21, 2017; and

- Any attachments that may have been produced or otherwise provided by outside parties to EPA prior to meetings with Administrator Pruitt, from May 19, 2017, to August 21, 2017.

The scope of this request includes the following specific calendar entries and attachments noted on the calendar records disclosed to EIP on March 30, 2018 (*see* Attachment A for relevant excerpts of the calendar records):

ENVIRONMENTAL INTEGRITY PROJECT

1000 Vermont Avenue NW
Suite 1100
Washington, DC 200005
Main: 202-296-8800
Fax: 202-296-8822
www.environmentalintegrity.org

Associated Calendar Entry	Attachment(s)
May 19, 2017 9:00 AM – 9:20 AM Brian Kilmeade Radio Interview Calendar at page 2	1. 2017-05-19 Kilmeade Radio Brief.docx
May 19, 2017 2:30 PM – 3:00 PM Speaking Engagement: Council for National Policy Meeting Calendar at page 5	1. Pruitt Speaker Request Form.docx 2. 2017-05 Pruitt First Confirmation.pdf 3. Speaker Guidelines 2017.pdf 2017-05 4. Confidential Short Program.pdf
May 22, 2017 12:15 PM – 1:15 PM Speaking Engagement: Large Public Power Council - CEO Meeting Calendar at page 11	1. EPA Administrator Pruitt Speaker Request Form - Large Public Power Counc .... docx
May 22, 2017 3:30 PM - 4:00 PM Meeting with Steve Chancellor Calendar at page 18	1. External Meeting Request Steve Chancellor.docx
May 22, 2017 5:00 PM - 6:00 PM Speaking Engagement: Congressional Coal Caucus Meeting Calendar at page 18	1. 05-18-2017 - Congressional Coal Caucus Speaking Event Memo.docx 2. 2.05-18-2017- Coal Caucus Recommendations Hand Out v2.docx
May 23, 2017 10:15 AM - 10:30 AM Meeting with Representative Costa Calendar at page 22	1. 05-22-2017 - Rep. Jim Costa Meeting Memo.docx
May 23, 2017 11:00 AM -11:30 AM Meeting with Chairman UptonCalendar at page 23	1. 05-22-2017 - Rep. Fred Upton Meeting Memo.docx
May 23, 2017 12:00 PM - 1:00 PM Speaking Engagement: Congressional Western Caucus Meeting Calendar at page 23	1. EPA Administrator Pruitt Speaker Request Form_Western Caucus May 23.docx 2. 05-18-2017 -Western Caucus Speaking Event Memo.docx 3. Pruitt RSVPs.xlsx
May 23, 2017 1:30 PM - 2:00 PM Meeting with Ford Calendar at page 25	1. External Meeting Request Form.docx

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Fax: 202-296-8822
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Associated Calendar Entry	Attachment(s)
May 23, 2017 3:00 PM - 3:30 PM Meeting with Reliable One Resources Calendar at page 26	1. Gold King Mine.docx 2. KS results.pdf 3. KS resultsl.pdf 4. 2016-04-28- Reliable One Resources Bac-T.PDF 5. 2016-04-28- Reliable One WSI Kansas Aquifer Raw rev Before Treatment.pdf
May 23, 2017 4:30 PM - 5:15 PM Speaking Engagement: American Iron and Steel Calendar at page 27	1. Event Request Form- Administrator Pruitt.docx
May 24, 2017 9:30 AM - 10:00 AM Meeting with American Academy of Pediatrics Calendar at page 31	1. American Academy of Pediatrics Meeting Request Form.docx
May 24, 2017 10:30 AM - 11:00 AM Speaking Engagement: American Exploration & Production Council's (AXPC) Annual Washington CEO Meeting Calendar at page 32	1. EPA Administrator Pruitt Speaker Request Form AXPC 5.24.17.docx
May 24, 2017 11:15 AM -11:45 AM Meeting with Kansas Farm Bureau Calendar at page 33	1. Flint Hills Prescribed Fire Update - May 5, 2017.pdf 2. EPA External Meeting Request Form- Kansas Farm Bureau 5.24.2017.docx
May 24, 2017 12:00 PM - 1:00 PM Speaking Engagement: Energy and Environment Symposium Calendar at page 33	1. EPA Administrator Pruitt Speaker Request Form.docx 2. 2017 Symposium - Scott Pruitt invitation.pdf
May 24, 2017 2:00 PM - 2:30 PM Meeting with Society of Chemical Manufacturers & Affiliates (SOCMA) Calendar at page 35	1. External Meeting Request Form - Robert F. Helminiak - SOCMA.DOCX 2. SOCMA May 24 meeting.docx 3. SOCMA Meeting with Adminsitrator Pruitt - Briefing Material.pdf
May 25, 2017 9:15 AM - 9:45 AM	1. EPA External Meeting Request Form IADC 05022017.docx

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Associated Calendar Entry	Attachment(s)
Meeting with International Association of Drilling Contractors (IADC) Calendar at pages 41-42	
May 25, 2017 10:00 AM - 11:00 AM Speaking Engagement: US Oil & Gas Association Board of Directors and Executive Committee Annual Meeting Calendar at page 42	1. EPA Administrator Pruitt Speaker Request Form - USOGA.PDF
May 25, 2017 11:30 AM -12:00 PM Meeting with Trout Unlimited Calendar at page 44	1. External Meeting Request Form - Pruitt.docx 2. Pruitt Scott - 04 18 2017.pdf
June 5, 2017 8:45 AM - 8:55 AM Interview: Breitbart News Daily with Joel Pollak Calendar at page 67	1. 06.05.17 - PatriotRadio Brief.docx
June 12, 2017 2:00 PM - 2:30 PM Meeting with US Chamber Calendar at page 82	1. External Meeting Request Form.docx
June 14, 2017 3:30 PM - 4:15 PM Meeting with AFPM Board Calendar at pages 91-92	1. External Meeting Request Form June 15.docx
June 19, 2017 11:00 AM - 11:30 AM Meeting with Healthy Partners Group Calendar at pages 100-101	1. Health and Medical Groups Request Meeting with Scott Pruitt 2.27.2017.pdf
June 19, 2017 1:00 PM - 3:00 PM Utility Partners Meeting Calendar at page 102	1. Agenda_EPA Roundtable June19 (004).docx 2. June 19 2017 Roundtable - RSVP List .xlsx
June 20, 2017 3:00 PM - 3:15 PM Stop in Meeting with National Association of Manufacturers (NAM) Calendar at page 108	1. Updated EPA Attendees, 06-16-17.xlsx
June 27, 2017 3:15 PM - 3:45 PM Meeting with Siemens	1. Siemens EPA Participants.docx

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Associated Calendar Entry	Attachment(s)
Calendar at page 126	
June 28, 2017 9:30 AM -10:00 AM Meeting with API Directors Calendar at 131	1. Externa l Meeting Request Form_APl.DOCX
June 28, 2017 11:30 AM -12:30 PM Tribal & State Energy Presentation Roundtable Discussion Calendar at 133	1. Event Memo Energy Week Roundtable June 28 2.3.docx
June 29, 2017 10:00 AM -11:00 AM Speak at American Coalition for Clean Coal Electricity Board Meeting (ACCCE) Calendar at pages 138-139	1. EPA Administrator Pruitt Speaker Request Form (002) copy.docx 2. Board agenda - Final.docx.pdf
August 1, 2017 6:00 PM -6:30 PM NEC Principals Meeting: Renewable Fuel Standard Calendar at page 190	1. 8.1.17 Energy PC Memo.pdf 2. 8.1.17 Energy PC Worksheet.pdf

Definition of Key Terms:

For the purposes of this request, the term "outside parties" includes any person who is not an employee of the federal government.

"Attachments" include files of any format (PDF, DOCX, or otherwise) that have been attached to an entry of Administrator Pruitt's calendar provided by EPA.

Claims of Exemption from Disclosure

If you regard any documents as exempt from required disclosure under FOIA, please exercise your discretion to disclose them nevertheless, keeping in mind that FOIA "is the most prominent expression of a profound national commitment to ensuring an open Government" and that "[a]ll agencies should adopt a presumption in favor of disclosure." President Barack Obama, Memorandum for the Heads of Executive Departments and Agencies: Freedom of Information Act, 74 Fed. Reg. 4, 863 (Jan. 26, 2009).

In the alternative, after careful review for the purpose of determining whether any of the information is exempt from disclosure, please provide all reasonably non-exempt portions of records and communications as required by FOIA.

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Should you elect to invoke an exemption, please provide the required full or partial denial letter and sufficient information to determine whether or not there may be grounds to appeal EPA's decision. In accordance with the minimum requirements and regulations of due process, this information should include:

- Basic factual material, including the originator, date, length, and addresses of the withheld items.
- Explanations and justifications for denial, including the identification of the exemption applicable to the withheld information or portions of the information found to be subject to exemption, and how each exemption applies to the withheld material.

Waiving Request for Fee Waiver

This FOIA request meets the case-by-case requirements for a fee waiver, by satisfying each of the six factors which must be met to qualify for a fee waiver under EPA regulations found at 40 C.F.R. § 2.107. However, although we are entitled to a fee waiver, we are waiving any request for a waiver of fees.

Opportunity to Provide Clarification

If I can provide any additional information or answer any questions that can help to clarify the scope of this request, please do not hesitate to contact me at (202) 263-4441, or via email at slee@environmentalintegrity.org.

Thank you for your assistance with this FOIA request. I appreciate your prompt attention to this matter, and I look forward to hearing from you.

All best,

_____/s/_____
Sanghyun Lee, Attorney
Environmental Integrity Project
1000 Vermont Avenue NW, Suite 1100
Washington, DC 20005
(202) 263-4441

ENVIRONMENTAL INTEGRITY PROJECT

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Enclosure:

Attachment A – Excerpts of Calendar Entries

From: foia_hq@epa.gov
To: Sanghyun Lee
Subject: FOIA Request EPA-HQ-2018-006648 Submitted
Date: Friday, April 13, 2018 5:16:25 PM

This message is to confirm your request submission to the FOIAonline application: View Request. Request information is as follows:

- Tracking Number: EPA-HQ-2018-006648
- Requester Name: Sanghyun Lee
- Date Submitted: 04/13/2018
- Request Status: Submitted
- Description: On March 30, 2018, EPA produced records of Administrator Pruitt's calendar in response to EIP's FOIA request for records of Mr. Pruitt's meetings with outside parties from May 19, 2017 through August 14, 2017 (FOIA Request No. EPA-HQ-2017-010504). These records show that 30 of these calendar entries include attachments that may have either been produced or otherwise provided by outside parties. This FOIA request seeks: (1) any attachments that may have been provided by EPA to outside parties, including those records produced internally by EPA staff but then subsequently shared with outside parties, prior to meetings or events with Administrator Pruitt, from May 19, 2017, to August 21, 2017; and (2) any attachments that may have been produced or otherwise provided by outside parties to EPA prior to meetings with Administrator Pruitt, from May 19, 2017, to August 21, 2017. Please find full FOIA request and supporting attachment enclosed.

EXHIBIT M

From: Sanghyun Lee
To: hq.foia@epa.gov
Subject: re: EPA-HQ-2018-006648
Date: Thursday, May 24, 2018 2:00:00 PM

Dear FOIA Officer,

I hope this email finds you well. I am writing to quickly check on the status of FOIA request EPA-HQ-2018-006648, which I submitted on behalf of the Environmental Integrity Project on April 13, 2018. Would it be possible for EPA to provide an estimated date by which it will respond and produce the records requested?

If you need any clarification regarding the scope or subject matter of this FOIA request, or if I can assist with anything else, please feel free to contact me any time at (202) 263-4441 or slee@environmentalintegrity.org.

Thank you in advance – I appreciate your assistance with this request.

All best,

Sanghyun Lee
Attorney
Environmental Integrity Project
1000 Vermont Avenue NW, Suite 1100
Washington, DC 20005
(202) 263-4441

CONFIDENTIAL LEGAL COMMUNICATION / WORK PRODUCT: The information transmitted is intended only for the person or entity to whom it is addressed, and may contain privileged and confidential attorney-client communications and/or confidential attorney work product. If you receive this message in error, please send a reply e-mail to the sender and delete the material from any and all computers and/or electronic devices. Unintended transmissions shall not constitute waiver of the attorney-client or any other privilege.

EXHIBIT N

From: Sanghyun Lee
To: "newton.jonathan@epa.gov"; "Rementer.Nicole@epa.gov"
Cc: Sylvia Lam
Subject: RE: FOIA Request: EPA-HQ-2018-006648
Date: Tuesday, June 05, 2018 5:13:00 PM

Hello Ms. Rementer,

This message is in response to the June 1, 2018 email I received from EPA, attached below. This EPA email appears to be a boilerplate email sent to all FOIA requesters who have submitted requests to the Office of the Administrator, and estimates completion dates for all requests 388 working days from the date the request was submitted, regardless of content or scope.

I recognize that EPA's Office of the Administrator has had considerable difficulty in keeping up with its FOIA obligations. It is our understanding, however, that this backlog is largely a direct result of EPA's new policy, implemented shortly after Administrator Pruitt took office, to have political appointees at OA review all FOIA requests that appear related to the Administrator.

Although this boilerplate response does not appear to be tailored in any way to our request, aside from the completion date based solely on the date the request was submitted, EIP will continue its attempt to accommodate EPA as much as possible in its request.

I. CLARIFICATION

EPA's June 1 email states that "If you wish to clarify your request, so that once we reach the request in the queue, it might be processed in a shorter amount of time, please contact Nicole Rementer." Because the June 1 letter is boilerplate, we assume this statement does not apply to our request and that clarification is unnecessary at this time. Our request seeks attachments either provided by EPA to outside parties, or produced/provided by outside parties to EPA, prior to specific meetings or events with Administrator Pruitt from May 19, 2017, to August 21, 2017. The 30 calendar entries for these specific meetings or events were listed in our FOIA request. Our FOIA request also lists the name of the files attached to each of these calendar entries. As such, our request is well-defined, and identifies the precise documents we are seeking, as well as the exact calendar entries/emails to which they are attached, and where they can almost certainly be located. However, if EPA has any specific questions about this request, we will be happy to answer them.

II. TIMEFRAME FOR RESPONSE

Given how narrow and meticulously defined our request is, we also disagree with EPA's assessment that this is a "complex FOIA request" that will require AO nearly 388 working days to process. In providing all the information necessary to identify and locate the records

requested, EIP has already completed most of EPA's work for EPA. It should now be a simple matter for EPA to retrieve those documents and determine whether or not it will disclose them.

III. NO RESPONSIVE DOCUMENTS FOUND IN LINKS PROVIDED

In the spirit of further accommodation, we have conducted searches for several of the records requested on EPA's website, newsroom, prior releases on FOIAonline, and frequently requested records, as linked to by EPA's June 1 boilerplate email. These search terms, which included "PatriotRadio," "Kilmeade Radio," "Large Public Power Council," and "External Meeting Request Form," encompassed 9 of the 30 specific calendar entries identified in our request, and did not yield the requested records. None of the links provided led to records that would be responsive to EIP's FOIA request. Four of the links provided are not relevant to our request (MyProperty, NSCEP, Superfund, and the January 19, 2017 EPA website).

If you have any further questions for me, please feel free to contact me at any time at either this email, or by phone at (202) 263-4441. Again, we are assuming because your June 1 email was boilerplate that EPA is not suggesting that any clarification is necessary at this time. However, if EPA has any specific questions about this request, we will be happy to answer them.

All best,

Sanghyun Lee
Attorney
Environmental Integrity Project
1000 Vermont Avenue NW, Suite 1100
Washington, DC 20005
(202) 263-4441

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From: newton.jonathan@epa.gov [mailto:newton.jonathan@epa.gov]
Sent: Friday, June 01, 2018 3:09 PM
To: Sanghyun Lee <slee@environmentalintegrity.org>
Subject: FOIA Request: EPA-HQ-2018-006648

06/01/2018 03:08 PM

FOIA Request: EPA-HQ-2018-006648

Sanghyun Lee,

This email is about your Freedom of Information Act (FOIA) request, EPA-HQ-2018-006648; it is assigned to the Office of the Administrator for processing.

The Office of the Administrator has experienced a significant increase in FOIA requests since the start of this administration. As of May 7, 2018, your FOIA request, EPA-HQ-2018-006648, is currently 1270 in the queue. We are processing all FOIAs within the scope of our resources, given the sharp increase in requests. If possible, we will provide you with interim releases as they become available.

In fiscal year 2017, the average processing time for complex FOIA requests processed by AO was 388 working days. Using this number as instructive to estimate the time to process your request, the new estimated completion date for this FOIA is October 9, 2019.

The following are some sources of publicly available information that you can access immediately and which may contain information responsive to your request:

- Our website: https://www.epa.gov/home/advanced-search
- The EPA newsroom: https://www.epa.gov/newsroom
- FOIAonline for records previously released through FOIA requests: https://foiaonline.regulations.gov/foia/action/public/search/
- Frequently requested records: https://www.epa.gov/foia/national-online-foia-library#request
- MyProperty: https://www3.epa.gov/enviro/facts/myproperty/
- Technical/scientific/educational publications: https://www.epa.gov/nscep
- Superfund sites and data: https://www.epa.gov/foia/national-online-foia-library#superfund
- Historical material reflecting the EPA website as it existed on January 19, 2017 https://19january2017snapshot.epa.gov/

If you wish to clarify your request, so that once we reach the request in the queue, it might be processed in a shorter amount of time, please contact Nicole Rementer, Rementer.Nicole@epa.gov. If you are no longer interested in the requested records, please let us know so that we can remove your request from the queue. Please be sure to include your tracking number, EPA-HQ-2018-006648, in the email subject to ensure a timely response.

In addition to seeking assistance from the contact above, you may seek assistance from the

EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). OGIS's services are described on their website, https://www.archives.gov/ogis. You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; email: ogis@nara.gov; telephone: (202) 741-5770 or (877) 684-6448; or fax: (202) 741-5769.

Thank you,

Nicole Rementer

EPA-HQ-2018-006648

EXHIBIT O

From: Newton, Jonathan
To: Auther, Larry; Tillery, Loreto; White, Candace; Gentry, Barbara; Teplitzky, Andy
Cc: Farren, Victor; Hope, Brian; Ng, Fredrick
Subject: FOIA Release Awareness Reviews
Date: Tuesday, June 06, 2017 3:07:57 PM

Good Afternoon FOIA Coordinators:

To insure that leadership is aware of public disclosures from AO, please send copies of pending FOIA releases to Ryan Jackson, Liz Bowman, and Amy Graham, 48 hours before the release. If there is a deadline that makes 48 hours impractical just alert them to the deadline so the awareness review can be expedited.

Thanks in advance,
Jonathan

Jonathan V. Newton, Attorney-Advisor
U.S. EPA, Office of the Executive Secretariat
1200 Pennsylvania Avenue, NW (MC 1105A)
Washington, D.C. 20460
(202) 564-6164

EXHIBIT P

From: Hope, Brian
To: Dolph, Becky
Cc: Minoli, Kevin; Fine, Steven
Subject: RE: RE: RE: FW:
Date: Thursday, August 03, 2017 3:15:00 PM

According to the assignment history in FOIAonline, the request was reassigned from AO to ORD about 5 hours after OEX received it on Tuesday, July 25.

(b)(5) deliberative

Thanks.

From: Dolph, Becky
Sent: Wednesday, August 02, 2017 8:50 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Hope, Brian <Hope.Brian@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Fine, Steven <fine.steven@epa.gov>
Subject: RE: RE: RE: FW:

Larry Gottesman is the National FOIA Officer – he is in OEI under Steve. FOIA requests for HQ come into Larry's office and his office then assigns them to a program office for response. It is from this system (as well as the requests that come in directly to the Regional Offices) that I review and pull the selected requests that are in the report that I send around on Fridays. If I don't hear from Liz by Tuesday, I send her a reminder to let me know of the ones she would like to see and she gets back to me promptly. I then distribute that list to Brian Hope (OEX) and to Larry Gottesman. FOIAs assigned to AO are OEX's responsibility (now in conjunction with the FEAT). If the requests marked by Liz are not assigned to the AO or are not otherwise being managed by the FEAT, Larry is responsible for letting the assigned office know of the need for awareness review prior to release.

(b)(5) attorney-client, (b)(5) deliberative

As we are implementing the pilot, I have instructed my staff that no AO requests are to be issued without the opportunity for an awareness review by you, OPA and the senior leadership of any other affected offices.

(b)(5) deliberative

I plan to be back in the office on Tuesday, 8/8.

Thanks,
Becky

Becky Dolph | Director, FOIA Expert Assistance Team Office
U.S Environmental Protection Agency
Office of General Counsel | 7309B WJCN | 202-564-5771

From: Jackson, Ryan
Sent: Wednesday, August 02, 2017 7:49 PM
To: Fine, Steven <fine.steven@epa.gov>
Cc: Hope, Brian <Hope.Brian@epa.gov>; Dolph, Becky <Dolph.Becky@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>
Subject: Re: RE: RE: FW:

Who is Larry?

(b)(5) deliberative

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

On Aug 2, 2017, at 5:38 PM, Fine, Steven <fine.steven@epa.gov> wrote:

> The response was completed before that request was tagged in the system for attention.
>
> Timeline:
>
> Mon 7/24: Request received
> Fri 7/28: Becky sent weekly list of requests that could be of interest
> Tue 8/1: Liz told Becky the ones for which she'd like advance notice
> Wed 8/2: Becky relayed that information to the National FOIA Office and ORD releases response
>
> Two suggestions:

(202) 564-6999

Begin forwarded message:

From: "Bowman, Liz"
<Bowman.Liz@epa.gov>
Date: August 2, 2017 at 3:10:03 PM EDT
To: "Jackson, Ryan"
<jackson.ryan@epa.gov>
Subject: RE: FW:

On 7/24 Kevin Bogardus submitted a FOIA for the letter/all records on the complaint from the Sierra Club against Pruitt's claims about climate. That request was fulfilled yesterday, 8/2 by Michael Bender, with no heads up to OPA. And, the response to Bogardus wasn't due until 8/30.

-----Original Message-----
From: Jackson, Ryan
Sent: Wednesday, August 2, 2017 3:03 PM
To: Bowman, Liz <Bowman.Liz@epa.gov>
Subject: Re: FW:

What was it about?

Ryan Jackson
Chief of Staff
U.S. EPA
(202) 564-6999

On Aug 2, 2017, at 3:00 PM,
Bowman, Liz
<Bowman.Liz@epa.gov>
wrote:

Why did Kevin Bogardus from E&E all of a sudden get a response to a FOIA today, without any awareness from our FOIA office? And, who filled this FOIA?

EXHIBIT Q

From: Hope, Brian
To: Newton, Jonathan; Ng, Fredrick; Farren, Victor
Cc: Dolph, Becky; Minoll, Kevin; Reeder, John
Subject: Awareness Review Guidance
Date: Tuesday, August 08, 2017 9:31:00 AM
Importance: High

Team –

Ryan Jackson has just issued instructions to have all AO FOIA releases reviewed by the FEAT team prior to distribution for awareness review by the political team. Please send Becky Dolph all proposed releases that are currently in the awareness review process, as well as all future proposed releases. At the conclusion of her team's review, they will forward the proposed release for the political team's awareness review. They will cc both the AO FOIA professional responsible for the request and me. At the conclusion of the awareness review period, I will sign the response letter, and we will upload the responsive documents to FOIAonline and release them to the requestor as per usual.

Jonathan –

Please communicate this guidance to the other AO FOIA professionals.

Let me know if you have any questions. Thanks.

- Brian

Brian T. Hope
Acting Director
Office of the Executive Secretariat
Office of the Administrator
(202) 564-8212

EXHIBIT R

TREY GOWDY, SOUTH CAROLINA
CHAIRMAN

ONE HUNDRED FIFTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5074
MINORITY (202) 225–5051

http://oversight.house.gov

July 13, 2018

The Honorable Trey Gowdy
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to request that you issue a subpoena to compel the Environmental Protection Agency (EPA) to produce documents it has failed to produce about policies implemented by ousted Administrator Scott Pruitt to withhold information about his tenure in response to Freedom of Information Act (FOIA) requests.

On June 11, 2018, I wrote to former Administrator Pruitt requesting that he produce documents by June 25, 2018.[1] EPA's only response to date has been an email from an EPA official providing a link to documents already publicly released under FOIA—some of the same documents I already cited in my request letter. Information recently obtained by the Committee confirms that EPA is using a process in which political appointees review FOIA requests and hand select requests to be processed by a different team if they are complex or "politically charged." Responses to FOIAs are at times deliberately delayed, and political appointees review responses to FOIA requests before they are released. In at least one instance, EPA gave favorable treatment to an industry lobbyist.

During a Committee hearing in 2011, you criticized an official from the Department of Homeland Security for having political appointees review FOIA responses. You asked the witness, "Would you concede that slow walking or taking your time in complying with an otherwise legitimate FOIA request could be interference?"[2] I ask that you show that same concern for the way this Administration is implementing FOIA.

---

[1] Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Administrator Scott Pruitt, Environmental Protection Agency (June 11, 2018) (online at https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2018-06-11.EEC%20to%20Pruitt%20re.%20FOIA%20requests.pdf).

[2] House Committee on Oversight and Government Reform, *Hearing on Why Isn't the Department of Homeland Security Meeting the President's Standard on FOIA?*, 112th Cong. (Mar. 31, 2011) (online at www.gpo.gov/fdsys/pkg/CHRG-112hhrg67719/pdf/CHRG-112hhrg67719.pdf).

Special Process for "Politically Charged" FOIA Requests

On June 29, 2018, bipartisan Committee staff interviewed Administrator Pruitt's Chief of Staff, Ryan Jackson, who continues to serve in that capacity despite Administrator Pruitt's departure. Mr. Jackson confirmed that EPA is using a new process for responding to FOIA requests for information from the Office of the Administrator or other "complex" and "politically charged" FOIA requests. He stated:

> Deputy Administrator Perciasepe established this FEAT team. I can't remember what the acronym stands for at this point, but I think it's FOIA Expertise Assistance Team, in not the environmental information office but general counsel's office to help process some of the more complex, maybe even politically charged FOIA productions.[3]

According to Mr. Jackson, he or Elizabeth Beacham White, the Director of the Executive Secretariat, run a list of FOIA requests through the Office of Public Affairs to decide which requests will be processed:

Q: Who makes the determination if they go to the FEAT team or elsewhere in the agency?
A: So—
Q: Are these only for requests about the Administrator's office records or is this for the whole all of EPA?
A: Primarily it's FOIA requests that deal with emails for documents that deal with individuals that work in the office of the Administrator, but not always. If it's complex, if it's very involved, the FEAT team gets involved.
Q: So who decides whether it goes to the FEAT team or not?
A: Well, we have our own, Eric Wachter, [who's] in charge of the office of the administrative—the Office of the Executive Secretariat who gets a list of the FOIAs that are coming into the agency each week.
Q: Who is that?
A: It is the director of the Office of the Executive Secretariat.
Q: I need to know the person's name. Who is it that—
A: Her name is Elizabeth White. She and I have our public affairs office, to the extent that we have the opportunity to, will identify certain productions that we are interested in getting help with. There's really limited amount of people at EPA that really work on FOIA productions. We probably get just at headquarters alone, and I think that this may only involve the Administrator's office, and what I mean by that is the office of policy, office of congressional affairs, office of—not just Pruitt's office, probably 40 to 60 new FOIAs a week.[4]

Mr. Jackson pointed to a FOIA request by the Sierra Club for email communications between senior EPA officials and outside entities as an example of a "politically charged" request:

---

[3] House Committee on Oversight and Government Reform, Interview of Ryan Jackson (June 29, 2018).

[4] *Id.*

Q: So you used the term politically charged as one of the categories. Can you describe what that means?

A: Well, you know, we are talking about the Sierra Club release, the request was—I can't remember the original request, but the request was we would like to get all of the emails sent by, or maybe received by, but definitely sent by this group of people since they began working at EPA. So, that's pretty much a fishing expedition. There's a bit of a disagreement on if that's even a proper request. But we tried to accommodate that request really at much and probably more than what we needed to. We really needed to—

Q: So what would make that a politically charged—that's the piece I am not—there are a lot of very broad FOIA requests that every agency receives. What differentiates one from the next? What about that one made it politically charged, in your view?

A: There's no—there was no reason for it. There was no topic. It was just a fishing expedition. And so when I say it's politically charged, there's no real FOIA, you know, Freedom of Information Act reason for it, it is just simply submitted to us to see what we will produce. And so what I wanted to do—

Q: So you don't think that intercommunications between the Administrator, senior staff with outside entities—you don't think there's a public interest, a legitimate public interest in those?

A: There is a huge legitimate public interest, but I think it is really important at the same time to specify what you are interested in, because FOIA is not meant to allow open ended requests and to be as if, you know, the requester is a fly on the wall.

Q: So are there particular groups that if they send requests that they are automatically sent to the FEAT team or categorized?

A: No. It just depends on what it is.

Q: So it's the breadth of the request? The subject of the request?

A: Sometimes.[5]

Mr. Pruitt's Senior Counsel, Samantha Dravis, said during her transcribed interview that in some cases, the Office of General Counsel identifies responsive documents rather than the custodian of the documents:

> So my understanding is that during the Obama administration it was individual custodians. So if there's a request for your emails, you would search your own files and your own emails. In the Pruitt era, we—that was shifted. And it is career Agency officials, I believe in the Office of General Counsel, who run the search. They go through my emails. They pull the relevant documents. And they make the relevant redactions, if any.[6]

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[5] *Id.*

[6] House Committee on Oversight and Government Reform, Interview of Samantha Dravis (June 28, 2018).

Deliberate Delays in Responding to FOIA Requests

According to Mr. Jackson, some FOIA responses are deliberately delayed:

Q: [C]an you think of times when there were FOIA productions came to you and you saw things that you thought out to be redacted and you flagged that?
A: Probably so. But we also, you know, make decisions on we've got this FOIA working on this track, this FOIA working on this track, maybe it would be best to wait on this FOIA production until we get this much bigger one done, there may be, you know, just like a week or two delay in that, so that we can just produce them all at one time.
Q: Can you think of a specific example when that's happened?
A: I think that I can think of a few examples of that, but it's been a while back, and so I'm going to—I'm really going to butcher my recollection of it if I tried. I mean, it's happened, though. I'm going to butcher my explanation if I just rely on my recollection of it.
Q: If you would just give it a shot. I mean—
A: Yeah. It's occurred. We try to coincide releases. I can't—I can't remember what those may be.[7]

Mr. Jackson confirmed that EPA is using a "first in, first out" policy in which requests from the current Administrator are delayed in order to respond to requests from previous Administrations:

Q: So it's just FOIA regulations require multitrack processing which seems at odds with this new policy. Can you explain that?
A: You'd have to tell me more of what you mean.
Q: Well, if the regulations require processing requests on two different tracks, complex requests and simple requests.
A: Uh-huh.
Q: And it is first in, first out within those different tracks, not a larger first in and first out. But what I have heard you saying sounds like older requests were prioritized over new requests.
A: It is the case that the 10 years of FOIA requests that were in a state of I think they were not being responded to at all, some are cleared out. And then we move forward with the request that we receive in the order in which we received them. Now if—even while we were clearing out that 10-year backlog we receive a new request that is just, you know, a few pages, we would kick that out, we would produce that and kick that out—because just because there's 10 years of backlog doesn't mean that there is 10-years of backlog in every program office, some program offices didn't have any. And so if—and especially in those cases, if we received a FOIA request that dealt with program offices that didn't have a backlog and especially in a situation where it was

[7] House Committee on Oversight and Government Reform, Interview of Ryan Jackson (June 29, 2018).

easily responded to, that was just produced.[8]

Ms. Dravis confirmed that EPA is using a "first in, first out" policy for responding to FOIA requests:

Q: During Mr. Pruitt's tenure, it's our understanding the EPA switched the FOIA policy to a first in, first out arrangement. Do you have any knowledge of that?
A: I do recall that we implemented a policy of, more or less, first in, first out.[9]

Political Appointees Review FOIA Responses Before Release

Mr. Jackson confirmed that he and other political appointees have the ability to review FOIA responses before they are produced to requesters:

Like I said, I probably do receive a number of them. I don't really know that I receive all of them. There are new individuals in that process now, not only is public affairs aware of what is going out, our Office of Executive Secretariat, when that was issued is when we discovered—we found that not only is there 10-years of backlog, but there is this very decentralized way that FOIAs are produced.[10]

Ms. Dravis said during her transcribed interview that she also sometimes reviewed FOIA responses before they were released:

Q: Did you ever personally review a potential response that wasn't about your equity?
A: I may have. I may have, yes. I may have, but not for an equitable review but just an FYI.
Q: Do you remember specifically which—
A: I don't remember specifics, but I think if it was highly significant, then it could be something that, perhaps, myself or the communications team or, you know, senior officials could be given an FYI of.[11]

Mr. Jackson also said that he has weighed in to recommend redactions:

Q: I just want to know what's happening now and who's reviewing them before they go out. And then also whether you have the opportunity to object. If you see something that's redacted that you think shouldn't be or something you think wasn't redacted that you think ought to be, do you have the opportunity to weigh in on that?
A: I have the opportunity.
Q: And did you ever exercise that opportunity?

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[8] *Id.*

[9] House Committee on Oversight and Government Reform, Interview of Samantha Dravis (June 28, 2018).

[10] House Committee on Oversight and Government Reform, Interview of Ryan Jackson (June 29, 2018).

[11] House Committee on Oversight and Government Reform, Interview of Samantha Dravis (June 28, 2018).

A: I have stressed that personal information like cell phones, Social Security numbers, really get a second pair of eyes and a double scrubbing because we have released those and we shouldn't have.
Sometimes there's been a couple of times when I have received a request and I have added to it or we're aware of other documents that I thought were responsive. I don't know if it meets the legal definition of responsive and we have added to it.[12]

An email produced by EPA in response to FOIA litigation by the Sierra Club indicates that Mr. Jackson helped the National Pork Producers Council obtain a meeting with EPA policy staff and lawyers about a pending FOIA request following a request by Mr. Jackson's personal friend, Michael Formica, who serves as an Assistant Vice President for the Pork Producers Council.[13]

During his transcribed interview with Committee staff, Mr. Jackson had this exchange:

Q: Is it typical for you to I guess facilitate getting the FOIA office to help a FOIA requester get an answer to their FOIA?
A: Well, when—in this case what it appears to me is that Michael emailed me about a FOIA request that they had. People email me about a lot of things and people email me with asking help for a lot of things. I would love to be able to bird dog all of those issues and respond to everybody and I can't. In this case, Byron has had quite a bit of experience with FOIA, actually Byron was a career deputy general counsel in OGC during the Bush administration and Obama administration. And I just asked if he could help me with processing that. I don't know that I even met with these folks on this meeting and really I am not sure what came of it.
Q: Okay. If the Sierra Club, and [NRDC], American [O]versight reached out to [you] with similar requests would you facilitate a meeting for them?
A: It's a possibility.
Q: Because they seem to all be having to litigate to get a response to their FOIA requests?
A: Well, I suggest that if they target their requests a little bit more so that I could more readily help them, that might help them out.
Q: Do you have a relationship, a personal one with Michael Formica?
A: Yeah, I've known Michael for years.
Q: So is the facilitation of the FOIA request done in this case because he's a personal friend of yours or because he worked for the National Pork Producers

[12] House Committee on Oversight and Government Reform, Interview of Ryan Jackson (June 29, 2018).

[13] Email from Michael C. Formica, National Pork Producers Council, to Chief of Staff Ryan Jackson, Environmental Protection Agency (July 3, 2017); Email from Chief of Staff Ryan Jackson, Environmental Protection Agency, to Deputy Chief of Staff Byron Brown, Environmental Protection Agency (July 3, 2017); Email from Michael C. Formica, National Pork Producers Council, to Chief of Staff Ryan Jackson, Environmental Protection Agency (July 11, 2017) (online at https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/ED_001523_00003623_0_ef19927b-c085-4aaa-a9a5-cbb6b9f7a86f.pdf.pdf).

Council?

A: It's because I was contacted by someone asking that I could—if I could help with this. As I described, Byron has years of experience with FOIA productions. I thought that he could help me with responding to it. I don't know that I had any further contact with Michael on this.

Q: Yeah. My question is did you do it because Michael is a friend of yours?

A: No.

Q: Did you do it because Michael works for the National Pork Producers Council?

A: No.

Q: So did you do it because you wanted to assist the National Pork Producers Council in getting a response to their FOIA?

A: Yes or getting someone to actually meet with them and help them. I don't know what the FOIA was about, other than livestock emissions.

Q: So if you don't know what the FOIA was about, how do you know that you did it because you wanted them to respond to that particular FOIA?

A: What now?

Q: So you said you didn't do this because Michael Formica is a friend of yours, right?

A: Uh-huh.

Q: Are you sure on that one?

A: Yes.

Q: Okay. And you didn't do it because he sent you a FOIA from the National Pork Producers Council, right?

A: Right.

Q: So then the reason you must have done it, I assume, was based on the specifics of the FOIA that you wanted to assist someone based on the specifics that was in the FOIA.

A: Not necessarily. I mean if somebody contacts me, I am assuming it's because they have exhausted as many things as they can in order to get whatever remedy that they are looking for. Maybe not, but I'm assuming so. If there's an opportunity for me to facilitate them getting a meeting so that they can—and maybe not even get what they're looking for but at least get their matter addressed, whether it be, you know, full cooperation with it or simply being told no and why, I am going to try to do that.

Q: Have you tried to do that for other entities trying to get FOIA responses?

A: I don't remember one, but I don't know that I ever got asked about anybody else, anybody else's FOIA response.[14]

Subpoena Request

For the reasons described above, I request that you issue a subpoena for the following documents covering the period between January 20, 2017, to the present:

[14] House Committee on Oversight and Government Reform, Interview of Ryan Jackson (June 29, 2018).

1. all documents and communications referring or relating to the order in which FOIA requests should be processed at EPA;

2. all documents and communications referring or relating to any process used by EPA to prioritize responses to FOIA requests;

3. all documents and communications referring or relating to FOIA requests that were rejected for being not reasonably described;

4. all documents and communications referring or relating to the process for determining whether a FOIA request is reasonably described;

5. all documents and communications referring or relating to the process for handling FOIA requests for information from the Office of the Administrator;

6. all responses provided to FOIA requests for information from the Office of the Administrator;

7. documents and communications referring or relating to reviews by Trump Administration political appointees to review FOIA requests or responses; and

8. documents and communications referring or relating to any review of FOIA requests or responses by White House employees.

If you choose not to issue these subpoenas yourself, then we ask that you place this matter on the agenda for our next regularly scheduled business meeting so all Committee Members will have the opportunity to vote on a motion to issue these subpoenas.

Thank you for your consideration of this request.

Sincerely,

Elijah E. Cummings
Ranking Member

EXHIBIT S

To: Jackson, Ryan[jackson.ryan@epa.gov]; Brown, Byron[brown.byron@epa.gov]
From: Michael Formica
Sent: Tue 7/11/2017 3:20:08 PM
Subject: RE: Environmental Justice FOIA

Thanks Ryan!

Byron, finally had a date finalized by the FOIA office. We will be meeting with them on Thursday July 13th at 3pm in ARN 2528. Looks like they are sending the following EJ and OGC lawyers to meet with us over my FOIA request

Ericka Farrell, Mary O'Lone, Jeryl Covington, Daniel Isales, Lilian Dorka, Kurt Temple, Nicole Rementer & Mark Stilp

I'm actually going to be at EPA this afternoon for a 1pm meeting with Mandy Gunasekara and David Fatouhi about reporting air emissions from livestock facilities. If you have any time free this afternoon, maybe we can chat for a few minutes about my FOIA request for Environmental Justice documents.

Michael C. Formica

National Pork Producers Council

202.680.3820

From: Jackson, Ryan [mailto:jackson.ryan@epa.gov]
Sent: Monday, July 03, 2017 6:28 PM
To: Michael Formica <formicam@nppc.org>; Brown, Byron <brown.byron@epa.gov>
Subject: FW: Environmental Justice FOIA

Byron, Michael is coming in the week after this to work out the FOIA request. I wanted you to be aware due to your FOIA work and for us to talk to be responsive to the FOIA request.

Thanks.

From: Michael Formica [mailto:formicam@nppc.org]
Sent: Thursday, June 22, 2017 10:45 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Environmental Justice FOIA

Ryan

Any time to chat about this FOIA request I sent in to EPA earlier this month? It involves the ongoing Environmental Justice matter that we've been dealing with in North Carolina.

Thanks

Michael C. Formica

National Pork Producers Council

202.680.3820

From: Michael Formica
Sent: Wednesday, May 31, 2017 5:59 PM
To: 'hq.foia@epa.gov' <hq.foia@epa.gov>

Subject: FOIA Request from National Pork Producers Council

Attached, please find a letter request made on behalf of the National Pork Producers Council under the Freedom of Information Act for documents in the custody of EPA related to an Environmental Justice petition concerning the pork industry in the state of North Carolina. As outlined in the letter, a fee waiver is also requested. If you have any questions, please do not hesitate to contact me.

Michael C. Formica

Assistant Vice President & Legal Counsel, Domestic Policy

National Pork Producers Council

202.347.3600

GENERAL LAW OFFICE - FRONT OFFICE WEEKLY AGENDA

Weekly Agenda
Hot Issues: August 28, 2018, at 3:00 pm Room 4045
Reg. Review: September 5, 2018 at 11:00 am; Room 4045

I. OA/AA/DAA/ MEETINGS

II. ACTION ITEMS FROM PRIOR MEETING

A. GLO

- ANP Follow-up

Ex. 5 Deliberative Process (DP)

- Metric for litigation
- Options paper
- HSPD-10
- Setting up DOJ improper request meeting for mid-September, 2018

B. Front Office

- Draft Elevation Memo
- Draft FOIA Memo (with Matt as of 8/29)
- Identify contact for AA for OLC – related to Nat. Security issue
- System for front office review of front office documents responsive to FOIA litigation
- Weekly reporting of FOIA production schedules
- Employment Delegation Memo. follow-up

III. HOT TOPICS AGENDA ITEMS

- Order 3220 (Youngblood) (Topic for 8/29 Hot Topics)

IV. HOT ISSUES AGENDA ITEMS

A. Employment Law Practice Group

- Case updates (Wulffen)

B. Information Law Practice Group

- FRA Updates: NARA letter regarding calendar and recent interim records policy (Blake)

- Upcoming FOIA Productions – potential issues (Schwarz)

- Sierra Club external correspondence case (Pickell)

- Next steps from DOI meeting (Blake)

C. Information Technology and Intellectual Property Law Practice Group

V. REG. REVIEW PRIORITY PRACTICE GROUP ISSUES/CASES

A. Employment Law Practice Group

- Case updates (Wulffen)

B. Information Law Practice Group

- NARA letter regarding calendar (Kelly)

- FOIAonline Upgrade – update on issues we are experiencing (Blake/Miller)

- Upcoming FOIA Productions and follow-up from 8/17 Hot Issues (Miller/Youngblood)

C. Information Technology and Intellectual Property Law Practice Group

- Secondary account follow-up (Hammitt/Blake)

- Exterro/Litigation Hold update (Stilp/Hammitt)

D. National Security and IG Act

- Update on Order 3220 (Youngblood Hammitt)

E. NEW CASES

Environmental Integrity Project v. EPA, Case No. 1:18-cv-01952 (08/21/18)
People for the American Way v. EPA, Case No. 1:18-cv-01947 (08/20/18)
NRDC v. EPA, Case No. 1:18-cv-07489 (08/16/18)

Commented [BW1]: Shirley – Please delete these cases and add any new FOIA cases that we have received since 7/31. Thanks

Commented [BS2R1]: Done

F. UPCOMING LITIGATION DEADLINES

8/23	Interim Production ***Sierra Club v. EPA*,** Case No. 18-cv-02372 (N.D. Cal.) (Judge: Elizabeth D. Laporte) This FOIA litigation concerns four FOIA requests submitted by Sierra Club. The first three FOIA requests were consolidated under requestion number HQ-2017-008660 and requested (1) communications between various OPA custodians and external parties and (2) communications between those custodians and Administrator Priutt on a list of subject matters. This request is assigned to OPA. The complaint alleges that EPA failed to respond to both FOIA requests. **Upcoming deadline:** EPA's second interim production is due by court order on **August 23.** **Attorneys:** Seth Buchsbaum, Rebecca Falk (AUSA)
8/27	***Sierra Club v. EPA*,** Case No. 18-cv-00722 (N.D. Cal) (Mag. Judge Jacquline Corley) The FOIA request at issue (EPA-HQ-2018-001207) has five parts, related to FOIA processing. The first four parts broadly request documents from January 20, 2017 through the date of the search concerning the Agency's handling, processing and disposition of FOIA requests and seeks records from the Agency's FOIA office, FOIA Officers, FOIA Coordinators, legal offices, and Inspector General's office. The fifth part requests records "to or from the designated Chief FOIA Officer at EPA, or any other FOIA Officer, concerning instituting a process for review of FOIA responses by the Office of Executive Secretariat of the EPA Administrator's Office prior to their release." Sierra Club submitted the FOIA request on October 31, 2017. EPA has negotiated a narrowed search and is making rolling productions based on identified custodians to Plaintiff. **Upcoming deadline**: Production of documents from Ryan Jackson and Samantha Dravis due **August 27**. **Attorneys**: Jennifer Hammitt, Claire Cormier (AUSA)
8/27	***Surgey v. EPA*,** 1:18-cv-00654 (D.D.C, Judge Timothy J. Kelly) Nicholas Surgey, a reporter represented by Public Citizen, filed this suit alleging a failure to respond to EPA-HQ-2018-003188 which sought records associated with former administrator Pruitt's travel to and attendance at the 2018 Rose Bowl. The request is assigned to OEX. Some responsive records are from OCEFT and involve the PSD. Productions were made on June 25, 2018 and July 7, 2018. Records were redacted and withheld under 6, 7(c), 7(e), and 7(f). A briefing schedule was set on July 30, 2018. **Upcoming deadline:** Motion for Summary Judgment and Vaughn Index due **August 27**

	Attorneys: Peter Bermes, Scott Sroka (AUSA)
8/28	***Am. Oversight v. EPA***, Case No. 1:17-cv-2559 (D.D.C.) (Judge: Honorable Colleen Kollar-Kotelly) This FOIA litigation concerns FOIA request EPA-HQ-2018-001290, seeking records related to actual or projected expenditures for renovations of any part of the office suites for any individuals acting in Senate-confirmed (PAS) positions, as well as related communications. **Upcoming Deadline**: Joint Status Report due **August 28** **Attorney:** Joan Kaminer, Marsha Yee (AUSA)
8/28	***CREW et al v. Pruitt et al***, Case No. 18-406 (D.D.C.) (Judge: Honorable James E. Boasberg) Citizens for Responsibility and Ethics in Washington and Public Employees for Environmental Responsibility filed suit against the EPA, Administrator Pruitt, the Archivist of the United States, and the National Archives and Records Administration. The suit alleges three counts. The first count alleges that EPA and Administrator Pruitt violated the APA because Administrator Pruitt and "other top EPA officials" allegedly violated the Federal Records Act (FRA) by not adequately documenting Agency functions, policies, decisions, procedures and essential transactions. The second count alleges EPA and Administrator Pruitt violated the FRA by not maintaining an adequate federal records program because of the alleged failure to adequately document decisions and activities. The third count alleges that the Archivist and National Archives failed to follow 44 U.S.C. Sec. 2115, which requires the Archivist to inform an agency head in writing of any concerned FRA violation and provide recommendations for its correction and if not corrected within a reasonable time, submit a written report to the President and Congress. **Upcoming deadline**: A status conference is scheduled for **August 28** at 10:00 AM. An answer to the case is also due **August 28**. **Attorneys**: Lynn Kelly, Steven Meyers (Civil Division)
08/30	***Envtl. Integrity Project v. EPA***, Case No. 1:17-cv-1914 (D.D.C.) (Judge: Honorable Kentanji Brown Jackson) This FOIA litigation concerns a FOIA request submitted by Environmental Integrity Project requesting records of expenditures for travel outside of Washington DC for the Administrator and anyone accompanying him from June 5, 2017 through June 12, 2017 (travel vouchers listing expenses). Upcoming deadline: JSR is due **August 30**.

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	Attorneys: Ed Sweeney, Dan Schaeffer (AUSA)
08/31	***Farmworker Justice and EarthJustice v. EPA,*** Case No. 3:18-cv-02293 (N.D. Cal) (Judge: Magistrate Judge Sallie Kim) This FOIA litigation concerns a FOIA request that seeks notes from EPA staff present at two sessions during a November 1-2, 2017 meeting identified as the Pesticide Program Dialogue Committee meeting. The FOIA request also seeks records concerning calendar entries and meetings between either the Administrator, Ryan Jackson, Charlotte Bertrand, Nancy Beck, Wendy Cleland-Hamnett, Michael Dourson, Richard Keigwin, or Kevin Keaney and the American Farm Bureau Federation, NASDA (initials used for brevity), AAPCO, CropLife, NCAE, NAAA, Oregonians for Food and Shelter, "State-based Farm Bureau associations," or "State departments of agriculture." **Upcoming Deadline:** Production due **August 31, 2018.** **Attorneys:** Quoc Nguyen, Julie Reagin (AUSA)
8/31	***Environmental Integrity Project v. EPA***, Case No. 17-2140 (D.D.C.) (Judge: Honorable Timothy J. Kelly) This FOIA litigation concerns two FOIA requests submitted by Environmental Integrity Project. The first FOIA request (HQ-2017-010504) sought Administrator Pruitt's schedule of meetings with outside parties from May 19, 2017 to August 14, 2017 and Administrator Pruitt's travel vouchers from June 13, 2017 to August 14, 2017. This request is assigned to the Office of the Administrator, Office of Executive Secretariat. The second FOIA request (HQ-2017-010603) sought travel vouchers for employees accompanying Administrator Pruitt on travel between February 21, 2017 through June 4, 2017 and June 13, 2017 through August 17, 2017. This request is assigned to the Office of Comptroller, Office of Chief Financial Officer. The complaint alleges that EPA failed to respond to both FOIA requests. **Upcoming deadline**: JSR (unless stipulation is filed beforehand) is due **August 31**. **Attorneys**: Ed Sweeney, Jeremy Simon (AUSA)
08/31	***American Oversight v. U.S. Department of Commerce et al,*** Case No. 1:18cv534 (D.D.C.) (Judge: Honorable Ketanji Brown Jackson) American Oversight filed a FOIA suit against EPA and thirteen other Agencies concerning separate FOIA requests related to calendars. The complaint alleges that EPA failed to respond to a two-part FOIA request (EPA-HQ-2018-000798) seeking: (1) calendars from May 18, 2017 to the date of search for the Administrator and Mike Flynn and (2) calendars from February 18, 2017 to date of search for Ryan Jackson, Reginald Allen, Byron Brown, Kevin Chmielewski, Nancy Beck, and Brittany Bolen. The request was submitted on October 19, 2017 and assigned to the Office of Executive Secretariat.

	Upcoming Deadline: Interim Production due **August 31** **Attorney:** Joan Kaminer, James Luh (DOJ Civil Division)
08/31	***CREW v. EPA***, Case No. 1:18-cv-1019 (D.D.C.) (Judge: Honorable Tanya S. Chutkan) Citizens for Responsibility and Ethics in Washington filed a FOIA suit alleging that EPA has failed to respond to its FOIA request. The FOIA request, HQ-2017-005504, seeks, "records of all communications from December 8, 2016 to the present between Administrator Pruitt and EPA's designated agency ethics officer." The complaint alleges that by email dated April 4, 2018, EPA and the requestor agreed to a modification of the request to include "any designated agency ethics official" who has discussed ethics related matters with Administrator Pruitt, including Kevin Minoli. The FOIA request is assigned to OGC. **Upcoming Deadline**: Final Production due **August 31** **Attorneys**: Joan Kaminer, Joshua Rogers (AUSA)
08/31	***Center for Biological Diversity v USFWS and EPA***, 1:18-cv-00342 (D.D.C, Judge Amy Berman Jackson)) Center for Biological Diversity filed a FOIA lawsuit alleging that EPA and US Fish and Wildlife separately failed to respond to FOIA requests by the statutory deadline. The EPA FOIA request at issue (EPA-HQ-2017-008866) seeks "all records mentioning, including and/or final biological evaluation of" chlorpyrifos, diazinon, carbaryl, and methomyl. The FOIA request is assigned to Office of Pesticide Programs, Office of Chemical Safety and Pollution Prevention. • Attorney: Casey Pickell; AUSA Scott Sroka • Fourth Production due **August 31**
08/31	***Am. Oversight v. EPA***, 1:18-cv-364 (D.D.C.) (Judge: Honorable Timothy J. Kelly) American Oversight filed a FOIA lawsuit challenging EPA's determination that three FOIA requests were improper requests. American Oversight included a Count alleging that EPA has a pattern and practice of denying FOIA requests that identify custodians and date ranges on the grounds that those requests do not provide keywords, search terms or particular subject matter. The three FOIA requests were submitted on June 23, 2017 and sought all emails between June 1, 2017 and June 15, 2017 between: (1) Administrator Pruitt and Ryan Jackson, John Reeder or Mike Flynn (Request #1, HQ-2017-008848); (2) Administrator Pruitt, Ryan Jackson, John Reeder, Mike Flynn and any email address not containing a .gov domain name (Request #2, HQ-2017-008850); and Administrator Pruitt and Ryan Jackson, John Reeder or Mike Flynn and any email address containing a house.gov or senate.gov domain name (Request #3, HQ-2017-008852). The Office of Executive

	Secretariat was the lead office for the three requests. The Complaint alleges that OEX denied the three requests on July 28, 2017, administrative appeals were filed on September 7, 2017, and the appeals were pending more than twenty working days. **Upcoming Deadline:** Production due **August 31, 2018** **Attorneys**: Joan Kaminer, Peter Wechsler (DOJ Civil Divison)
08/31	***Waterkeeper All. v. EPA***, Case No. 1:17-cv-7400 (S.D.N.Y.) ("Waterkeeper I") (Judge: Honorable Valerie E. Caproni) This FOIA litigation pertains to FOIA request HQ-2017-005671 submitted by Waterkeeper Alliance, Inc., Sierra Club, Clean Water Action, and Environmental Integrity Project on April 3, 2017, that sought "all records created, stored, or received since November 8, 2016 concerning the ELG rule." The Plaintiffs allege that EPA has not responded to the FOIA request. Since the filing of this lawsuit, EPA has completed production of documents and is now working with Plaintiffs to narrow the substantive issues. **Upcoming deadline**: Joint Status Report due **August 31**. **Attorneys**: Matt Schwarz, Anthony ("Tony") Sun (AUSA)
08/31	***Waterkeeper All. v. EPA***, Case No. 1:17-cv-9184 (S.D.N.Y.) ("Waterkeeper II") (Judge: Honorable Valerie E. Caproni) This FOIA litigation pertains to FOIA request HQ-2017-010217 submitted by Waterkeeper Alliance, Inc., Sierra Club, Clean Water Action, and Environmental Integrity Project on August 4, 2017, that sought records related to reconsideration of, and postponement of compliance deadlines within, the EPA's Steam Electric Effluent Limitations Guidelines ("ELGs") Rule. The Plaintiffs allege that EPA has not responded to the FOIA request. Since the filing of this lawsuit, EPA has completed production of documents and is now working with Plaintiffs to narrow the substantive issues. **Upcoming deadline**: Joint Status Report due on **August 31**. **Attorneys**: Matt Schwarz, Anthony ("Tony") Sun (AUSA)
08/31	***PEER v. EPA***, Case No. 17-00652 (D.D.C) (Judge: Honorable Beryl Howell) Public Employees for Environmental Responsibility (PEER) filed a lawsuit under the FOIA based on a two-part request. Part 1 asked for any information "relied upon" by Administrator Pruitt when he made a statement on the show "Squawk Box" that stated that he did not believe that humans were the primary cause of climate change. Part 2 asked for any EPA studies, reports, or documents that concluded that humans were not the primary cause of climate change. EPA moved for summary judgment, arguing that the requests were improper

	under the FOIA and that Part 2 was unreasonably burdensome. On June 1, the Court denied EPA's motion. Consistent with the Court's order, EPA is producing any briefing materials prepared for the "Squawk Box" appearance and any other documents that may be located from inquiries with the Administrator's office as to Part 1. For Part 2, EPA is conducting a limited email search and is continuing to negotiate / work internally to determine the potential scope of any other searches. **Upcoming deadline**: Production for Part 2 -self seach documents (2 records found) due **August 1**. **Attorneys:** Jennifer Hammitt, Daniel Schaefer AUSA
09/01	***Environmental Defense Fund v. EPA***, Case No. 1:17-cv-2220 (D.D.C.) (Judge: Honorable Amit P. Mehta) On October 26, 2017, the Environmental Defense Fund (EDF) filed a Freedom of Information Act (FOIA) lawsuit in the District of Columbia alleging that EPA has failed to timely respond to three FOIA requests submitted to EPA in January, March, and June of 2017. The three FOIA requests at issue request records on three distinct topics: (1) conflicts of interest for Administrator Pruitt, (2) direction to EPA staff on communicating with the public about science, and (3) Administrator Pruitt's calendar. EPA had provided a partial response to two of the three requests at the time the complaint was filed, but has not completed the response to any requests within the statutory time-frame. The requests are assigned to OGC and/or OEX. **Upcoming Deadline:** Production due **September 1** **Attorney:** Joan Kaminer, Joshua Kolsky (AUSA)
9/5	Answer ***Hall & Associates v. EPA,*** No. 1:18-cv-001749 (D.D.C.) (Judge: Honorable Randolph Moss) This case concerns a FOIA request (EPA-HQ-2018-002581) that seeks seeking unredacted copies of "all 35 documents included as response records for FOIA EPA-HQ-2016-006425." Plaintiff re-requested documents based on a position that all documents previously withheld in response to a 2016 request must be released in light of a February 28, 2017, D.C. Circuit Court ruling in *Ctr. For Regulatory Reasonableness v. EPA*, 849 F.3d 453 (D.C. Cir. 2017). The Office of Water responded to the renewed request on January 23, 2018, and re-asserted Exemption 5 as to the same withholdings. Plaintiffs appealed the Office of Water's response. The Office of General Counsel has been working with the Office of Water to identify the set of responsive documents for review on appeal, and has communicated with the requester several times concerning the pendency of the appeal and the need for an extension of time.

	Upcoming deadline: The Answer is due on or before September 5, 2018. **Attorneys:** Quoc Nguyen; Scott Sroka (AUSA)
9/5	Reply Brief/Opposition ***Center for Biological Diversity v. EPA,*** No. 16-cv-0175 (D.D.C.) (Chief Judge Beryl Howell) Carch 15berative n the matter. did not represent the Agency'al since they were intended to be further considered by the recipienCenter for Biological Diversity (CBD) initiated this FOIA action seeking an order requiring both an adequate search and disclosure of all responsive records withheld in response to CBD's two FOIA requests concerning the ESA Addenda developed for the amended registration of the herbicide, Enlist Duo. On September 28, 2017, the Court issued a decision granting and denying in part EPA's Motion for Summary Judgment, ordering EPA to review its withholdings in previous productions and to perform a supplemental search extending the search cutoff to March 31, 2015, adding 10 more custodians, and providing a supplemental Vaughn Index. The review of past productions was completed on December 4, 2017, and the supplemental search and Vaughn Index were completed on March 1, 2018. **Upcoming deadline:** EPA's Reply Brief/Opposition due **September 5** (extension from August 16) **Attorneys:** Casey Pickell; AUSA: Jeremy Simon.
9/5	***Clark v EPA***, No. 1:18-cv-75 (D.D.C.) (District Court Judge: Dabney L. Friedrich) This FOIA litigation concerns FOIA request EPA-HQ-2017-008007, which asked for emails between Ryan Jackson and twenty named individuals from January 19, 2017 through June 2, 2017. The office to which this FOIA request is assigned, OEX, contacted the requester and informed him that the request was improper because it did not include a subject matter. The requester declined to clarify. OEX gave the requester an additional chance to clarify, but the requester declined and on November 15, 2017 OEX denied the request. The requester appealed the denial but filed this lawsuit before OGC could issue a determination. **Upcoming Deadline**: Production due **September 5**. **Attorneys**: Matt Schwarz, Scott Sroka (AUSA)
09/07	Final Production ***American Oversight v. EPA***, Case No. 18-893 (D.D.C.) (Judge: Honorable Amit Mehta)

	American Oversight filed a FOIA lawsuit alleging that EPA failed to respond to four different FOIA requests within the statutory time period. The first FOIA request (HQ-2018-004640) sought records waiver requests submitted by Administrator Pruitt for first class travel and any decisions. This FOIA request is assigned to the Office of the Comptroller. The second FOIA request (HQ-2018-005157) sought records sufficient to identify all non-coach travel by Pasquale "Nino" Perrotta and any waiver requests for first class travel and waiver decisions. The third FOIA request (HQ-2018-005159) sought communications between Pasquale "Nino" Perrotta and a list of 15 individuals and companies including Edwin Steinmetz, Edwin Steinmetz Associates, etc. The second and third FOIA requests are assigned to OCEFT. The fourth FOIA request (HQ-2018-005595) sought all records relating to the procurement of any vehicle to transport the Administrator. The fourth FOIA request is assigned to OARM. **Upcoming Deadline**: Final Production Due September 7, 2018 **Attorneys**: Mark Stilp, Jeremy Simon (AUSA)
9/7	Vaughn Index Due to Plaintiff ***PEER v. EPA, 18-cv-0772 (D.D.C.) (Judge Emmet G. Sullivan)*** Public Employees for Environmental Responsibility (PEER) filed a lawsuit under the FOIA and the Privacy Act alleging that EPA failed to respond to a FOIA and Privacy Act request by the statutory deadline. PEER's combined FOIA and Privacy Act request (EPA-HQ-2018-000714) sought "All internal communications and external communications with any news media representatives concerning Dr. Southerland from July 31, 2017 to the present." The request is assigned to the Office of Water. On July 18, 2018, the Court ordered EPA to produce a Vaughn Index for the 86 documents withheld in full or in part. • **Upcoming deadline:** Vaughn Index is due Setpember 7 • **Attorneys:** Steve Jawgiel, Casey Pickell (POC), Patricia McBride (AUSA)
9/11	***Sierra Club v. EPA***, Case No. 18-cv-00722 (N.D. Cal) (Mag. Judge Jacquline Corley) The FOIA request at issue (EPA-HQ-2018-001207) has five parts, related to FOIA processing. The first four parts broadly request documents from January 20, 2017 through the date of the search concerning the Agency's handling, processing and disposition of FOIA requests and seeks records from the Agency's FOIA office, FOIA Officers, FOIA Coordinators, legal offices, and Inspector General's office. The fifth part requests records "to or from the designated Chief FOIA Officer at EPA, or any other FOIA Officer, concerning instituting a process for review of FOIA responses by the Office of Executive Secretariat of the EPA Administrator's Office prior to their release." Sierra Club submitted the FOIA request on October 31, 2017. EPA has negotiated a narrowed search and is making rolling productions based on identified custodians to Plaintiff.

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	Upcoming deadline: Production of documents from Kenneth Wagner and Sara Greenwalt is due **September 11.** **Attorneys**: Jennifer Hammitt, Claire Cormier (AUSA)
09/12	***Washington v. EPA***, Case No. C18-00645-RSM (W.D. Wash.) (Judge Ricardo S. Martinez). This FOIA litigation concerns one FOIA request submitted by the State of Washington requesting records of EPA communications to members of EPA Federal Advisory Committees related to Administrator Pruitt's October 31, 2017 directive titled "Strengthening and Improving Membership on EPA Federal Advisory Committees." The FOIA request is particularly focused on communications inquiring as to whether advisory committee members have, administer, or work on EPA grants, and requesting that advisory committee members resign, refrain from seeking re-appointment or recuse themselves from pending matters. The FOIA request is currently assigned to OARM. The complaint alleges that EPA has failed to respond to the FOIA request, and that EPA failed to conduct a search to locate records. **Upcoming deadline**: A Joint Status Report is due **September 12**. **Attorneys**: Paul Logan (R8 ORC), Scott Albright (OGC), Michelle Lambert (AUSA).
9/12	***Environmental Integrity Project, et al. v. EPA*** (D.D.C.) (Judge: Honorable Trevor N. McFadden) This case concerns a FOIA request (HQ-2018-004127) that sought various records concerning approximately 33 meetings purportedly attended by Administrator Pruitt to discuss the proposed repeal and changes to the "Waters of the US" rule. The request is assigned to the Office of Executive Secretariat. **Upcoming Deadline:** An interim production is due by September **12.** **Attorneys:** Quoc Nguyen, April Seabrook (AUSA).
9/14	***Farmworker Justice and EarthJustice v. EPA,*** Case No. 3:18-cv-02293 (N.D. Cal) (Judge: Magistrate Judge Sallie Kim) This FOIA litigation concerns a FOIA request that seeks notes from EPA staff present at two sessions during a November 1-2, 2017 meeting identified as the Pesticide Program Dialogue Committee meeting. The FOIA request also seeks records concerning calendar entries and meetings between either the Administrator, Ryan Jackson, Charlotte Bertrand, Nancy Beck, Wendy Cleland-Hamnett, Michael Dourson, Richard Keigwin, or Kevin Keaney and the American Farm Bureau Federation, NASDA (initials used for brevity), AAPCO, CropLife, NCAE, NAAA, Oregonians for Food and Shelter, "State-based Farm Bureau associations," or "State departments of agriculture."

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	Upcoming Deadline: Joint status report due by **September 14, 2018.** **Attorneys:** Quoc Nguyen, Julie Reagin (AUSA)
09/14	Status Report ***Envtl. Integrity Project v. EPA***, 1:17-cv-2610 (D.D.C.) (Judge: Honorable Rudolph Contreras). Environmental Integrity Project (EIP) alleges that EPA failed to fully respond to EIP's September 7, 2017 FOIA request that sought records related to EPA's decision to designate as "inactive" a rulemaking that would require certain oil and gas facilities to disclose their releases of toxic chemicals to the national Toxics Release Inventory. The request was initially assigned to the Office of Chemical Safety and Pollution Prevention (OCSPP). OCSPP issued an interim response on November 28, 2017, and transferred the request to the Office of the Executive Secretariat (OEX). OEX is currently the lead office for the request. Answer filed January 31, 2018. **Upcoming deadline:** Joint Status report due on **September 14**. **Attorneys:** Mark Stilp, Mark Nebeker (AUSA)
09/14	**Second Production** *Sierra Club v. EPA*, Case No. 3:18-cv-2592 (N.D. Cal.) (Magistrate Judge Laurel Beeler) This case concerns two FOIA requests seeking information about the work of Michael Dourson and Susan Bodine while they were at EPA and awaiting Senate confirmation: EPA-HQ-2018-001171 and EPA-HQ-2018-001172. Discussions with the plaintiffs have narrowed the request to 1705 potentially responsive documents, from an initial total of 10,700+. We have committed to Plaintiffs that we will review and respond (produce, withhold, or determine not responsive) 500 documents per month until we have completed the response. This series of productions is likely to substantially resolve the matter, but plaintiff may seek some follow-up. Case management statement is now due by 10/25/18; case management conference has been continued to 11/1/18; court has exempted parties from Rule 26 requirements. Attorneys: Michael Boydston (ORC, Region 8), Jennifer Hammitt (OGC POC); Pamela Johann (AUSA)
9/15	Final Production ***NRDC v. EPA***, No. 1:18-cv-0794 (D.D.C.), (Judge Colleen Kollar-Kotelly)

	The Natural Resources Defense Council filed a FOIA lawsuit alleging that EPA failed to respond to a FOIA request (HQ-2018-000175). The FOIA request had two parts and sought (1) emails to or from Michael Dourson regarding methylene chloride, N-methylpyrrolidone, and/or trichloroethylene, from January 20, 2017 to the present and (2) records relating to Michael Dourson's involvement in EPA's evaluation of methylene chloride, N-methylpyrrolidone, and/or trichloroethylene, from January 20, 2017 to the present. The FOIA request is assigned to the Office of Pollution Prevention and Toxics. Answer filed May 8. • Attorney: Jon Micah Goeller; Casey Pickell (POC); AUSA: Dan Schaefer • EPA's final production of two is due **September 15.**
9/15	***Sierra Club v. EPA*,** Case No. 18-cv-00722 (N.D. Cal) (Mag. Judge Jacquline Corley) The FOIA request at issue (EPA-HQ-2018-001207) has five parts, related to FOIA processing. The first four parts broadly request documents from January 20, 2017 through the date of the search concerning the Agency's handling, processing and disposition of FOIA requests and seeks records from the Agency's FOIA office, FOIA Officers, FOIA Coordinators, legal offices, and Inspector General's office. The fifth part requests records "to or from the designated Chief FOIA Officer at EPA, or any other FOIA Officer, concerning instituting a process for review of FOIA responses by the Office of Executive Secretariat of the EPA Administrator's Office prior to their release." Sierra Club submitted the FOIA request on October 31, 2017. EPA has negotiated a narrowed search and is making rolling productions based on identified custodians to Plaintiff. **Upcoming deadline**: Joint Case Management Statement is due **September 15.** **Attorneys**: Jennifer Hammitt, Claire Cormier (AUSA)
09/15	First Interim Production (1 of 8 monthly productions) ***Campaign for Accountability v. EPA*,** Case No. 18-783 (D.D.C) (Judge: Honorable Randolph D. Moss) Campaign for Accountability, represented by American Oversight, filed suit regarding two FOIA requests related to the Tar Creek superfund site (R6) and communications with the Oklahoma AG's office. The first request was to Region 6 and the IG's office; it has been removed from the suit. The remaining request is for communications with the Administrator's Office that included the words "Tar Creek," "LICRAT," and others, and for communications with ok.oag.gov. The search for responsive documents is underway, and is to be completed by 7/31. **Upcoming deadline**: Interim Production (200 reviewed) due **September 15** **Attorney:** Jennifer Hammitt, Wyneva Johnson (AUSA; replace Alex Shoaibi)

09/16	***NRDC v. EPA***, No. 1:17-cv-9492 (S.D.N.Y.) (District Court Judge: Honorable Denise Cote) Natural Resources Defense Council filed a FOIA lawsuit in the Southern District of New York alleging that EPA failed to respond to a FOIA request (HQ-2017-011514). The FOIA request sought various records concerning (1) the "red team-blue team" climate-changed related exercise announced by the Administrator in June 2017 and (2) EPA's Protocol for Office of Affairs of Draft Competitive Grant Solicitations released in August 2017. The FOIA is assigned to the Office of Executive Secretariat. The complaint alleges that Plaintiff contacted the EPA FOIA Headquarters in October (voice mail) and November (email) and did not receive a response. The FOIA request is assigned to OEX. Part 1 of the FOIA request is assigned to OPA and OEX. Part 2 of the FOIA request is assigned to OPA and OARM. **Upcoming deadline**: A production of documents is due **September 16**. **Attorneys**: Matt Schwarz, Christine Poscablo (AUSA)
09/17	***Ctr. for Biological Diversity v. EPA***, Case No. 17-816 (D.D.C.) (Judge: Honorable Timothy J. Kelly). This case concerns two FOIA requests submitted to EPA in February 2017 requesting (1) all correspondence to or from Scott Pruitt, and (2) all calendars, schedules and travel itineraries for Scott Pruitt. EPA declined to process the first request as improper, for failing to describe the requested records and because the request would be unduly burdensome. OGC upheld that analysis in an administrative appeal decision, but later agreed to process the 11 day request. EPA completed its response to the calendar request after the filing of the complaint. **Upcoming deadline:** A Joint Status Report is due **September 17**. **Attorneys:** Lynn Kelly, Marina Braswell (AUSA)
09/17	Joint Status & Proposed Briefing Schedule ***Government Accountability Project et al v. EPA***, Case No. 1:17-cv-789 (D.D.C.) (Judge: Honorable Timothy J. Kelly) The Government Accountability Project and an individual named Zack Kopplin sued alleging that EPA failed to respond to two FOIA requests. The first FOIA request (HQ-2017-005723) sought "emails referencing the phrase 'gag order.'" This request was assigned to the Office of Public Affairs. The second FOIA request (HQ-2017-009008) sought from January 20, 2017, (1) "Any and all documents that reference "red team" and "blue team" in the same document and (2) any documents referencing "critiquing climate change" or "critique climate change." This FOIA request was assigned to the Office of Executive Secretariat. **Upcoming deadline**: Joint Status & Proposed Briefing Schedule is due **September 17.**

	Attorney(s): Mark Stilp, Scott Sroka (AUSA)
09/18	Status Report ***American Oversight v. EPA***, Case No. 18-893 (D.D.C.) (Judge: Honorable Amit Mehta) American Oversight filed a FOIA lawsuit alleging that EPA failed to respond to four different FOIA requests within the statutory time period. The first FOIA request (HQ-2018-004640) sought records waiver requests submitted by Administrator Pruitt for first class travel and any decisions. This FOIA request is assigned to the Office of the Comptroller. The second FOIA request (HQ-2018-005157) sought records sufficient to identify all non-coach travel by Pasquale "Nino" Perrotta and any waiver requests for first class travel and waiver decisions. The third FOIA request (HQ-2018-005159) sought communications between Pasquale "Nino" Perrotta and a list of 15 individuals and companies including Edwin Steinmetz, Edwin Steinmetz Associates, etc. The second and third FOIA requests are assigned to OCEFT. The fourth FOIA request (HQ-2018-005595) sought all records relating to the procurement of any vehicle to transport the Administrator. The fourth FOIA request is assigned to OARM. **Upcoming Deadline**: Status Report is due on **September 18, 2018.** **Attorneys**: Mark Stilp, Jeremy Simon (AUSA)
09/19	Joint Status Report ***Cause of Action Inst. v. EPA,*** Case No. 1:17-cv-2549 (D.D.C.) (Judge: Honorable Emmit Sullivan) This case concerns EPA's failed to respond to two FOIA requests, EPA-HQ-2017-010970 (submitted August 30, 2017) and EPA-HQ-2017-011341 (submitted September 11, 2017). Both requests sought specific records generated during EPA's efforts to investigate the use of the Signal mobile application by EPA employees. The requests are assigned to the Office of Environmental Information. **Upcoming deadline:** A Joint Status Report is due on **September 19.** **Attorney(s):** Lynn Kelly, Jeremy Simon (AUSA)
09/19	***Clark v EPA***, No. 1:18-cv-75 (D.D.C.) (District Court Judge: Dabney L. Friedrich) This FOIA litigation concerns FOIA request EPA-HQ-2017-008007, which asked for emails between Ryan Jackson and twenty named individuals from January 19, 2017 through June 2, 2017. The office to which this FOIA request is assigned, OEX, contacted the requester and informed him that the request was improper because it did not include a subject matter. The

	requester declined to clarify. OEX gave the requester an additional chance to clarify, but the requester declined and on November 15, 2017 OEX denied the request. The requester appealed the denial but filed this lawsuit before OGC could issue a determination. **Upcoming Deadline**: A Joint Status Report is due **September 19**. **Attorneys**: Matt Schwarz, Scott Sroka (AUSA)
9/20	***PEER v. EPA***, No. 18-cv-0046 (D.D.C.), (Judge Reggie B. Walton) Plaintiff PEER brought this FOIA litigation alleging that EPA failed to respond to a FOIA request (HQ-2017-008813). The request sought communications, extant studies, and other documents related to EPA's decision to end contributions for gym fees. The FOIA request is assigned to the Office of Administration and Resources Management. **Upcoming deadline:** Final production is due **September 20, 2018**. **Attorneys:** Ed Sweeney, Damon Taafe (AUSA).
9/20	***Sierra Club v. EPA*,** Case No. 18-cv-00722 (N.D. Cal) (Mag. Judge Jacquline Corley) The FOIA request at issue (EPA-HQ-2018-001207) has five parts, related to FOIA processing. The first four parts broadly request documents from January 20, 2017 through the date of the search concerning the Agency's handling, processing and disposition of FOIA requests and seeks records from the Agency's FOIA office, FOIA Officers, FOIA Coordinators, legal offices, and Inspector General's office. The fifth part requests records "to or from the designated Chief FOIA Officer at EPA, or any other FOIA Officer, concerning instituting a process for review of FOIA responses by the Office of Executive Secretariat of the EPA Administrator's Office prior to their release." Sierra Club submitted the FOIA request on October 31, 2017. EPA has negotiated a narrowed search and is making rolling productions based on identified custodians to Plaintiff. **Upcoming deadline**: Case Management Conference is scheduled for **September 20.** **Attorneys**: Jennifer Hammitt, Claire Cormier (AUSA)
9/24	Interim Production ***Sierra Club v. EPA***, Case No. 18-cv-02372 (N.D. Cal.) (Judge: Elizabeth D. Laporte) This FOIA litigation concerns four FOIA requests submitted by Sierra Club. The first three FOIA requests were consolidated under requestion number HQ-2017-008660 and requested (1) communications between various OPA custodians and external parties and (2) communications between those custodians and Administrator Priutt on a list of subject matters. This request is assigned to OPA. The complaint alleges that EPA failed to respond to both FOIA requests.

	Upcoming deadline: EPA's third interim production is due by court order on **September 24**. **Attorneys**: Seth Buchsbaum, Rebecca Falk (AUSA)
09/25	***PEER V. EPA***, No. 1:18cv271 (D.D.C.) (Judge Amy Berman Jackson) This failure to respond FOIA request (HQ-2018-002473) has five parts and seeks records concerning statements Administrator Pruitt made in a December 4, 2017 letter to Senator Whitehouse. The first three parts of the request seek various records focused on EPA's policy on third-party event participation of Office of Research and Development employees. The fourth part, purportedly quoting the December 4, 2017 letter, requests "Documents which summarize or enumerate research ORD is or is slated, to undertake as 'outlined in our Strategic Research Action Plans reflecting Congressional appropriations.' The fifth, and last part, paraphrased a sentence from the December 4, 2017 letter and seeks, "Any records reflecting any internal communications from Mr. Pruitt concerning 'EPA's Scientific Integrity Policy' including any documents reflecting steps Mr. Pruitt is taking to uphold that policy." The FOIA request is assigned to the Office of Executive Secretariat, Office of Administrator. EPA completed its production of documents responsive to the request on June 29, 2018. Plaintiff is seeking settlement and attorney costs and fees. **Upcoming deadline**: Joint Status Report due **September 25** **Attorneys**: Tricia Jefferson, April Seabrook (AUSA)
9/25	Case Management Report ***Sierra Club v. EPA***, Case 3:18-cv-3472 (N.D. Calif.) (Mag. Judge: Honorable Elizabeth D. Laporte) This FOIA litigation concerns four FOIA requests submitted by Sierra Club. Three of the four requests were filed in July 2017 and ask for external communications of former EPA Administrator Scott Pruitt's executive assistant and specified senior EPA staff. The fourth FOIA request was filed in May 2018 and seeks external communications of additional EPA staff, including Acting EPA Administrator Andrew Wheeler. Plaintiff is also challenging EPA's denial of two of Plaintiff's four fee waiver requests. Three of the requests are currently assigned to OEX; one request is currently assigned to OCIR. **Upcoming deadline:** The Agency's portion of the case management report is due **September 25 (continued from Setpember 4)** stating its case for how the production should be scheduled. A subsequent Case Management Conference is scheduled for October 2. **Attorneys:** Casey Pickell; Lynn Kelly; Adrienne Zack (AUSA).
09/26	***Sierra Club v. EPA***, Case No. 17-1906 (D.D.C.) (Judge: Honorable Colleen Kollar-Kotelly)

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	This FOIA litigation concerns four FOIA request submitted by Sierra Club requesting records of (1) Scott Pruitt; (2) Ryan Jackson and Samantha Dravis; (3) Milan Hupp and Sydney Hupp; and (4) Mandy Gunasekara. Requested records include external communications, calendars, communication logs, and deleted, yet recoverable, records. The requests are currently assigned to the Office of the Administrator. The complaint alleges that EPA has failed to respond to the FOIA requests. EPA completed processing the requests on August 15, 2018. **Upcoming deadline:** A Joint Status Report is due **September 26**. **Attorneys:** Lynn Kelly & Casey Pickell, Benton Peterson (AUSA)
9/27 **9/28**	***PEER v. EPA***, No. 18-cv-0046 (D.D.C.), (Judge Reggie B. Walton) Plaintiff PEER brought this FOIA litigation alleging that EPA failed to respond to a FOIA request (HQ-2017-008813). The request sought communications, extant studies, and other documents related to EPA's decision to end contributions for gym fees. The FOIA request is assigned to the Office of Administration and Resources Management. **Upcoming deadline:** JSR is due **September 27, 2018**. **Attorneys:** Ed Sweeney, Damon Taafe (AUSA). Joint Status Report ***Nat. Res. Def. Council v. EPA***, 18-175 (S.D.N.Y.) (Judge: Honorable Analisa Torres) Plaintiff NRDC filed suit on January 9, 2018 after EPA failed to respond to a FOIA request submitted on August 3, 2017. The FOIA request asked for records relating to: "(1) the process, planning, or criteria used to decide which states would be visited by Administrator Scott Pruitt on his 'State Action Tour,' and (2) the process, planning, or criteria used to decide which non-EPA persons, organizations, or entities to invite to attend any meeting with EPA officials during the 'State Action Tour.'" The complaint describes the "State Action Tour" by citing EPA news releases from July 2017 that provided details of Administrator Pruitt's meetings with various state and local officials (including those in Utah and Colorado) to discuss issues such as EPA's proposal to rescind the 2015 "Waters of the United States" rule. The parties have resolved all substantive issues in this case and are currently discussing Plaintiff's request for attorneys' fees. **Upcoming deadline**: Joint Status Report is due **September 28, 2018**. **Attorneys**: Scott Albright, Michael Byars (AUSA)
9/28	***Environmental Integrity Project, et al. v. EPA,*** Case No. 1:18-cv-00796 (D.D.C.) (Judge: Honorable Trevor N. McFadden)

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	This case concerns a FOIA request (HQ-2018-004127) that sought various records concerning approximately 33 meetings purportedly attended by Administrator Pruitt to discuss the proposed repeal and changes to the "Waters of the US" rule. The request is assigned to the Office of Executive Secretariat. **Upcoming Deadline:** Joint status report is due on **September 28.** **Attorneys:** Quoc Nguyen, April Seabrook (AUSA).
9/28	Final Production (per extension request from 9/4) ***Cause of Action Inst. v. EPA,*** Case No. 1:17-cv-2549 (D.D.C.) (Judge: Honorable Emmit Sullivan) This case concerns EPA's failed to respond to two FOIA requests, EPA-HQ-2017-010970 (submitted August 30, 2017) and EPA-HQ-2017-011341 (submitted September 11, 2017). Both requests sought specific records generated during EPA's efforts to investigate the use of the Signal mobile application by EPA employees. The requests are assigned to the Office of Environmental Information. **Upcoming deadline:** EPA's Final Production is due on or before **September 28.** **Attorney(s):** Lynn Kelly, Jeremy Simon (AUSA)
10/01	Motion for Summary Judgment + Vaughn Index ***NRDC v. EPA***, Case No. 17-05928 (S.D.N.Y.) (Judge: Honorable Jesse M. Furman) This FOIA litigation concerns a multi-part FOIA request submitted by Plaintiff seeking records concerning the following: (1) Nancy Beck's recusal or participation in TSCA rulemakings; (2) steps, if any, EPA took to shield Nancy Beck from TSCA rulemakings; (3) Executive Order 13770 and Nancy Beck; (4) the authority for Nancy Beck's appointment; (5) Nancy Beck's civil service status; and (6) number of employees hired as 42 U.S.C. § 300j-10 and date hired. Plaintiff alleges that EPA only produced two records and did not complete its response within the statutory time frame. **Upcoming Deadline:** EPA's MSJ and Vaughn Index is due **October 1.** **Attorneys:** Casey Pickell, Quoc Nguyen, Tomoko Onazowa (AUSA)
10/01	***Environmental Defense Fund v. EPA***, Case No. 1:17-cv-2220 (D.D.C.) (Judge: Honorable Amit P. Mehta) On October 26, 2017, the Environmental Defense Fund (EDF) filed a Freedom of Information Act (FOIA) lawsuit in the District of Columbia alleging that EPA has failed to timely respond to three FOIA requests submitted to EPA in January, March, and June of

	2017. The three FOIA requests at issue request records on three distinct topics: (1) conflicts of interest for Administrator Pruitt, (2) direction to EPA staff on communicating with the public about science, and (3) Administrator Pruitt's calendar. EPA had provided a partial response to two of the three requests at the time the complaint was filed, but has not completed the response to any requests within the statutory time-frame. The requests are assigned to OGC and/or OEX. **Upcoming Deadline:** Production due **October 1** **Attorney:** Joan Kaminer, Joshua Kolsky (AUSA)
10/01	**American Oversight v. EPA,** No. 1:17-cv-01261 (D.D.C. filed June 27, 2017) (Judge Christopher R. Cooper) This FOIA litigation concerns two requests from American Oversight. The first seeks records on or after February 17, 2017 of the calendars and call logs of the Administrator and other political and SES appointees in the Office of the Administrator (EPA-HQ-2017-005777). The second FOIA request seeks records on or after February 17, 2017 of communications between the Administrator and other staff in the Office of the Administrator and Office of Air and Radiation, on the one hand, and Carl Icahn and his associates, agents, and affiliated businesses, on the other (EPA-HQ-2017-005774). This production will involve a subset of the line-by-line records in Joan's EDF case. **Upcoming Deadline:** Production due **October 1** **Attorney:** Daniel Schramm; Jeremy Simon (AUSA)
10/01	***Farmworker Justice and EarthJustice v. EPA,*** Case No. 3:18-cv-02293 (N.D. Cal) (Judge: Magistrate Judge Sallie Kim) This FOIA litigation concerns a FOIA request that seeks notes from EPA staff present at two sessions during a November 1-2, 2017 meeting identified as the Pesticide Program Dialogue Committee meeting. The FOIA request also seeks records concerning calendar entries and meetings between either the Administrator, Ryan Jackson, Charlotte Bertrand, Nancy Beck, Wendy Cleland-Hamnett, Michael Dourson, Richard Keigwin, or Kevin Keaney and the American Farm Bureau Federation, NASDA (initials used for brevity), AAPCO, CropLife, NCAE, NAAA, Oregonians for Food and Shelter, "State-based Farm Bureau associations," or "State departments of agriculture." **Upcoming Deadline:** Case management conference is set for **October 1, 2018.** **Attorneys:** Quoc Nguyen, Julie Reagin (AUSA)
10/03	**Joint Status Report**

	Center for Biological Diversity v USFWS and EPA, 1:18-cv-00342 (D.D.C, Judge Amy Berman Jackson)) Center for Biological Diversity filed a FOIA lawsuit alleging that EPA and US Fish and Wildlife separately failed to respond to FOIA requests by the statutory deadline. The EPA FOIA request at issue (EPA-HQ-2017-008866) seeks "all records mentioning, including and/or final biological evaluation of" chlorpyrifos, diazinon, carbaryl, and methomyl. The FOIA request is assigned to Office of Pesticide Programs, Office of Chemical Safety and Pollution Prevention. • Attorney: Casey Pickell; AUSA Scott Sroka • JSR due **October 3**
10/09	***PEER v. EPA***, Case No. 17-00652 (D.D.C) (Judge: Honorable Beryl Howell) Public Employees for Environmental Responsibility (PEER) filed a lawsuit under the FOIA based on a two-part request. Part 1 asked for any information "relied upon" by Administrator Pruitt when he made a statement on the show "Squawk Box" that stated that he did not believe that humans were the primary cause of climate change. Part 2 asked for any EPA studies, reports, or documents that concluded that humans were not the primary cause of climate change. EPA moved for summary judgment, arguing that the requests were improper under the FOIA and that Part 2 was unreasonably burdensome. On June 1, the Court denied EPA's motion. Consistent with the Court's order, EPA is producing any briefing materials prepared for the "Squawk Box" appearance and any other documents that may be located from inquiries with the Administrator's office as to Part 1. For Part 2, EPA is conducting a limited email search and is continuing to negotiate / work internally to determine the potential scope of any other searches. **Upcoming deadline**: Final production for Part 2 documents (review of emails) due **October 9**. **Attorneys:** Jennifer Hammitt, Daniel Schaefer AUSA
10/12	***Environmental Integrity Project, et al. v. EPA*** (D.D.C.) (Judge: Honorable Trevor N. McFadden) This case concerns a FOIA request (HQ-2018-004127) that sought various records concerning approximately 33 meetings purportedly attended by Administrator Pruitt to discuss the proposed repeal and changes to the "Waters of the US" rule. The request is assigned to the Office of Executive Secretariat. **Upcoming Deadline:** An interim production is due by **October 12.** **Attorneys:** Quoc Nguyen, April Seabrook (AUSA).

10/15	Second Interim Production (2 of 8 monthly productions) ***Campaign for Accountability v. EPA***, Case No. 18-783 (D.D.C) (Judge: Honorable Randolph D. Moss) Campaign for Accountability, represented by American Oversight, filed suit regarding two FOIA requests related to the Tar Creek superfund site (R6) and communications with the Oklahoma AG's office. The first request was to Region 6 and the IG's office; it has been removed from the suit. The remaining request is for communications with the Administrator's Office that included the words "Tar Creek," "LICRAT," and others, and for communications with ok.oag.gov. The search for responsive documents is underway, and is to be completed by 7/31. **Upcoming deadline**: Interim Production (500 reviewed) due **October 15** **Attorney:** Jennifer Hammitt, Wyneva Johnson (AUSA; replace Alex Shoaibi)
10/19	**Third and Final Production** *Sierra Club v. EPA*, Case No. 3:18-cv-2592 (N.D. Cal.) (Magistrate Judge Laurel Beeler) This case concerns two FOIA requests seeking information about the work of Michael Dourson and Susan Bodine while they were at EPA and awaiting Senate confirmation: EPA-HQ-2018-001171 and EPA-HQ-2018-001172. Discussions with the plaintiffs have narrowed the request to 1705 potentially responsive documents, from an initial total of 10,700+. We have committed to Plaintiffs that we will review and respond (produce, withhold, or determine not responsive) 500 documents per month until we have completed the response. This series of productions is likely to substantially resolve the matter, but plaintiff may seek some follow-up. Case management statement is now due by 10/25/18; case management conference has been continued to 11/1/18; court has exempted parties from Rule 26 requirements. Attorneys: Michael Boydston (ORC, Region 8), Jennifer Hammitt (OGC POC); Pamela Johann (AUSA)
10/23	**Interim Production** *Sierra Club v. EPA*, Case No. 18-cv-02372 (N.D. Cal.) (Judge: Elizabeth D. Laporte) This FOIA litigation concerns four FOIA requests submitted by Sierra Club. The first three FOIA requests were consolidated under requestion number HQ-2017-008660 and requested (1) communications between various OPA custodians and external parties and (2) communications between those custodians and Administrator Priutt on a list of subject matters. This request is assigned to OPA. The complaint alleges that EPA failed to respond to both FOIA requests.

	Upcoming deadline: EPA's second interim production is due by court order on **October 23**. Attorneys: Seth Buchsbaum, Rebecca Falk (AUSA)
10/31	***Farmworker Justice and EarthJustice v. EPA,*** Case No. 3:18-cv-02293 (N.D. Cal) (Judge: Magistrate Judge Sallie Kim) This FOIA litigation concerns a FOIA request that seeks notes from EPA staff present at two sessions during a November 1-2, 2017 meeting identified as the Pesticide Program Dialogue Committee meeting. The FOIA request also seeks records concerning calendar entries and meetings between either the Administrator, Ryan Jackson, Charlotte Bertrand, Nancy Beck, Wendy Cleland-Hamnett, Michael Dourson, Richard Keigwin, or Kevin Keaney and the American Farm Bureau Federation, NASDA (initials used for brevity), AAPCO, CropLife, NCAE, NAAA, Oregonians for Food and Shelter, "State-based Farm Bureau associations," or "State departments of agriculture." **Upcoming Deadline:** Production due **October 31, 2018.** **Attorneys:** Quoc Nguyen, Julie Reagin (AUSA)
10/31	***PEER v. EPA,*** Case No. 1:17-cv-1780 (D.D.C.) (Judge: Honorable Christopher R. Cooper) This FOIA litigation concerns a FOIA request submitted by PEER requesting records pertaining to the prioritizing the Superfund Program and the Superfund Task Force, both announced in the May 22, 2017 memorandum. The request is currently assigned to Office of Executive Secretariat, the Office of the Administrator. The complaint alleges that EPA has failed to respond to the FOIA requests. **Upcoming deadline:** An interim production of documents is due **October 31.** **Attorneys:** Quoc Nguyen, Johnny Walker (AUSA)
10/31	***Farmworker Justice and EarthJustice v. EPA,*** Case No. 3:18-cv-02293 (N.D. Cal) (Judge: Magistrate Judge Sallie Kim) This FOIA litigation concerns a FOIA request that seeks notes from EPA staff present at two sessions during a November 1-2, 2017 meeting identified as the Pesticide Program Dialogue Committee meeting. The FOIA request also seeks records concerning calendar entries and meetings between either the Administrator, Ryan Jackson, Charlotte Bertrand, Nancy Beck, Wendy Cleland-Hamnett, Michael Dourson, Richard Keigwin, or Kevin Keaney and the American Farm Bureau Federation, NASDA (initials used for brevity), AAPCO, CropLife, NCAE, NAAA, Oregonians for Food and Shelter, "State-based Farm Bureau associations," or "State departments of agriculture." **Upcoming Deadline:** Production due **October 31, 2018.**

	Attorneys: Quoc Nguyen, Julie Reagin (AUSA)
11/01	***Environmental Defense Fund v. EPA***, Case No. 1:17-cv-2220 (D.D.C.) (Judge: Honorable Amit P. Mehta) On October 26, 2017, the Environmental Defense Fund (EDF) filed a Freedom of Information Act (FOIA) lawsuit in the District of Columbia alleging that EPA has failed to timely respond to three FOIA requests submitted to EPA in January, March, and June of 2017. The three FOIA requests at issue request records on three distinct topics: (1) conflicts of interest for Administrator Pruitt, (2) direction to EPA staff on communicating with the public about science, and (3) Administrator Pruitt's calendar. EPA had provided a partial response to two of the three requests at the time the complaint was filed, but has not completed the response to any requests within the statutory time-frame. The requests are assigned to OGC and/or OEX. **Upcoming Deadline:** Production due **November 1** **Attorney:** Joan Kaminer, Joshua Kolsky (AUSA)
11/01	Joint Status Report ***Campaign for Accountability v. EPA*****,** Case No. 18-783 (D.D.C) (Judge: Honorable Randolph D. Moss) Campaign for Accountability, represented by American Oversight, filed suit regarding two FOIA requests related to the Tar Creek superfund site (R6) and communications with the Oklahoma AG's office. The first request was to Region 6 and the IG's office; it has been removed from the suit. The remaining request is for communications with the Administrator's Office that included the words "Tar Creek," "LICRAT," and others, and for communications with ok.oag.gov. The search for responsive documents is underway, and is to be completed by 7/31. **Upcoming deadline**: Joint Status Report due **November 1** **Attorney:** Jennifer Hammitt, Wyneva Johnson (AUSA; replace Alex Shoaibi)
11/13	***Sierra Club v. EPA*****,** Case No. 18-cv-00722 (N.D. Cal) (Mag. Judge Jacquline Corley) The FOIA request at issue (EPA-HQ-2018-001207) has five parts, related to FOIA processing. The first four parts broadly request documents from January 20, 2017 through the date of the search concerning the Agency's handling, processing and disposition of FOIA requests and seeks records from the Agency's FOIA office, FOIA Officers, FOIA Coordinators, legal offices, and Inspector General's office. The fifth part requests records

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	"to or from the designated Chief FOIA Officer at EPA, or any other FOIA Officer, concerning instituting a process for review of FOIA responses by the Office of Executive Secretariat of the EPA Administrator's Office prior to their release." Sierra Club submitted the FOIA request on October 31, 2017. EPA has negotiated a narrowed search and is making rolling productions based on identified custodians to Plaintiff. **Upcoming deadline**: Production of documents from Elizabeth White due **November 13.** **Attorneys**: Jennifer Hammitt, Claire Cormier (AUSA)
11/15	Third Interim Production (3 of 8 monthly productions) ***Campaign for Accountability v. EPA***, Case No. 18-783 (D.D.C) (Judge: Honorable Randolph D. Moss) Campaign for Accountability, represented by American Oversight, filed suit regarding two FOIA requests related to the Tar Creek superfund site (R6) and communications with the Oklahoma AG's office. The first request was to Region 6 and the IG's office; it has been removed from the suit. The remaining request is for communications with the Administrator's Office that included the words "Tar Creek," "LICRAT," and others, and for communications with ok.oag.gov. The search for responsive documents is underway, and is to be completed by 7/31. **Upcoming deadline**: Interim Production (500 reviewed) due **November 15** **Attorney:** Jennifer Hammitt, Wyneva Johnson (AUSA; replace Alex Shoaibi)
11/19	Opposition-Reply Brief ***NRDC v. EPA***, Case No. 17-05928 (S.D.N.Y.) (Judge: Honorable Jesse M. Furman) This FOIA litigation concerns a multi-part FOIA request submitted by Plaintiff seeking records concerning the following: (1) Nancy Beck's recusal or participation in TSCA rulemakings; (2) steps, if any, EPA took to shield Nancy Beck from TSCA rulemakings; (3) Executive Order 13770 and Nancy Beck; (4) the authority for Nancy Beck's appointment; (5) Nancy Beck's civil service status; and (6) number of employees hired as 42 U.S.C. § 300j-10 and date hired. Plaintiff alleges that EPA only produced two records and did not complete its response within the statutory time frame. **Upcoming Deadline:** EPA's Opposition to NRDC's cross motion and Reply is due **November 19.** **Attorneys:** Casey Pickell, Quoc Nguyen, Tomoko Onazowa (AUSA)
11/23	**Interim Production**

ED_004865_00000044-00027

	Sierra Club v. EPA, Case No. 18-cv-02372 (N.D. Cal.) (Judge: Elizabeth D. Laporte) This FOIA litigation concerns four FOIA requests submitted by Sierra Club. The first three FOIA requests were consolidated under requestion number HQ-2017-008660 and requested (1) communications between various OPA custodians and external parties and (2) communications between those custodians and Administrator Priutt on a list of subject matters. This request is assigned to OPA. The complaint alleges that EPA failed to respond to both FOIA requests. Upcoming deadline: EPA's second interim production is due by court order on **November 23**. Attorneys: Seth Buchsbaum, Rebecca Falk (AUSA)
12/15	Fourth Interim Production (4 of 8 monthly productions) ***Campaign for Accountability v. EPA***, Case No. 18-783 (D.D.C) (Judge: Honorable Randolph D. Moss) Campaign for Accountability, represented by American Oversight, filed suit regarding two FOIA requests related to the Tar Creek superfund site (R6) and communications with the Oklahoma AG's office. The first request was to Region 6 and the IG's office; it has been removed from the suit. The remaining request is for communications with the Administrator's Office that included the words "Tar Creek," "LICRAT," and others, and for communications with ok.oag.gov. The search for responsive documents is underway, and is to be completed by 7/31. **Upcoming deadline**: Interim Production (500 reviewed) due **December 15** **Attorney:** Jennifer Hammitt, Wyneva Johnson (AUSA; replace Alex Shoaibi)
01/15	Fifth Interim Production (5 of 8 monthly productions) ***Campaign for Accountability v. EPA***, Case No. 18-783 (D.D.C) (Judge: Honorable Randolph D. Moss) Campaign for Accountability, represented by American Oversight, filed suit regarding two FOIA requests related to the Tar Creek superfund site (R6) and communications with the Oklahoma AG's office. The first request was to Region 6 and the IG's office; it has been removed from the suit. The remaining request is for communications with the Administrator's Office that included the words "Tar Creek," "LICRAT," and others, and for communications with ok.oag.gov. The search for responsive documents is underway, and is to be completed by 7/31. **Upcoming deadline**: Interim Production (500 reviewed) due **January 15**

	Attorney: Jennifer Hammitt, Wyneva Johnson (AUSA; replace Alex Shoaibi)
02/15	Sixth Interim Production (6 of 8 monthly productions) ***Campaign for Accountability v. EPA***, Case No. 18-783 (D.D.C) (Judge: Honorable Randolph D. Moss) Campaign for Accountability, represented by American Oversight, filed suit regarding two FOIA requests related to the Tar Creek superfund site (R6) and communications with the Oklahoma AG's office. The first request was to Region 6 and the IG's office; it has been removed from the suit. The remaining request is for communications with the Administrator's Office that included the words "Tar Creek," "LICRAT," and others, and for communications with ok.oag.gov. The search for responsive documents is underway, and is to be completed by 7/31. **Upcoming deadline**: Interim Production (500 reviewed) due **February 15** **Attorney:** Jennifer Hammitt, Wyneva Johnson (AUSA; replace Alex Shoaibi)
03/15	Seventh Interim Production (7 of 8 monthly productions) ***Campaign for Accountability v. EPA***, Case No. 18-783 (D.D.C) (Judge: Honorable Randolph D. Moss) Campaign for Accountability, represented by American Oversight, filed suit regarding two FOIA requests related to the Tar Creek superfund site (R6) and communications with the Oklahoma AG's office. The first request was to Region 6 and the IG's office; it has been removed from the suit. The remaining request is for communications with the Administrator's Office that included the words "Tar Creek," "LICRAT," and others, and for communications with ok.oag.gov. The search for responsive documents is underway, and is to be completed by 7/31. **Upcoming deadline**: Interim Production (500 reviewed) due **March 15** **Attorney:** Jennifer Hammitt, Wyneva Johnson (AUSA; replace Alex Shoaibi)
04/15	Final Production (8 of 8 monthly productions) ***Campaign for Accountability v. EPA***, Case No. 18-783 (D.D.C) (Judge: Honorable Randolph D. Moss) Campaign for Accountability, represented by American Oversight, filed suit regarding two FOIA requests related to the Tar Creek superfund site (R6) and communications with the Oklahoma AG's office. The first request was to Region 6 and the IG's office; it has been

	removed from the suit. The remaining request is for communications with the Administrator's Office that included the words "Tar Creek," "LICRAT," and others, and for communications with ok.oag.gov. The search for responsive documents is underway, and is to be completed by 7/31. **Upcoming deadline**: Final Production (500+ Reviewed) due **April 15, 2019** **Attorney:** Jennifer Hammitt, Wyneva Johnson (AUSA; replace Alex Shoaibi)

Draft FOIA memo for issuance by Acting Administrator

Key Messages

- **Transparency**: The EPA is committed to operating in an open and transparent manner. People have the right to access agency records, except where the information is protected from disclosure.
- **Timeliness**: We will improve the timeliness of our FOIA responses to make sure the public receives the information they need when they need it.
- **Quality:** We will improve the quality of our FOIA responses so that the public receives both clear communication about the FOIA process, and appropriately redacted records.
- **Professionalism:** We will bolster our training efforts and ensure that our FOIA professionals have the resources they need to help make EPA a flagship example of transparent, efficient and effective government.

Throughout the history of the U.S. Environmental Protection Agency (EPA), Administrators have reaffirmed a commitment to transparency in our agency's operations. The Freedom of Information Act (FOIA) is an important tool for promoting transparency and building public trust in agency actions. I reaffirm the Agency's commitment to operating in an open and transparent manner, and I encourage all Agency employees to join me to help improve the Agency's FOIA response efforts. The success of our efforts at EPA directly depends on the trust of the public we serve.

General Principles

FOIA encourages accountability through transparency. Pursuant to the FOIA, any person has the right to access agency records, except where the information is protected from disclosure. Like other federal agencies, the EPA is subject to the FOIA. The Agency is committed to conducting its business in an open and transparent manner. The Agency will work to ensure that its FOIA professionals have the support needed to satisfy FOIA's transparency requirement in as timely and efficient a manner as possible. The EPA should also strive to proactively provide the public with access to information that is likely to be requested under the FOIA to better assist the public to participate and engage with the Agency.

Because the EPA is a public regulatory agency, EPA staff may come into possession of information that may need to be protected from disclosure under FOIA, including confidential business information, trade secrets, or personal privacy information. Although the Agency's business is to be conducted in an open, accountable manner, we must also ensure that sensitive information entitled to special protection is handled with the utmost care and in full compliance with all applicable laws and regulations. EPA's FOIA Regulations are available [HYPERLINK "https://www.ecfr.gov/cgi-bin/text-idx?SID=6e03f1fcf8b91fe19d5ad1d462dad85c&node=40:1.0.1.1.2&rgn=div5"] (https://www.ecfr.gov).

Important Steps Taken to Date

The Agency has taken several steps recently to improve its FOIA program. The Agency's FY 2018-2022 EPA Strategic Plan sets one of its Strategic Goals as increasing transparency and public participation. Measures for meeting this goal include eliminating the backlog of pending FOIA requests and meeting the statutory deadlines for responding to FOIA requests. As part of this improvement effort, the Agency recently created the National FOIA Office within the Office of General Counsel. The National FOIA Office sets FOIA policy and helps provide training and assistance to offices Agency-wide that are responsible for FOIA.

Last fall, the Office of General Counsel partnered with the Office of Environmental Information to host a multi-day conference for over 180 of the Agency's FOIA professionals. The conference was the first of its kind in more than a decade. The training agenda tracked the life cycle of a FOIA and addressed legal issues encountered at all stages of FOIA processing. Last fall's conference represents the first of a two-phased training program. The second phase, described below, involves specialized FOIA training for supervisors.

In February 2018, the Agency held a multi-day Lean event focused on FOIA. That event resulted in two pilot projects that the National FOIA Office has led in conjunction with the Office of Continuous Improvement (OCI) to identify bottlenecks and help streamline the FOIA response process.

Moving Forward to Improve the FOIA Process

The Agency's leadership intends to continue to take steps to improve its FOIA process this year. In addition, I encourage organizations responsible for FOIA to undertake their own projects to improve FOIA processing. These may include centralization of FOIA review and management functions in the organization, adding tracking identification numbers to all documents released through FOIA, and providing supplemental training using existing resources, like the [HYPERLINK "https://usepa.sharepoint.com/sites/ogc_Community/NFT2017/Documents/Conference%20Materials/FOIA%20Toolkit.PDF"] (https://usepa.sharepoint.com/sites/ogc_Community/NFT2017/Documents/Conference%20Materials/FOIA%20Toolkit.PDF).

To meet the transparency and public participation Strategic Goal, EPA must work to ensure that it is not only providing responses to FOIA requests in a timely manner, but also that those responses are of the highest quality. Programs and regions should continue implementing current EPA FOIA policy and procedures to help reduce errors in their responses. For instance, all organizations should continue to have at least two knowledgeable individuals, who may be subject matter experts, and including one manager, review all documents before they are released to the public to improve accuracy and consistency in release determinations. See Freedom of Information Act Policy, [HYPERLINK "https://intranet.epa.gov/foia/docs/FOIA-Policy-August2014-09-30FINAL(with-electronic-signature).pdf"] (September 20, 2014) (available at https://intranet.epa.gov/foia/docs/FOIA-Policy-August2014-09-30FINAL(with-electronic-signature).pdf).

Further, the Agency should continue FOIA training for all staff. To that end, the Office of General Counsel is planning the second phase of the training program mentioned above. This second phase of the training program will include a training directed at supervisors, including Division Directors or the equivalent, responsible under the Agency's FOIA Policy for the review of FOIA responses. These training efforts and continued annual training of our FOIA professionals will help ensure that the Agency is responding effectively and efficiently to FOIA requests and utilizing fully available technological resources, including the Agency's Relativity document review software. Questions about whether FOIA exemptions apply to certain information or other questions about FOIA processing should be directed to the Office of General Counsel.

Federal Records Act Requirements

For the Agency to have an effective FOIA program, the Agency must also ensure that it has a robust Federal Records program. The Federal Records Act provides the foundation for transparency at EPA. Under the Federal Records Act, employees must create and maintain records that document the persons, places, things, or matters dealt with by the agency and which facilitate action by agency officials and their successors in office. Proper records management protects the financial, legal, and other rights of EPA and of persons directly affected by the EPA's actions, and permits adequate oversight of the Agency's work by Congress and the public. All EPA employees must take care to document the formulation and execution of basic policies and decisions, and the taking of necessary actions. It is particularly important that all employees understand that the Federal Records Act requirements apply to oral communications. All substantive decisions and commitments reached orally should be documented. You can learn more about the Federal Records Act at [HYPERLINK "http://intranet.epa.gov/records/"]. Should you have any questions about your Federal Records Act obligations, you should contact the Records Help Desk by calling 202-566-1494 or emailing records@epa.gov.

Conclusion

I recognize that several offices within the Agency are facing an unprecedented volume of FOIA requests. Despite this unprecedented challenge, EPA is committed to conducting its business in an open and transparent manner and will continue to take steps to improve the efficacy and efficiency of its FOIA process. I look forward to working with all of you to make EPA a flagship example of transparent, efficient and effective government.

Message

From: Lynn, Tricia [lynn.tricia@epa.gov]
Sent: 8/29/2018 7:40:18 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily Clips, 8/29/18

Air

Bloomberg Environment: Trump to Reopen Another EPA Coal Rule With an Eye to Changes

E&E News: Republicans praise Trump plan but question EPA authority

Secret Science

The Hill: Pentagon warns against EPA's science proposal

Chemicals & Pesticides

Chemical Watch: EPA issues 29 TSCA significant new use rules

Chemical Watch: EPA's systematic review approach exposes mechanistic data debate

PBS News Hour: Does formaldehyde cause leukemia? A delayed EPA report may hold the answer

Pollution Control

Inside EPA: Wheeler Poised To Soon Issue EPA Policy For Assessing State Programs

Water

E&E News: Lawmakers, experts say algae problem goes beyond Fla.

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The Hill
Pentagon warns against EPA's science proposal
http://thehill.com/policy/energy-environment/404056-pentagon-warns-against-epas-science-proposal
By Timothy Cama - 08/28/18 04:40 PM EDT

The Pentagon is criticizing the Environmental Protection Agency's (EPA) proposal to boost "transparency" standards for the science it uses in decisionmaking.

Patricia Underwood in the Department of Defense's office of energy, installations and environment told the EPA last week that the proposal could unnecessarily exclude sound science from the agency's use.

"While we agree that public access to information is very important, we do not believe that failure of the agency to obtain a publication's underlying data from an author external to the agency should negate its use," she wrote.

"It is improbable that EPA will be able to obtain underlying data from all authors, this should not impede the use of otherwise high-quality studies."

Underwood's comments were first reported by Greenwire Tuesday.

They were in response to a landmark proposal, first pushed by former EPA head Scott Pruitt, to restrict the agency's use of scientific findings and studies in regulations, enforcement and elsewhere, unless all of the underlying data can be made available to the public.

Health advocates, environmental groups and some scientists have criticized the proposal as a veiled attempt to handicap the EPA's regulatory authority by prohibiting the use of major scientific findings in fields like epidemiology.

But conservatives and many regulated industries support the proposal and say it would shine a much-needed light on the EPA's activities.

The EPA received thousands of comments on the proposal before the deadline last week. It must review the comments before potentially making the regulation final.

Chemical Watch
EPA issues 29 TSCA significant new use rules
https://chemicalwatch.com/69954/epa-issues-29-tsca-significant-new-use-rules
29 August 2018

The US EPA has issued TSCA significant new use rules (Snurs) for 29 substances, subject to section 5(e) consent orders.

The covered chemicals are varied, but include several substances intended for use as coatings additives.

Once finalised, these Snurs will hold users of the covered substances to the same requirements as those negotiated with the original pre-manufacture notice (PMN) submitters and agreed to in the consent orders.

The requirements for each of the substances differ, but may include limitations on the uses of the substance, hazard communication, personal protective equipment use and the submission of certain toxicity testing data.

These protective measures are designed to address potential unreasonable risk that the EPA identified while reviewing the request to bring each new substance to market.

The rules correspond to consent orders that were agreed to more than a year ago, and – in one case – as long ago as November 2016.

Rulemaking process
The EPA issued the Snurs in two batches: one set of 10 and another of 19.

Like two recent groupings – 27 Snurs on 17 August and 145 others on 1 August – the agency has promulgated these as both direct final rules and proposed rules. The former takes effect on a faster timeline than through a traditional rulemaking process, but requires that the agency hears no significant adverse comment in order for them to be finalised.

Both of the direct final rules are to take effect from 26 October. But for any substance for which the EPA receives significant feedback before 10 September, it will drop those Snurs from the direct final rule and address them through the proposed rulemaking process.

E&E News
Lawmakers, experts say algae problem goes beyond Fla.
https://www.eenews.net/eedaily/stories/1060095373/search?keyword=epa
By Cecelia Smith-Schoenwalder, Published: Wednesday, August 29, 2018

Witnesses during a Senate hearing yesterday reminded lawmakers that almost no state is safe from harmful algae blooms.

"Prominent in everyone's minds is the Florida red and green tides," Don Anderson, a senior scientists for Woods Hole Oceanographic Institute, told the Senate Commerce, Science and Transportation Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard.

But Anderson reminded lawmakers of harmful algae bloom events that affected Alaska in 2015; Toledo, Ohio, in 2014; and Salem, Ore., in 2018 and urged them not to throw money at the problem in Florida as a short-term solution.

"The temptation to target funding to that one problem ignores the need for balanced, sustained national support that will allow other regions to respond to the inevitable outbreaks that will occur elsewhere in future years," said Anderson, who also serves as the director of the U.S. National Office for Harmful Algal Blooms.

Sen. Bill Nelson (D-Fla.), the ranking member of the full committee, said Florida is "enveloped in a green slime." The state is dealing with red tide on the Gulf Coast and blue-green algae traveling through the inland waterways to the ocean.

"It breaks my heart to see our beaches and rivers fouled like this," he said, urging the House to pass the "Harmful Algal Bloom and Hypoxia Research and Control Amendments Act." The bill is a companion to S. 1057, which passed the Senate in September 2017 (Greenwire, Sept. 27, 2017).

It would fund federal programs that research the blooms at $22 million for fiscal 2019 through 2023. Current funding is set to expire at the end of next month.

Michigan Democratic Sen. Gary Peters said House members have resisted taking up the bill because they say the funding is not needed and that too many federal agencies are already involved in the issue.

Anderson said that an authorization lapse would be "terrible," noting that money within the agencies for the issue is scarce.

He added that money has fluctuated over the years but that it remains well below what is needed for an adequate response to events.

Specifically, he pointed out that NOAA handles algae blooms in the oceans but EPA is in charge of the events in fresh water. He said EPA programs for harmful algal blooms lack support and direction.

Subcommittee ranking member Tammy Baldwin (D-Wis.) said hundreds of rivers and lakes in her state look like "green pea soup." She said, "The blooms spoil so much of what defines a great Wisconsin summer."

Baldwin asked witnesses whether climate change is making the problem worse.

Anderson said that it is particularly an issue with fresh water. Cyanobacteria, like the kind fueling the blue-green algae bloom in Florida, like it hot, he said.

"The species that cause these problems are real winners when it comes to a warming climate," said Anderson.

Harmful algae blooms have garnered the attention of Congress this summer, with other actions including:

- Introduction of a bill from Nelson and Sen. Marco Rubio (R-Fla.) last week to direct the Interagency Task Force on Harmful Algal Blooms to look at the causes of the events around Florida (E&E Daily, Aug. 27).
- Inclusion of $1 million in funding for the Centers for Disease Control and Prevention for work related to mitigating, surveying and responding to harmful algae bloom exposure in a Senate appropriations package (E&E Daily, Aug. 24).
- An amendment from Rubio to the appropriations package to secure at least $5 million for EPA to look at the health impacts on humans exposed to the bloom's toxins and develop preventive measures. The amendment also included a minimum of $200,000 for the U.S. Geological Survey to study how toxins develop from the blooms (E&E Daily, Aug. 1).
- Inclusion of language authorizing a reservoir south of Florida's Lake Okeechobee that could reduce nutrient levels in the lake's discharges that fuel the blue-green algae blooms in S. 2800 (E&E Daily, Aug. 16).

E&E News
Republicans praise Trump plan but question EPA authority
https://www.eenews.net/eedaily/stories/1060095381/search?keyword=epa
Nick Sobczyk, Published: Wednesday, August 29, 2018

Congressional conservatives who repeatedly tried to kill Clean Air Act climate regulations during the Obama administration are now embracing one.

Republicans on both sides of Capitol Hill have lavished praise on the Affordable Clean Energy rule — the Trump administration's proposed scaled-back replacement for the Clean Power Plan — since it was rolled out last week.

In a Washington Examiner op-ed Monday, House Majority Whip Steve Scalise (R-La.) hailed the end of the "war on coal" and called the proposed ACE rule "another welcome addition to President Trump's list of promises fulfilled."

But for years, Scalise and other congressional Republicans tried to kill or curtail EPA's authority to regulate greenhouse gases in the first place.

While those efforts appear to be on standby for now, some conservatives haven't given up the idea of revisiting the issue.

EPA's authority "is still unclear, and anything we can do to provide greater clarity of what their role is, we should," Sen. James Lankford (R-Okla.) said yesterday. "I mean, EPA has a very important role in what we're doing, but it lacks clarity."

The ACE rule would set guidelines for states to curb emissions by strictly focusing on efficiency improvements at individual power plants, the kind of "inside the fence line" approach that industry groups have long called for.

That's a major departure from the gridwide approach to climate regulation the Obama administration took with the CPP.

At the same time, ACE would not address the endangerment finding, EPA's 2009 ruling that greenhouse gases pose a threat to public health.

Without axing the endangerment finding, EPA said in a set of talking points that it has a "responsibility to fill the void" with a curtailed power plant emissions regulation, rather than repealing the Clean Power Plan outright.

Republicans have used various channels to argue over the years that the Clean Air Act does not allow EPA to regulate greenhouse gases and that Congress has the ultimate authority on the issue.

Senate Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska) attempted to nix the endangerment finding using the Congressional Review Act in 2010, but she was shot down by a Democratic Senate.

At the time, she argued that the finding was an effort by EPA to push Congress to pass a climate bill (E&E News PM, June 10, 2010).

Since the Obama administration announced the final CPP in 2015, Republicans have looked both to stand-alone legislation and appropriations riders to either kill the endangerment finding or prevent EPA from using key climate measurements to shape its regulations.

Lankford last year authored legislation with Rep. Evan Jenkins (R-W.Va.) and others to ban the federal government from considering the social cost of carbon, the metric used to determine the long-term economic impacts of carbon emissions.

Similar language was tacked onto the House-passed Interior-EPA spending bill last month (E&E Daily, July 19).

Another proposed amendment to that bill, from Rep. Paul Gosar (R-Ariz.), would have barred EPA from using funds to implement the endangerment finding, though it was never approved for floor consideration.

But with the proposed ACE rule, those kinds of efforts may start to fade on Capitol Hill, said Frank Maisano, a partner in Bracewell LLP's Policy Resolution Group, which represents a mix of energy clients.

"There's always going to be a core group of conservatives and think tank conservatives who think it would be better to do away with the endangerment finding," Maisano said. "I think that number dwindles when you have this rule in place, only because now there is a viable, different alternative to that option."

For now, some seem content with the proposed alternative, especially with Republicans eager to tout a win for the Trump administration ahead of the midterm election.

In response to specific questions about continued legislative efforts to toss the endangerment finding and the agency's ability to regulate climate-altering air pollution, a Scalise spokeswoman said the majority whip "is very supportive of the president's effort to roll back the CPP" and replace it with the ACE proposal.

"The CPP was an ill-conceived and illegal one-size-fit-all regulation that served primarily to eliminate certain types of energy sources — all to the detriment of American families, workers and consumers," she said after linking to Scalise's op-ed.

Still an issue

There remains a sense among some conservatives that Congress will have to act in the long term.

Senate Environment and Public Works Chairman John Barrasso (R-Wyo.) said yesterday that his committee — and the Senate as a whole — would be unlikely to address the endangerment finding or greenhouse gas regulations anytime soon. He ticked off a list of other priorities on the Senate calendar, including confirming judges and pushing through the stalled water infrastructure bill.

But Barrasso suggested he's still interested in revisiting EPA's authority to regulate greenhouse gases under the Clean Air Act.

"I still think it's an issue," he told E&E News.

Gosar, too, said he wants to continue to press the issue on Capitol Hill. Through a spokesman, he said the ACE proposal "is as reasonable as the existent regulatory and judicial environment will allow, and so I applaud it."

But Congress retains the power to legislatively negate the endangerment finding, he added, and "should consider doing so as a matter of good governance, given the implausibility of the idea that Congress imagined or anticipated the Clean Air Act would ever apply to carbon emissions."

With the proposed ACE rule on the table, "what you might get is a few hortatory items, encouraging the Agency to go in certain directions," GOP energy lobbyist Mike McKenna said in an email.

But EPA will eventually need some longer-term clarity, McKenna said.

"I think the argument that regulation of greenhouse gases is going to eventually require congressional involvement is pretty much without serious argument," he said. "Agencies usually are hesitant to do anything too aggressive outside of statutory boundaries, and that is especially the case where the cost of the action will be apparent to everyone (like a regime involving GHGs would be)."

Sen. Jim Inhofe (R-Okla.), the Senate's pre-eminent climate skeptic, said almost as soon as the ACE rule was proposed that he would prefer to ax the endangerment finding (E&E Daily, Aug. 22).

He added yesterday that he's been fighting the endangerment finding since it was finalized under the Obama administration. Inhofe took issue with EPA's use of science from the Intergovernmental Panel on Climate Change, which he said was "totally discredited" after the 2009 "Climategate" email controversy.

"I've always felt from that time that it should be revisited," he said. "And, of course, it would take legislation."

'An enduring solution'

Democrats, meanwhile, continue to rhetorically fight the proposed ACE rule, but it's not clear they'll have much power to stop it from moving forward.

Sen. Michael Bennet (D-Colo.) said on the floor last week that the CPP rollback ultimately highlights the need for congressional action on climate change.

"If we're serious about climate, we need an enduring solution," he said. "We can't have something that's ripped out like the Clean Power Plan after a year and a half. That will not fulfill the responsibility we have for the next generation of Americans, or to the planet, for that matter."

EPW ranking member Tom Carper (D-Del.) added yesterday that he would like his panel to take a closer look at EPA's replacement proposal, though he said he hadn't yet spoken to Barrasso about potentially scheduling a hearing.

"I think this is a situation which begs for a hearing or two and a chance to bring in folks who can talk about what the administration has laid out," Carper said. "We have, on our side, very serious reservations."

PBS News Hour

Does formaldehyde cause leukemia? A delayed EPA report may hold the answer

https://www.pbs.org/newshour/science/does-formaldehyde-cause-leukemia-a-delayed-epa-report-may-hold-the-answer

By Amanda Grennell, Aug 29, 2018 11:49 AM EDT

The Environmental Protection Agency has been evaluating the link between formaldehyde and leukemia, a type of blood cancer, for more than a decade, but it has not yet reached a final decision.

The National Cancer Institute first found a link between formaldehyde and leukemia, a cancer of blood-forming tissues like bone marrow, in 2003. Based on more than 25,000 workers at 10 industrial plants over 40 years, the study found that the risk for leukemia increased for people exposed to relatively high levels of formaldehyde levels at 0.1 to 4 parts per million.

Formaldehyde is a common chemical that is found in, but not limited to, types of wood glue, embalming fluid, refinery pollution, makeup and vehicle emissions. Everyday exposure levels, even in congested areas like New York City, are up to thousands of times lower than the exposures linked to leukemia.

A second investigation in 2010, conducted by toxicologist Luoping Zhang at the University of California Berkeley, strongly supported this link. The study examined about 100 workers split between factories with and without formaldehyde.

After controlling for certain lifestyle factors, the team found that workers exposed to 0.6 to 2.5 parts per million of formaldehyde had fewer red and white blood cells and blood platelets. The researchers also detected a higher prevalence of DNA mutations in the blood stem cells of exposed workers.

Later in 2010, the International Agency for Research on Cancer, a part of the World Health Organization, voted to classify formaldehyde as a cause of leukemia.

News reports say the EPA's analysis may connect exposure to any level of formaldehyde with a risk of leukemia, which could spur new regulations on the chemical industry. In July, Politico, citing current and former agency officials, reported that the formaldehyde report has been complete since Donald Trump took office, but top EPA advisors refuse to hold the meetings necessary to publicly release it. In January, former EPA chief Scott Pruitt told Congress he believed the assessment was complete.

The department conducting the report — EPA's Integrated Risk Information System (IRIS) — provides guidance on health hazards due to exposure from chemicals. But in 2011, the National Academy of Sciences found significant problems with a publicly released draft of the report, forcing the EPA to completely overhaul its evaluation process. In the meantime, plenty of research has surfaced on the health consequences of formaldehyde.

Here's what you need to know about what has been discovered and what the EPA report might mean for your future health.

Scientists and the chemical industry clash over formaldehyde

Formaldehyde is a tiny molecule — one carbon atom, one oxygen atom and two hydrogen atoms. Formaldehyde is also made naturally in every mammal as a byproduct of biochemical reactions.

Though it is small, formaldehyde packs a punch — humans can smell it at levels of around one part per million, which can irritate the skin, eyes and lungs. At higher levels, around four parts per million, formaldehyde causes a rare nasal cancer, but historically, only embalmers or factory workers have faced this amount of exposure. People who are exposed consistently develop a tolerance to the irritation.

Zhang subsequently found additional types of DNA mutations in the workers that are linked to leukemia. In mouse experiments, she also discovered that inhalation of formaldehyde leads to bone marrow cell damage, a reduction in blood cell counts similar to the human workers and other leukemia predictors.

Bernard Goldstein said Zhang's 2010 study changed his mind about formaldehyde. As a hematologist, a doctor who treats patients with blood disorders, Goldstein took special note of the data on blood cell counts.

"If somebody were to tell me they've got a new chemical, it's great for keeping your lawn green or whatever, and by the way it seems to cause these low blood counts, I would say don't even go near it, don't manufacture that," said

Goldstein, a former dean of the University of Pittsburgh School of Public Health and assistant EPA administrator for research and development from 1983 to 1985. "That's what leukemogens [leukemia-causing agents] do."

Goldstein said the mutations found in Zhang's studies resemble ones made by benzene, a known leukemia-causing agent that also lowers blood counts.

Kimberly White, toxicologist and senior director for the American Chemistry Council's chemical products and technology division, said that after the EPA's draft report on formaldehyde, the council launched a research program to address problems laid out by the National Academy's peer review.

The American Chemistry Council has funded several research investigations to re-examine the 2003 and 2010 epidemiological studies, including a recent review paper in 2017. The review focused on exposure levels for individual workers, rather than the averages for the whole group.

They found individuals exposed to high levels of formaldehyde did not always have low blood counts, while some in the unexposed group did have low blood counts.

"You have this human data which is basically weak and inconsistent," White said. "There are some studies with a positive association and some with a negative association."

White also noted that none of the animals in academic studies of formaldehyde develop leukemia, though rodents exposed to chemicals — outside of chemotherapies in combination with radiation — are not known to develop the cancer.

Zhang disagreed with the American Chemistry Council's assessment.

"The human evidence is not weak but strong, particularly in highly exposed embalmers and medical technicians," Zhang said. She added that most meta-analyses — the best validation for combining multiple epidemiological studies — "showed very consistent positive results."

Zhang also said that benzene, which clearly causes leukemia in humans, has never induced leukemia in animal studies.

Goldstein said epidemiological studies on leukemia rates, like the National Cancer Institute's 2003 study, may not be the strongest evidence because too few people develop leukemia, even with high exposure to formaldehyde. Rather than focus on the total number of people who develop leukemia, Goldstein said scientists and industry experts should look to studies — like Zhang's — that could predict leukemia.

"I would strongly fault industry for not repeating that [2010] study. They've had plenty of time. Instead they hire consultants to poke holes in it," Goldstein said.

Why IRIS could be a deciding factor

White and the American Chemistry Council question how formaldehyde could cause leukemia without ever reaching the bone marrow — the chemical reacts on contact with nose and lung tissue. The American Chemistry Council argues if formaldehyde can't interfere with the creation of new blood cells in bone marrow, then it can't cause leukemia.

Zhang and Goldstein said it could be possible. Recent research contradicts the long-held idea that blood stem cells are only made in bone marrow — instead, the nose and lungs may also be a producer. If formaldehyde reaches these blood stem cells in the nose and lungs, Zhang said it could damage them and lead to leukemia.

The EPA's upcoming IRIS report, like its predecessors, will try to pin down how much chemical exposure will make a person sick. Departments within the EPA and other government agencies will use the report to determine safety levels of formaldehyde, White said.

"[Agencies] are going to assume that what's in the IRIS report is the best available," White said. So the evidence needs to be weighed carefully, she said.

Goldstein said IRIS makes it easier to calculate formaldehyde's risk. Regulators can determine how much daily exposure over an entire lifetime increases the chance of getting a disease by using a simple multiplication table published at the end of the report.

"We have a country that says we want to be protected from these low level risks, and IRIS is the best science we have now," Goldstein said. "They are reasonable estimates, but are they perfect? No."

White said that there is evidence for a safe level according to animal studies of formaldehyde pointed out by the National Academy's peer review in 2011.

The EPA told the NewsHour it is reviewing the updated draft with other federal agencies and did not indicate when the report would be released.

"Assessments of this type are often the result of needs for particular rulemakings and undergo an extensive intra-agency and interagency process," said an EPA spokesperson in an email.

Goldstein said evidence from Zhang's 2010 study supports the idea of a safe level, but added that more evidence is still needed, and until then, formaldehyde should be considered "guilty until proven innocent."

Chemical Watch
EPA's systematic review approach exposes mechanistic data debate
https://chemicalwatch.com/69942/epas-systematic-review-approach-exposes-mechanistic-data-debate
By Andrew Turley, 29 August 2018

A recently concluded EPA consultation has shown that industry and academics strongly disagree over the role of mechanistic data in the regulatory hazard assessment of chemicals.

Mechanistic data can be used to identify how toxicity occurs and is often applied in the form of evidence for, or against, a particular mode of action. Its use in regulatory hazard assessment is relatively new, compared with other types of data.

The differences of opinion emerged in comments to the 45-day consultation on the EPA's application of systematic review in TSCA risk evaluations which closed on 16 August.

Call to add discussion
In its remarks, the American Chemistry Council (ACC) called on the agency to add discussion to the approach that emphasises the importance of incorporating mechanistic data in problem formulation. The EPA, it said, should consider organising the step dealing with problem formulation around such data, even if the mechanism is not entirely clear from the outset.

In separate comments, however, a group of 33 scientists – including ten from the University of California – called on the EPA to clarify that mechanistic data, if available, can only be used to increase, not decrease, confidence in a body of evidence. This means that if the other data indicates a certain hazard, it is inappropriate to use conflicting mechanistic data to reduce confidence in that finding. They said the EPA had "correctly" recognised that mechanistic data is not required for hazard assessment, although overall they were damning about the framework.

Traditionally, regulatory hazard assessments were dominated by data from toxicity studies of animals as model organisms and large-scale epidemiological studies of humans. In recent years, mechanistic data has become central to

the discourse for several long-running assessments. It is, for example, key to the claim that formaldehyde does not cause leukaemia, which the ACC has made repeatedly in relation to the assessment of the substance under the EPA's Integrated Risk Information System programme (IRIS).

In their comments, the scientists cited a 2017 report by the US National Academies of Sciences (NAS) on the use of systematic review for consideration of endocrine disrupting chemicals. This concluded that the foundation of the hazard classification in a systematic review is the animal and human data, with the mechanistic data playing a supporting role.

Evaluating quality

Comments to the consultation also showed that the two parties differed greatly over the proposed process for evaluating the quality of studies, which involves determining scores for individual studies

The ACC said it "appreciates the EPA's intention to be highly transparent and consistent in its evaluations through the use of a quantitative study scoring system".

But the group of scientists said that quantitative scores are, in general, arbitrary and not scientific and that the EPA's proposed scoring system:

wrongly conflates the extent of study reporting with the study quality; and
excludes otherwise quality research based on single reporting or methodological limitations.
Referring to the framework in general, the ACC gave some support, commending the EPA on a "strong baseline" approach and described the guidance on searching, screening and extracting data as "comprehensive and useful". But it said critical concepts and methodologies "remain to be discussed or fully developed".

The scientist group were strongly critical of the systematic review framework, calling it "ad hoc", "incomplete" and "inconsistent with current, established, best available empirical methods for systematic review".

Systematic review is a research methodology for integrating data from multiple sources to answer scientific questions. The EPA's framework outlines how the methodology should be used in risk assessment of chemical substances under the revised TSCA.

NAS workshop

The National Academies of Sciences (NAS) is to hold a workshop on the systematic reviewing of mechanistic data.

The event in Washington, DC, on 10-11 December, will look at the strategies and tools under development to help the EPA come up with guidance for performing chemical assessments in its Integrated Risk Information System programme (IRIS).

Topics covered will include:

- approaches and tools to search and screen the literature for mechanistic data;
- approaches to evaluating the validity of mechanistic studies,
- methods for assimilating and using mechanistic information to support evidence synthesis and integration; and
- practical experience with implementing systematic reviews of mechanistic evidence into human health assessments.

Inside EPA

Wheeler Poised To Soon Issue EPA Policy For Assessing State Programs

https://insideepa.com/daily-news/wheeler-poised-soon-issue-epa-policy-assessing-state-programs

By Dave Reynolds

Acting EPA Administrator Andrew Wheeler is reviewing a highly-anticipated draft final policy for how the agency assesses the adequacy of state pollution control programs, a plan that will govern a host of federal-state interaction, ranging from retrospective reviews of state programs and oversight of permitting and enforcement decisions.

In an exclusive Aug. 29 interview with *Inside EPA*, EPA's acting Deputy Administrator Henry Darwin said that Wheeler is currently reviewing and plans to soon issue a draft final policy governing agency reviews of state environmental programs, which the agency plans to first implement in reviews of state Title V air permit programs and national pollutant discharge elimination system (NPDES) water permit decisions.

"We're going to be providing the standard of review, so when we do a review of the state, they're going to know what we're reviewing them for and what the standards are for the review so they're not surprised by the questions that we're asking or the results of the review," Darwin said, describing what he called the policy's "no surprises" approach.

"It's going to be coming from statute, rule or guidance," he added. "There is going to be some basis for our review that will be shared with them."

The policy responds to ECOS' calls for EPA to conduct retrospective reviews of state programs wherever possible, rather than reworking specific decisions, and for a consistent review process.

But it is unclear how state officials responded to Darwin's closed-door briefing on the policy, which Darwin said Wheeler will likely issue in a memo to staff in the coming weeks, and whether the policy preserves EPA regions' flexibilities to work with states -- a top priority for ECOS.

Darwin is a former head of the Arizona Department of Environmental Quality. Former EPA Administrator Scott Pruitt hired Darwin as the agency's chief of operations but he was elevated to his current role after Pruitt resigned in July and then-Deputy Administrator Andrew Wheeler was tapped as the agency's acting chief.

Wheeler's memo to staff will outline principles to guide EPA regional officials' work with states in several areas -- conducting retrospective reviews of state environmental programs and reviewing specific permitting and enforcement actions where necessary, as well as other meetings and interactions with state regulators.

The policy calls for work in each of those areas to adhere to four principles. Those include defining an appropriate level of deference for state decision-making, clearly communicating with states prior to reviews, clarifying the standard of review as defined in a specific statute or policy, and defining a process for elevating disputes from staff to supervisors to ensure prompt resolution of disagreements.

Darwin said that EPA plans to pilot the review process with several states and EPA regions. Feedback from those states will inform whether adjustments are needed, such as possibly expanding the policy to cover additional areas of state and federal interaction, or whether to implement the policy in its current form nationally.

The pilot will focus on programmatic reviews of states' Title V permitting programs and on reviews of NPDES permits as they are being issued, Darwin said.

Cooperative Federalism

The policy results from months of negotiations between states and EPA, and is a core facet of the "cooperative federalism" that ECOS and the Trump administration have strongly backed.

Scaling back EPA review of state environment programs is a component of ECOS' spring 2017 paper, "Cooperative Federalism 2.0: A Deeper Look into a Rebooted EPA-State Relationship," which outlines principles for redefining state and federal roles for overseeing pollution control requirements.

In addition, Todd Parfitt, Wyoming's top environment official and ECOS' past president, has urged EPA to establish an audit system under which "EPA should not review individual state implementation decisions, including enforcement, on a routine basis unless an audit recognizes" that there is a problem.

ECOS, which represents most state environment commissioners, has for months been in talks with Darwin and other EPA officials on crafting the policy for EPA regional offices reviews of state environment programs.

In those talks, state officials have called for an elevation policy and have called out reviews of NPDES permits as an area of particular concern.

While Darwin's overview of the policy suggests that it responds to some of ECOS' primary concerns, state officials will likely be watching how the pilot plays out in states where EPA and regional collaboration already runs smoothly.

ECOS Director Sam Sankar told *Inside EPA* in July that states generally appreciate EPA's plan to streamline agency reviews of state programs but that any policy should be sufficiently flexible to not alter cooperation in states and regional relationships are strong.

ECOS officials July 9 released a set of principles for the federal policy that called for both increased consistency in reserves while also preserving some regional flexibility.

“EPA should manage its internal decision-making processes so it can be clear, transparent, and as consistent as possible given regional differences,” the document says.

“EPA decisions should reflect coordination and agreement among all the relevant parts of the agency, including the National Program Manager offices and Regional offices."

Any draft plan is also likely to face a complex response from other stakeholders. For example, industry officials have also welcomed EPA's streamlining efforts, saying that technical or legal questions can cause EPA permit reviews to drag on.

But environmentalists, who have faulted some state programs as inadequate, fear that streamlining the EPA reviews will weaken environmental protections, especially in states where industry has significant political influence.

For example, environmentalists have vowed to challenge EPA's approval this summer of Oklahoma's first-in-the-nation coal ash permit program, charging that the program falls short of public-participation mandates and that Oklahoma lacks resources to adequately enforce it.

Additionally, environmentalists have argued that the Trump administration's proposals to cut EPA's budget by roughly one-third would gut agency grants that help fund state programs, further weakening environmental oversight.

Bloomberg Environment
Trump to Reopen Another EPA Coal Rule With an Eye to Changes
https://news.bloombergenvironment.com/environment-and-energy/trump-to-reopen-another-epa-coal-rule-with-an-eye-to-changes
By Amena Saiyid, Posted Aug. 29, 2018, 2:49 PM

The EPA will reconsider its rationale for setting limits on toxic power plant air pollution with an eye toward revising those emissions limits, the agency told Bloomberg Environment Aug. 29.

In the coming weeks, the Environmental Protection Agency said it will ask the White House Office of Management and Budget to review a draft proposal questioning the finding that it was “appropriate and necessary” to set standards in

2012 for mercury and other toxic air pollution emitted by existing power plants. It also will consider also the "standards set by the rule itself," EPA spokeswoman Molly Block said in an Aug. 29 email.

"One of a number of issues EPA is assessing in the context of the appropriate and necessary analysis is striking the right balance when accounting for co-benefits," Block added.

The power industry and some states criticized the Obama-era EPA for relying on the health benefits of reducing pollution such as airborne particles not directly regulated by the standards, known as co-benefits, to justify the emissions limits.

Under the upcoming proposal, the EPA may decide to change or even revoke the current 2012 Mercury and Air Toxics Standards or MATS (RIN: 2060-AP52, RIN 2060–AR31), which required most power plants to comply by 2016.

Though the power sector opposes the regulation, it has had no choice but to install expensive pollution controls, switch coal plants over to natural gas, or shutter aging power plants. Now that the compliance deadlines have passed, many in the power sector want the rule to stay.

The EPA was required to in 2015 by the U.S. Supreme Court in Michigan v. EPA to take the power industry's compliance costs into account when determining whether it was necessary to regulate the toxic pollution. The agency put out a subsequent determination supporting regulation after taking costs into account.

"EPA knows these issues are of importance to the regulated community and the public at large and is committed to a thoughtful and transparent regulatory process in addressing them," Block said.

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Message

From: Leopold, Matt (OGC) [Leopold.Matt@epa.gov]
Sent: 8/28/2018 10:50:09 PM
To: Brazauskas, Joseph [brazauskas.joseph@epa.gov]
Subject: FW: UPDATE: OMR Clips Compilation, 28 August 2018

Joe, here are the daily clips. Email OPA if you'd like to be added.

From: Daguillard, Robert
Sent: Tuesday, August 28, 2018 3:39 PM
To: AO OPA OMR CLIPS <AO_OPA_OMR_CLIPS@epa.gov>
Subject: UPDATE: OMR Clips Compilation, 28 August 2018

Re-sending to add one missing story:

ACE, Carbon Emissions

- Washington Post
- Washington Times
- E&E News: Carbon emissions bill
- Bloomberg Environment: Coal-powered plants

Chemicals

- The Hill: HFCs
- Inside EPA: TSCA litigation

Climate

- Bloomberg News: Arctic ice melt and shipping routes
- Bloomberg News: French environment minister resigns

Other

- Axios Generate: Electric Cars
- CNN: Environmental Justice
- E&E News: Environmental "fighter" congressional candidate
- E&E News: "Secret Science" and the Pentagon
- E&E News: Fmr. Administrator Pruitt
- Inside EPA: OECA's priorities

EE News: Pentagon challenges 'secret science' proposal
Sean Reilly, E&E News reporter
https://www.eenews.net/greenwire/2018/08/28/stories/1060095357?utm_medium=email&utm_source=eenews%3Agreenwire&utm_campaign=edition%2BpzUZ0S5OIFm7SpFDdGVKHg==
Published: Tuesday, August 28, 2018

Add the Defense Department to the ranks of those expressing concern about EPA's plans to restrict the use of scientific research in writing new regulations.

"While we agree that public access to information is very important, we do not believe that failure of the agency to obtain a publication's underlying data from an author external to the agency should negate its use," Patricia Underwood, a senior Pentagon official in the Office of the Assistant Secretary of Defense for Energy, Installations and Environment, wrote in recent comments on the EPA proposal.

Because it's "improbable" EPA would always be able to obtain such underlying data, Underwood added, "this should not impede the use of otherwise high-quality studies."

The proposed rule — "Strengthening Transparency in Regulatory Science" — would generally limit EPA to using studies for which the underlying research data "are publicly available in a manner sufficient for independent validation," according to the text.

In unveiling the plan this spring, then-EPA Administrator Scott Pruitt touted it as a confidence booster in agency decision-making.

Critics view that premise as a smokescreen for thwarting consideration of research that would help justify stricter regulations.

After Pruitt resigned last month under White House pressure, an array of advocacy groups opposed to the proposed rule have urged acting EPA Administrator Andrew Wheeler to scrap it (Greenwire, Aug. 15).

In an interview last month, Wheeler told E&E News he would take "a hard look" at the proposal but added that he believed "the more information we put out to the public as far as what we're basing our regulations on, the better our regulations will be" (Greenwire, July 13).

The Defense Department, the largest federal agency when measured by its budget and the size of its civilian workforce, is also a prime sponsor of scientific research.

Underwood's comments were among more than a half-million that EPA received on the proposed rule by an Aug. 16 deadline; they were added late last week to the online docket on the Regulations.gov website.

Under the draft rule, the EPA administrator could grant exceptions to the data access requirements under specified conditions.

Alongside a host of more technical concerns with the draft rule, Underwood urged EPA to allow for such exemptions when "underlying study data may be difficult to obtain from authors outside the agency."

She also suggested that EPA "grandfather" existing analyses unless those studies "are being updated or challenged."

Bloomberg News: Melting Ice In the Arctic Is Opening a New Energy Trade Route
LNG shippers are taking advantage of open waters as ice caps stage one of their largest retreats on record.
https://www.bloomberg.com/news/articles/2018-08-28/arctic-ice-melt-opens-lng-energy-trade-route-near-north-pole?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axiosgenerate&stream=top-stories
By Jeremy Hodges , Anna Shiryaevskaya , and Dina Khrennikova
August 28, 2018, 12:00 AM EDT

A new trade route for energy supplies is opening up north of the Arctic Circle as some of the warmest temperatures on record shrink ice caps that used to lock ships out of the area.

This year is likely to rank among the top 10 for the amount of sea ice melting in the Arctic Ocean after heat waves across the northern hemisphere this summer. While that's alarming to environmentalists concerned about global warming, ship owners carrying liquefied natural gas and other goods see it as an opportunity. Their cargoes have traversed the region for the first time this year without icebreakers, shaving days off shipping times and unlocking supplies from difficult-to-reach fields in Siberia.

More navigable waters are a boost for Russian President Vladimir Putin's effort to expand his nation's reach in the gas market and for energy companies such as Total SA and Novatek PJSC, which are leading Arctic developments. They also help reduce shipping costs for LNG, benefiting buyers and traders of the fuel from PetroChina Co. to Gunvor Group Ltd.

"There is a growth trend for volumes transported via the Northern Sea Route this year," said Sergei Balmasov, head of the Arctic Logistics Information Office, a consultancy in Murmansk, Russia. "The reason is an increase in LNG exports."

While shorter shipping journeys reduce emissions, environmentalists are concerned that more traffic through the Arctic will add to the amount of black carbon—particles of pure carbon—settling in the snow from tanker smokestacks. When that soot darkens the surface of the ice, it speeds up the warming process by absorbing more of the Sun's energy.

And with the shipping season through the Arctic starting earlier and ending later, tankers will spend more time in the area and spew more of their pollution onto the ice.

Turbulent weather in the area also churns the seas, making it almost impossible to clean up anything that's spilled. The International Maritime Organization is considering rules that would ban burning heavy fuel oil in Arctic waters, extending restrictions already in place in the Antarctic.

"It's a major concern for us because as the ice melts we are seeing more and more shipping," said Sian Prior, lead adviser for the Clean Arctic Alliance, an environmental group.

Scientists are seeing a rapid change in the Arctic. The Bering Sea between Alaska and Russia lost about half its ice coverage during a two-week period in February, while the most northern weather station in Greenland recorded temperatures above freezing for 60 hours that month. The previous record was 16 hours by the end of April 2011. The mercury topped an unprecedented 30 degrees Celsius (86 degrees Fahrenheit) north of the Arctic Circle on July 30 in Banak, Norway.

Ice begins melting in the Arctic as spring approaches in the northern hemisphere, and then it usually starts building again toward the end of September as the days grow shorter and cooler. A total of 5.7 million square kilometers (2.2 million square miles) of ice covered the Arctic in July, according to the Colorado-based National Snow & Ice Data Center. Through the first two weeks of August, ice extent declined by 65,000 square kilometers each day, according to the NSIDC.

"The ice has been retreating by about 10 percent every decade during the last 30 years," said Miguel Angel Morales Maqueda, senior lecturer in Oceanography at Newcastle University in northern England. "There is no other known explanation than climatic change. If it isn't climactic change, then we don't know what it is."

This season is likely headed for the the ninth biggest retreat since satellite measurements began, not as extreme as bigger melting seasons in 2012 and 2007, according to Julienne Stroeve, Professor of Polar Observation & Modelling, University College London.

"The total ice extent loss is being slowed by winds pushing the ice southwards," Stroeve said in a message sent from an Arctic research trip. "We likely still have a month of sea ice retreat. The ocean is still warm enough to melt some ice even if air temperatures cool."

LNG exporters are taking advantage of the open waters, most notably around the Yamal LNG gas liquefaction plant in northern Siberia. The project owned by Total, Novatek and their Chinese partners has custom-built ARC 7 tankers rugged enough to cut through whatever ice remains in the area. That enables them to sail without help from icebreakers west to Europe year round and east to Asia during the summer months. In the coming years, more routes will open for ships to sail without an icebreaker.

The Yamal venture's Christophe de Margerie was the world's first ice-breaking LNG tanker built and collected Yamal's first cargo to make the the trip westward through the Northern Sea Route.

In early 2018 though, the Eduard Toll, became the first LNG tanker to ever use the full Northern Sea Route in the winter. It traveled from a South Korean shipyard to Sabetta and collected a cargo there from the Yamal LNG plant, then delivered it to France. That shaved about 3,000 nautical miles off the traditional route through the Suez Canal.

In July China received two cargoes from Yamal from the first LNG ships to cross the Arctic without help from ice breakers. The net voyage time from the port of Sabetta through the Northern Sea Route to the destination the Chinese port of Jiangsu Rudong was completed in 19 days, compared with 35 days for the traditional eastern route via the Suez Canal and the Strait of Malacca.

Routes like that may save Yamal $46 million in shipping costs for the remainder of the year, those savings could quadruple by 2023, Bloomberg NEF said in a note.

Traffic is picking up. The Northern Sea Route saw 9.7 million tons of cargo shipped through it in 2017, according to the Russian Federal Agency for Maritime and River Transport. There were 615 voyages along the Northern Sea Route this year through July 15, about the same as in 2017, said Balmasov at Arctic Logistics. The Russian government is targeting cargo traffic through that route totaling 80 million tons by 2024.

"The main difference to 2017 is LNG deliveries from the port of Sabetta," Balmasov said. "Our data show that as of early July, 34 tankers were dispatched from Sabetta towards European ports, and one voyage was east-bound."

Since then, two more ships have moved from Yamal to Asian markets in the east, though the most icy part of the Northern Sea Route.

Bloomberg Environment - Aging Power Plants Get Lifeline in Clean Energy Rule, EPA Head Says
https://news.bloombergenvironment.com/environment-and-energy/aging-power-plants-get-lifeline-in-clean-energy-rule-epa-head-says?context=landing-heroes&limit=10&tab=news
Alex Ebert - Posted Aug. 28, 2018, 11:17 AM

- New EPA rule could prolong life of old plants, acting administrator says
- States can choose to be less stringent on coal plants, older facilities

States could prolong the life of aging and less efficient power plants if they so choose under the EPA's new proposed carbon emissions rule, Acting Administrator Andrew Wheeler said.

Wheeler touted the agency's Affordable Clean Energy proposal, which would replace the Obama-era Clean Power Plan, during a visit to Columbus, Ohio, Aug. 28. While the Clean Power Plan set statewide carbon dioxide reduction

requirements, the latest proposal would set federal guidelines for reductions and then give states three years to design their own requirements for each power plant.

That will help aging power plants, Wheeler said, because states can regulate each plant individually, and not based on the Obama administration's more stringent standards.

"Instead of saying every plant will be judged by the same standard, they're going to be judged by the class they're in and the age of the facility," which Wheeler said could prolong the life of older plants or coal-fired plants.

Step Back or Legal Necessity?
Environmental groups are attacking the proposal as a step back. They said it will allow states to prop up coal plants that produce more pollution and delay moving toward cleaner energy resources.

The Clean Power Plan never took effect after being halted by the U.S. Supreme Court, but Wheeler said the Affordable Clean Energy rule proposal would survive a legal challenge. The challenge to the Obama administration's standards was mounted by Republican-led states opposed to the carbon dioxide limits.

"States can set reduction targets for each plant, so it's not going to require the wholesale closure of coal power plants, or any type. It's going to level the playing field," Wheeler said at the Ohio Chamber of Commerce event. He said the plan also will be a boon to businesses and residential customers through lower energy costs than what would have been available under the Clean Power Plan.

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EE News: How McCain's death might affect Scott Pruitt
Robin Bravender, E&E News reporter
https://www.eenews.net/greenwire/2018/08/28/stories/1060095363
Published: Tuesday, August 28, 2018

Sen. John McCain's death could complicate Scott Pruitt's political future.

The Arizona Republican's perch atop the Senate Armed Services Committee is widely expected to be occupied by Sen. Jim Inhofe (R-Okla.), who might be more likely to run for re-election — and more likely to win — if he's the chairman of that powerful panel.

That means ex-EPA boss Pruitt, who was widely thought to be using his Cabinet-level post as a launch pad for higher office, could face long odds if he's eyeing a 2020 bid for Inhofe's Senate seat.

There's been no official announcement about the Armed Services post since McCain's death, but Inhofe is all but certain to take the helm as the panel's second-most-senior Republican. It's a post Inhofe has long coveted, according to his former aides and colleagues.

"That's a brass ring to him, and to reach for that brass ring and to be able to grasp it ... is something that he's always wanted," said Frank Keating, former Republican governor of Oklahoma.

Inhofe will turn 84 in November. There's been speculation he might not run in 2020, when he's next up for re-election.

But some close to Inhofe and Oklahoma politics don't see him stepping down — especially if he's leading the influential panel that oversees the Pentagon.

"I had been hearing that he was very much going to stay, but obviously having the gavel of the Armed Services Committee makes an even stronger case for him to stay on," said Matt Dempsey, a former Inhofe spokesman.

"I think he's full speed ahead," Dempsey added. "He obviously loves this job."

Of course, Inhofe would keep the gavel only if the Republicans control the chamber, but Democrats face an uphill battle in wresting control away from the GOP in November's midterm elections.

Pruitt has been keeping a low profile since he left EPA last month after a deluge of bad headlines and ethics allegations.

He was spotted at the Four Seasons hotel in Maui on Saturday, Politico Playbook reported. (Rooms for two adults there run from about $650 per night to $20,000 per night, according to the hotel's website.)

Pruitt is widely expected to return home to Oklahoma, where his family has a house in Tulsa. It's unclear what job he might seek or whether his stormy tenure at EPA clouds his political prospects in his home state.

Early in the Trump administration, some suggested Inhofe might be willing to step down in 2020 if he were comfortable with his likely successor. Inhofe even told The New York Times in March 2017 of Pruitt, "I think he'd make a great senator."

Ronald Keith Gaddie, a political science professor at the University of Oklahoma, doesn't see Inhofe leaving Capitol Hill voluntarily anytime soon.

"I don't think Jim Inhofe will ever retire," he said. "Senators get to a certain point where once you get past about age 75 or so, everyone they know is in the Senate." Inhofe has been a senator since 1994 and a member of Congress since 1987.

"John McCain, God rest his soul, was going to keep going until he couldn't go anymore, and that's what he did," Gaddie added.

As for the ex-EPA boss's prospects in Oklahoma, Gaddie said, "There's a lot more talent and political ambition in this state than is represented by Scott Pruitt."

He noted the up-and-comers vying in Oklahoma's runoff elections today.

"Both the winners and the losers in those runoffs are potential contenders for the U.S. Senate," Gaddie said. "And they don't have Scott Pruitt's baggage."

Oklahoma's junior senator, James Lankford, doesn't face another election until 2022.

Keating doesn't see Pruitt waging a successful primary campaign against Inhofe if he tried to.

"Because of the imbroglio of that departure, it looks like he was asked to leave, and that would be a negative," Keating said of Pruitt's exit from office. "And Jim is tough as nails."

'Go back home and start again'

Inhofe would be bolstered in a primary race if he were Armed Services chairman, Keating added. "It would be a tremendous honor but also a tremendous strength to have the chairman of Armed Services from your state."

Chad Alexander, former Oklahoma Republican state chairman who now hosts a politics talk show, said Pruitt's reputation wasn't hurt as much in the Sooner State as it was elsewhere, but the headlines probably had an impact.

Prior to his tenure at EPA, Pruitt was "considered a choir boy in Oklahoma," Alexander said. "I think with some Republicans, it's done damage to his reputation."

But should Pruitt return to his home state, "I think he has a base of support among Oklahoma Republicans that still think of him very fondly."

Pruitt could potentially find a job as a consultant or an industry lawyer. Some suspect he'll set up shop at an Oklahoma law firm.

But one headhunter who recruits for law and lobby firms said of Pruitt's career prospects, "There doesn't seem anybody willing to take a chance on having the negative publicity bleed onto them by hiring Pruitt."

Even beyond the stories that implicated Pruitt personally, other recent news of corruption involving President Trump and his close associates might affect Pruitt's marketability as well.

"The indictments involving Trump's inner circle certainly don't help," said the headhunter, who believes Pruitt should leave Washington and return to Oklahoma to find his next job.

"My advice is to go back home and start again," he said.

Reporter Kevin Bogardus contributed.

Bloomberg: Slow Action on Environment Prompts French Minister to Quit
https://news.bloombergenvironment.com/environment-and-energy/slow-action-on-environment-prompts-french-minister-to-quit?context=landing&limit=10&tab=news
Posted Aug. 28, 2018, 8:19 AM

- Energy Minister Hulot quits denouncing lack of Macron action
- Economy and unemployment show slow improvements, ministers say

It has been a long, hot summer for Emmanuel Macron.

The French president went into the break buffeted by a scandal over a rogue aide and returned to a string of bad news on the economy and his reform agenda. But the biggest blow came out of nowhere Aug. 28: His star minister for energy and the environment, Nicolas Hulot, resigned citing "small steps" taken by Macron's administration for the planet.

Hulot resigned, blaming the Macron administration's lack of action to protect the environment against pesticides or land destruction and in sheltering biodiversity, among other causes he sought to promote. Hulot, a vocal environmentalist for decades who made television programs about nature, was one of Macron's most prominent ministers. He said he hadn't notified the president or the prime minister ahead of his radio announcement.

Such was his influence that Hulot's decision to quit prompted some movement on the markets. Shares of Electricite de France SA—the national energy company that owns the country's nuclear reactors—gained as much as 2.7 percent after the minister announced his resignation. The government is preparing its energy policy road map for the next 10 years, which aims to reduce the use of nuclear power. Electricite de France is trying to convince Macron to agree to new atomic plants to replace part of its aging fleet.

'Useless Madness'

France is "persisting" in a nuclear industry that's "useless madness, economically and technically," Hulot said on the radio. "I haven't managed to convince on all those issues."

Government spokesman Benjamin Griveaux said he only found out as Hulot spoke on radio, and that the surprise resignation "lacks courtesy" to the president. "I wished he had stayed," said Griveaux, praising Hulot for his work. Griveaux defended Macron's policies, saying "it takes time" to reform farming methods and humans' impact on the environment.

The Elysee presidential palace saluted Hulot, saying that he "can be proud of his work" as minister, AFP reported, citing the president's office.

The government "has a total determination to continue to take into account climate change and its impact on France and all of humanity," Prime Minister Edouard Philippe told reporters in Paris. He pledged to work on the topics Hulot said had been insufficiently addressed.

While not the first minister to quit, Hulot's critique is particularly cutting for Macron, who came to power last year saying his election was the embodiment of France's transformation, even revolution. One day after a foreign-policy speech loaded with grand ambitions, the resignation is a reminder that Macron's presidency hinges on the success or failure of his domestic program.

The 40-year-old Macron, known internationally for his proactive, reform-focused agenda, is running into obstacles at home as he prepares for a fresh wave of economic overhauls, from taxes to social benefits, that threatens to alienate even more voters. His government has warned that the economy won't grow as fast as planned this year and next—closer to 1.7 percent than the 2 percent targeted—making any new budget cuts even more difficult for the French to swallow.

"It takes time to change things in a country and Macron knows it, but what we see now is a climate, a change of mood in France over his actions," said Bernard Sananes, who heads Paris-based polling institute Elabe. "He's facing severe headwinds."

For political opponent and France Unbowed party lawmaker Adrien Quatennens, the addition of Hulot's resignation is a signal that "the whole Macron system is dislocating," he said on BFM Television.

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Inside EPA: NRDC Drops Suit Over EPA's TSCA New Chemicals Analysis Framework
https://insideepa.com/daily-news/nrdc-drops-suit-over-epas-tsca-new-chemicals-analysis-framework
Maria Hegstad, August 27, 2018

As a federal appellate court weighs the Natural Resources Defense Council's (NRDC) standing to sue, the group is moving to drop its suit challenging the agency's draft framework for reviewing new chemicals under the revised Toxic Substances Control Act (TSCA), arguing that EPA has decided not to implement the framework.

The request appears to mark a strategic decision for the group, allowing it to withdraw the suit before any adverse decision, while nevertheless succeeding in forcing the agency to admit that the draft framework has not been used to approve any chemicals despite officials' indications that it would be.
NRDC's attorneys filed an Aug. 27 brief asking that the U.S. Court of Appeals for the 2nd Circuit drop the case, *NRDC v. EPA*, with prejudice and with each side bearing the cost of the suit.

NRDC points to EPA's July response to the suit, in which the agency argues that the framework EPA's toxics office proposed to use to evaluate the risks that new chemicals may pose has not been utilized, as the explanation for its request.

"In light of these representations, Petitioner has elected to move for voluntary dismissal of this petition for review," the brief states.

Late last year, EPA issued and sought comment on a draft "New Chemicals Decision-Making Framework" that proposed streamlining reviews of new chemicals by dropping EPA's use of enforceable orders as an interim step in regulating them.

The approach would allow the agency to proceed directly from premanufacture notices to issuing significant new use rules (SNURs) to address any unreasonable risks the new chemical's uses might pose if unaddressed.

New chemicals are those chemicals that are not on the TSCA inventory of chemicals -- the list of chemicals that were on the market when the original TSCA was enacted in 1976 and those EPA has since added to the inventory.

The agency said the approach it was proposing in its draft framework was needed to speed approvals of new chemicals, which were facing a backlog due to lawmakers' adoption of a new review standard in the revised TSCA. Officials said they would begin implementing the draft framework even before they finalized it.

But NRDC sued over the framework last January, arguing that the framework inappropriately narrows the scope of new chemical reviews to only the intended uses of a new chemical, while punting other reasonably anticipated uses to a SNUR.

They also raised concerns that the draft framework allowed the agency to drop use of enforcement orders as an interim step to prevent some unapproved uses before issuance of a lengthy SNUR.
NRDC was joined by intervenor Safer Chemicals Healthy Families (SCHF), which alleged procedural violations, noting statements from EPA officials that they had already started implementing the framework late last year.

EPA's Defense

But EPA defended its framework in a July 31 response arguing that the policy is consistent with the 2016 law, but also saying the framework is a draft that it might never finalize and therefore critics lack legal standing for their challenge.

"The Framework is a non-final statement of policy that explains one possible approach that EPA may apply in an appropriate case to make a determination on a new chemical substance under TSCA," the filing says.

In arguing environmentalists lack standing, EPA adds, "Petitioner's members face no injury at all, unless and until EPA applies the approach described in the Framework to an individual determination, and then the determination allows Petitioner's members to be exposed to the chemical substance under circumstances that pose an unreasonable risk to human health."

While the court has not yet ruled on EPA's procedural challenge, industry and other attorneys have long said that even though NRDC's suit faced procedural hurdles, it nevertheless dissuaded the agency from following the novel process spelled out in the draft framework. "The goal is not to get a decision on the merits but to signal to EPA not to issue one-step SNURs and that is what has occurred at EPA," Herb Estreicher, a partner with the law firm Keller and Heckman, said earlier this year.

In explaining their reasons for dropping the suit, NRDC in its Aug. 27 filing points to EPA's defense of the framework, as well as an attached deposition of Jeff Morris, director of EPA's toxics office, in which the agency acknowledges making 150 determinations on pre-manufacture notices since the framework's release but "has not yet followed the SNUR approach described in the Framework."

The brief notes that "EPA does not oppose the dismissal of the petition with prejudice," nor does SCHF. NRDC adds that trade groups who intervened in the case, American Chemistry Council and National Association of Manufacturers, "have not stated their position."

Similarly, NRDC reports that EPA and SCHF agreed to bear their own costs, which the industry intervenors have yet to state a position. -- *Maria Hegstad* (mhegstad@jwpnews.com)

Inside EPA: Bodine Formally Launches Plan To Focus OECA Priorities On Compliance
https://insideepa.com/daily-news/bodine-formally-launches-plan-focus-oeca-priorities-compliance
David LaRoss: August 27, 2018

EPA is preparing to rework its framework for designating its top priorities for the Office of Enforcement and Compliance Assurance (OECA), focusing the program on compliance rather than enforcement as well as boosting the roles of both states and other EPA program offices in selecting new initiatives.

In an Aug. 21 memo to regional administrators, OECA chief Susan Bodine writes that her office is renaming the national enforcement initiative (NEI) program as part of a broader emphasis on compliance assistance; extending the cycle for revising the initiatives from every three years to every four; and modifying the selection criteria for the next round to downplay many of the current initiatives that were chosen by the Obama EPA, several of which will be shuttered or scaled back.

"The EPA intends to evolve the National Enforcement Initiatives program into a National Compliance Initiatives (NCIs) program by providing states and tribes with additional opportunities for meaningful engagement, by developing and applying a broader set of compliance assurance tools, and by aligning the NCIs with the Agency Strategic Plan measures and priorities," reads the memo, which was first reported by E&E News.

EPA released its last round of NEIs in 2016, and they are due to expire when fiscal year 2020 begins in October 2019 -- meaning the first round of new NCIs will be designated as soon as next year, and remain in effect until the beginning of FY23.

However, a former EPA enforcement official says revising the initiatives seems unlikely to have major effects on OECA's actions, given that the Trump administration was already shifting enforcement toward compliance assistance and an overall "lighter footprint" regardless of the issues that have been formally identified as high priorities.

"The federal government has already indicated that it's going to have a lighter footprint in terms of programs that are delegated to the states . . . The reality is that there will be less federal enforcement," the former official says.

Bodine's memo follows the announcement in 2017, before her Senate confirmation, that OECA was weighing an overhaul of the NEI program as part of an agency-wide focus on bolstering states' role in implementation of environmental laws, under the umbrella of "cooperative federalism."

But in addition to a commitment to "engaging more fully with states and tribes in the selection and development of the initiatives," Bodine is also pledging to align OECA's priority-setting process more with other EPA program offices, by setting deadlines for the new NCI process that line up with the development of new National Program Guidance documents -- formerly National Program Manager guides -- outlining each office's agenda for a two-year span.

"[I]n most cases . . . an NCI cannot be completed in a single two-year cycle. OECA believes that the better approach would be to extend the NCI cycle from three to four years to facilitate this alignment," the memo says.

The former official says that while the prioritizing process is non-binding in any case, synchronizing the two efforts could aid EPA's decision-making process. "That they'll try to align that more -- I don't think that is something that doesn't make sense, necessarily."

The memo also outlines a three-point set of selection criteria that Bodine writes will guide OECA as it identifies new initiatives for the first NCI cycle, which will begin in fiscal year 2020, based on the goals in EPA's current

strategic plan; an identified "Need for EPA expertise, authority, or resources" to address noncompliance; and the existence of "serious and widespread non-compliance across the country."

Existing NEIs

While Bodine's memo does not outline issues that OECA might add to the list of NCIs when it issues them in 2019, it describes how the office plans to "modify its implementation of the existing NEIs to evolve them into NCIs" -- with four of the eight initiatives on that list slated to be wound down either imminently or during the next four-year cycle.

Bodine writes that OECA plans to remove at least three of the current priority items from the list in the FY20 cycle, returning them to the "core" enforcement program. Those entries are: preventing animal waste from contaminating surface and ground water; keeping raw sewage and contaminated stormwater out of the nation's waters; and reducing air pollution from the largest sources.

The memo says downgrading the sewage and air-pollution items is warranted because in each case, "the EPA has almost completed this NCI, obtaining significant improvement in compliance and major reductions in" pollution releases.

However, there is no such finding for the animal-waste NCI; instead, Bodine only writes, "Starting in FY 2019, OECA intends to return this NEI to our core program rather than keep it as a national priority. As part of the core program, in collaboration with authorized state programs, regions will continue to conduct inspections and enforcement actions to address serious violations in this area, focusing on the Strategic Plan goal to address water quality impairments."

In addition, Bodine writes that OECA plans to either heavily scale back or modify the current NCI aimed at ensuring that energy extraction operations comply with all relevant environmental laws, at first by limiting it to "significant public health and environmental problems" within the sector, and potentially merging it into another initiative in the FY20 cycle.

"This initiative historically focused on one industrial sector, implying that the EPA considers all problems in this sector -- large or small -- to be a priority," Bodine writes, echoing a frequent industry criticism of that NEI.

"When we consider the FY 2020-2023 NCI cycle, we will evaluate the idea of merging this work into the 'Cutting Hazardous Air Pollutants' NCI or focusing this NCI on significant sources of [volatile organic compounds] that have a substantial impact on air quality (without regard to sector), including the potential to adversely affect an area's attainment status, and returning other work in this sector to the core program and Regional priorities," Bodine's memo says.

The former enforcement official says that change in particular is in line with the Trump EPA's general shift toward more energy-friendly policies. "I think this signals that there will be less enforcement emphasis on the energy sector overall."

Finally, Bodine writes that the remaining four Obama-era NEIs -- focused on keeping industrial pollutants out of surface waters, reducing accidental releases from industrial and chemical facilities, cutting hazardous air pollutants and reducing air toxics from hazardous waste sites -- will continue in some form, but potentially with a modified focus.

In particular, she writes, the NCI for industrial water pollution "would have a broad focus on increasing the percentage of [National Pollutant Discharge Elimination System] permittees in compliance with their permit limits," which will include shifting resources to a broader effort to reduce significant noncompliance by permittees. -- David LaRoss (dlaross@iwpnews.com)

EE News: New Minn. senator pushes storage bill
https://www.eenews.net/eedaily/2018/08/28/stories/1060095305
Manuel Quiñones, E&E News reporter
Published: Tuesday, August 28, 2018

Minnesota Democratic Sen. Tina Smith introduced legislation last week that she says would increase the country's energy storage capabilities.

The "Advancing Grid Storage Act," S. 3376, would authorize $500 million over five years to better coordinate Department of Energy storage research and fund grants to local governments or private entities.

"Expanding the nation's energy storage capabilities will not only help expand use of renewables like wind and solar energy but will contribute to our nation's energy and economic security," Smith said in a statement.

"This bill will help to significantly improve our nation's efforts to store energy, and jump start energy storage research and the deployment of energy storage technologies," she said.

Co-sponsors include Sens. Debbie Stabenow (D-Mich.), Martin Heinrich (D-N.M.), Catherine Cortez Masto (D-Nev.), Mazie Hirono (D-Hawaii), Tammy Duckworth (D-Ill.) and Angus King (I-Maine).

Broad reform legislation championed by Senate Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska), S. 1460, includes a section on storage.

Click here for a summary of Smith's bill.

EE News: Dems poised to elect 'fighter' on the environment
https://www.eenews.net/eedaily/2018/08/28/stories/1060095303
Nick Bowlin, E&E News reporter
Published: Tuesday, August 28, 2018

Five years ago, mounds of petroleum processing waste piled up along the Detroit River. Black grit routinely blew off the open-air heaps, and Detroit residents found it coating their cars and homes.

A company owned by petrochemical billionaire brothers Charles and David Koch was storing the petcoke, refuse from an oil refining process known as coking, before shipping it overseas where it is burned as fuel.

Concerned constituents called their state representative, Rashida Tlaib, who is now running for the House seat once occupied by John Conyers. The episode has helped define her career.

Unsatisfied by the response from the state environmental agency, which declared no health risks, Tlaib gathered samples of the industrial waste herself and gave them to a local environmental group for testing. It found traces of heavy metals selenium and vanadium.

Tlaib kept pushing, raising concerns of runoff into the Detroit River, air pollution and public health risks from the particulate matter.

She rallied to her cause then-Rep. Gary Peters (D), who brought up Detroit's petcoke problem in a House debate on the Keystone XL pipeline, urging — unsuccessfully — a study on the health and environmental impacts of oil processing. Detroit's petcoke resulted from refining Canadian oil sands crude.

Peters and Tlaib warned that the pipeline would mean more U.S. cities like Detroit accepting the oil refinery waste.

"What is really, really disturbing to me is how some companies treat the city of Detroit as a dumping ground," she told The New York Times in 2013.

Tlaib was the point person for a massive community push to remove the black waste piles. And in August 2013, Detroit Mayor Dave Bing ordered all the petcoke removed from the waterfront, citing residents' concerns.

The Michigan Department of Environmental Quality eventually released a report stating that exposure to petcoke could lead to health issues.

Even in her first term as a state legislator, Tlaib showed a political savvy that yielded results. By taking samples herself, she drew public and media attention to the issue, but she also pressed the DEQ to enforce existing laws, urging the agency to act.

Sarah Roberts, a Democratic state lawmaker at the time, credited Tlaib's tenacity for the petcoke's removal. "She is fearless," Roberts said.

National status

Tlaib, 42, graduated with a bachelor's degree in political science from Wayne State University in 1998. In 2004, she got a law degree from Cooley Law School, which gained attention for being the alma mater of President Trump's former attorney Michael Cohen.

The oldest of 14 children, Tlaib is now a national name, hailed as part of the Democratic Party's changing face.

In early August, she won the Democratic nomination for Michigan's 13th District, which covers Detroit. The seat was held for decades by civil rights legend Conyers, who resigned following sexual harassment allegations.

During her primary bid, Tlaib — like other politicians on the left end of the Democratic spectrum — signed a pledge to accept no fossil fuel industry contributions.

With no Republican running, Tlaib's path to Capitol Hill is clear. Along with Ilhan Omar of Minnesota, who also lacks a challenger, she will be the first Muslim woman in Congress, as well as the first female Palestinian-American member. Her father was born near Jerusalem and worked at a Ford assembly line.

Tlaib was already the first Muslim woman elected to the Michigan Legislature. Her campaign said it was unable to comment for this story because of an overwhelming number of media requests.

Along with Omar and Alexandria Ocasio-Cortez of New York, Tlaib is one of several young, forceful, progressive women of color set to join the Democratic caucus next year.

All three are favorites of the party's left flank, staunch supporters of a $15 minimum wage, universal health care and free college education.

Tlaib and Ocasio-Cortez are both members of the Democratic Socialists of America.

But it was Tlaib's work on environmental justice in Detroit that helped give Tlaib prominence over two terms as a state lawmaker.

"Rashida has shown day in day out that she's a champion for the environment and the people of Michigan," said Bob Allison, deputy director at the Michigan League of Conservation Voters.

Tlaib's rising profile means she will speak for and to a large number of progressive voters who share her values, an unusually strong starting point for a new member.

Roberts, the former state lawmaker, said her onetime colleague could have "a tremendous impact in the House" — just as she did in Michigan.

'Doesn't give up'
Around the same time she was taking on Koch Carbon, Tlaib engaged another powerful, politically connected private interest: development mogul Matty Moroun.

A billionaire businessman and trucking industry tycoon, Moroun owns the company that controls the Ambassador Bridge, an international span connecting Detroit and Canada. It is the sole privately owned border crossing between the two countries.

Moroun wanted to build a second span to his bridge — and began construction on the Detroit side without any permits. The work disrupted low-income communities, and the construction meant a major increase in traffic through Tlaib's district. More large trucks, combined with construction dust, spawned air quality concerns.

"She felt there was a correlation between the number of large idling trucks in her community and negative impacts on public health," Roberts said.

Moroun and his company have been accused of destroying neighborhoods for the bridge project on both sides of the border, skirting environmental permitting laws and attempting to divert traffic flow near Moroun-owned gas stations and duty-free stores.

In an online letter, Tlaib wrote, "From blighted homes that my boys have to walk by to allowing [Moroun's] trucks to rumble down our residential streets, passing our parks, schools, and homes — we have had it."

She described an interaction with Moroun himself, telling him he needed to apply for permits.

"I don't come and tell you what to do in your backyard," she recalled Moroun saying.

"But Mr. Moroun, it is my backyard," Tlaib responded.

The fight over Moroun's second span continues, but construction has now begun on a different bridge, the publicly owned Gordie Howe International Bridge, despite years of litigation by Moroun to block the project.

Tlaib was instrumental, Roberts said, in calling attention to the issue when Moroun began building without permits and later in fighting for concessions for the community.

And as with the petcoke issue, Tlaib showed herself unafraid of doing things on her own.

In 2011, Moroun illegally fenced off part of a public park underneath the bridge. Tlaib helped organize a cohort of residents who tore it down.

"She's just a fighter," Roberts recalled, "and she doesn't give up."

The Washington Times (Opinion) - The ACE up the EPA's sleeve
https://www.washingtontimes.com/news/2018/aug/27/the-ace-up-the-epas-sleeve/
By Nicolas Loris - - Monday, August 27, 2018

Oh the climate change-inspired regulations imposed on power plants they are a-changin'.

The Environmental Protection Agency has released its Affordable Clean Energy (ACE) rule, a vastly preferable alternative to the Obama administration's Clean Power Plan (CPP). The proposed rule will be just as ineffectual as CPP in combatting climate change, but its minimalist approach offers many advantages.

For starters, the ACE regulation would actually abide by the rule of law. Both the CPP and ACE seek to reduce carbon dioxide emissions from operating coal-fired power plants. ACE would empower states to set limits on these nonhazardous, nontoxic emissions at their source — the power plant — using the best technology available.

CPP, on the other hand, offered compliance options — such as increased renewable energy — that had nothing to do with coal-fired power plants. Lawyers argued that such an approach blatantly exceeded the EPA's regulatory jurisdiction.

For example, Montana Public Service Commissioner Travis Kavulla argued that, by eschewing a plant-specific approach, the CPP "essentially ignore[d] the details of a state's situation, and instead applie[d] a cookie-cutter formula."

The Obama administration wanted to let government regulators re-engineer America's energy portfolio. Doing so would have raised electricity bills and done damage throughout the economy. Bullet dodged.

Another significant advantage of ACE over CPP is its willingness to tackle the New Source Review program. Adopted in 1977, New Source Review requires that new energy producing facilities — and existing facilities that make "major modifications" — go through an extensive and costly permitting process and install the best available pollution control equipment.

What constitutes a significant modification is subjective under the rules. Despite multiple administrative attempts to clarify the meaning, it remains murky.

That's a problem. Plant upgrades can improve efficiency and reduce operating costs, thereby reducing emissions and lowering electricity bills.

But companies will forgo these investments because of the costly and lengthy environmental review it would trigger. Or, if the plant makes a modification it thinks is minor, the EPA could contest that it was a major modification, dragging that company into years of litigation, not to mention millions of dollars in fines.

And this is all supposed to improve plant efficiency.

Apparently, Democrats and Republicans can agree on energy efficiency improvements only when they're mandated by the federal government. Yet, when a company wants to invest in new, innovative technologies to reduce costs and emissions, it's suddenly taboo. What gives? The EPA is right to make NSR less of a nuisance.

Despite all of the welcome differences ACE has to CPP, the two rules do have one noteworthy similarity: Neither would make a dent in averting global warming. Even if implemented to perfection for the rest of this century, the change in the earth's temperatures wrought by either regulatory regime would be practically undetectable.

So why is the Trump administration moving forward with a new approach? Because the Supreme Court demands that it "do something." In 2007, the highest court declared that carbon dioxide and other greenhouse gases are pollutants and mandated the EPA to regulate them if the agency determined they threatened public health and the environment.

Two years later, EPA Administrator Lisa P. Jackson signed an endangerment finding saying just that. The endangerment finding provides the legal basis for climate change regulations and requires the EPA to act.

Several climatologists have argued that, while the Earth is warming and human-made emissions are contributing, the climate models used to justify the endangerment finding and project catastrophic climate scenarios don't match up with climate realities. The Competitive Enterprise Institute, a Washington, D.C. based think tank, has petitioned the EPA to reopen and reconsider its 2009 finding.

As elected officials, members of Congress should step up and recognize their role as well. Prohibiting the EPA from regulating carbon dioxide and other greenhouse gas emissions would send the right message: that American families and businesses should not be burdened with costly, ineffective climate change regulations.

• The Heritage Foundation's Herbert and Joyce Morgan Fellow, Nicolas Loris specializes in energy, environmental and regulatory policy analysis.

The Hill: EPA asks Supreme Court not to take up case on planet-warming chemicals
http://thehill.com/policy/energy-environment/403967-epa-asks-supreme-court-not-to-take-up-case-on-planet-warming
BY TIMOTHY CAMA - 08/28/18 11:42 AM EDT

EPA asks Supreme Court not to take up case on planet-warming chemicals

The Environmental Protection Agency (EPA) doesn't want the Supreme Court to hear an appeal of a court ruling that overturned the agency's limits on certain Earth-warming chemicals used in air conditioners.

Trump administration attorneys told the high court in a Tuesday brief that the EPA is no longer pursuing the type of regulation that the lower appeals court overturned, so the appeal by companies wishing to reinstate the rule is unnecessary.

The case concerns a 2015 rule under which the Obama administration sought to limit the use of hydrofluorocarbons (HFCs). The chemicals have been used in recent years to replace ozone-depleting chemicals, but HFCs are potent greenhouse gases, so the EPA sought to stop their use as well.

The Trump administration defended the HFC restrictions before the Court of Appeals for the District of Columbia Circuit, but lost. Now EPA officials are exploring other ways to regulate HFCs.

"Given EPA's current position, the question presented is of limited prospective importance," the Trump administration told the court. "Granting review to consider an interpretation of EPA's authority that EPA itself no longer supports would serve little or no purpose."

"This court's review therefore is unwarranted," attorneys said.

Companies that make HFC replacements, led by Honeywell International Inc., appealed the 2017 decision overturning the regulation, along with environmentalists led by the Natural Resources Defense Council. Although the decision overturned an EPA rule, the EPA did not file its own appeal.

CNN: Trump's EPA is selling out people of color
https://www.cnn.com/2018/08/28/opinions/trump-epa-endanger-communities-color-morrison/index.html
By Denise Morrison
Updated 7:15 AM ET, Tue August 28, 2018
Health risks to power plant regulation rollback

Denise D. Morrison is the acting president of AFGE Council #238, a union representing more than 8,000 EPA workers nationwide. The views expressed in this commentary are her own. View more opinion articles on CNN.

(CNN)President Donald Trump's Environmental Protection Agency has abandoned environmental justice, which requires the fair treatment of all people, regardless of race or color, in the development and enforcement of environmental laws and regulation.

Its latest effort -- the so-called Affordable Clean Energy Rule, announced last Tuesday -- only exacerbates the issue by continuing to dismantle regulations designed to protect communities of color. It neglects the enforcement of the Clean Air Act (CAA), which standardizes air pollution to safe levels, and the Clean Water Act (CWA), which regulates the discharge of pollutants in American waters.

And it does this despite the EPA's own research showing how communities of color bear the brunt of dirty air and contaminated water. Urban neighborhoods, impoverished rural towns and Native American communities, in fact, face the worst toxic pollution in the nation.

The new rule also rolls back the Clean Power Plan, proposed in 2014 by then-President Barack Obama as a complement to the CAA and CWA, to cut millions of tons of carbon dioxide emissions and hundreds of thousands of tons of particulate matter pollution, also known as soot and smog. That soot and smog more often impact minority and low-income communities, which likely reside in high-pollution areas.
And the EPA even admits that the Trump administration's rollback of the Clean Power Plan rule will result in thousands more premature deaths, heart attacks, asthma attacks and missed work days that impact minority communities.

If Trump and GOP don't understand climate change, they don't deserve public office

What makes these changes that much more egregious is that they go against the history of the agency, which was founded on the principles of environmental justice. After Cleveland's then-Mayor Carl Stokes exposed extreme pollution from steel mills and factories as the cause for the Cuyahoga River fire, he and his brother, then-Congressman Louis Stokes, helped to bring about the creation of the EA and passage of the CWA.

Since then, the agency has always strived to consider how regulations affect communities of color -- and how they must be designed and implemented to ensure the safety of those communities. In 2010, the former EPA Administrator, Lisa P. Jackson, even established environmental justice as an agencywide priority, engaging those communities in decision-making and devoting needed resources.

In 2016, the EPA issued an ambitious four-year plan called the Environmental Justice 2020 Action Agenda. The next phase of strategic planning on environmental justice at EPA, EJ 2020 would help advance environmental justice through its programs, policies and activities, and would support the cross-agency strategy on making a visible difference.

New EPA rule would force people to choose between privacy and health

But after decades of progress, the Trump administration's policies are creating new public health risks and imperiling lives in many minority communities.

Trump's first 2017 budget proposal eliminated the EPA's environmental justice program -- which serviced minority communities facing severe air and water pollution. Mustafa Ali, a towering figure in the field who worked at EPA for 24 years, resigned as the head of that office in March 2017.

Then, researchers in the EPA's National Center for Environmental Assessment released findings in February 2018 that people of color are much more likely to live near polluted water and breathe dirty air. The study focused on automobile fumes, smog, soot, ash and construction dust that cause serious illnesses and outcomes like asthma, low birth weight, heart attacks and high blood pressure.

It's time for the EPA to ban asbestos once and for all

It found African-Americans are exposed to 1.5 times more pollutants than Caucasians and Latinos were about 1.2 times more likely to breathe toxins than non-Hispanic whites. And, according to the CDC, one in six black children

has asthma, a rate that is almost double that of white children. Meanwhile, almost one in five Puerto Ricans across the US has asthma, the highest of any racial or ethnic group.

Despite these findings, Scott Pruitt, who formerly led the agency under Trump, did little to address them. In fact, Pruitt stalled numerous environmental regulations, took little action on improving ozone standards and developed plans to scrap Obama-era rules on disposal of coal ash, the toxic byproduct from coal-fired power plants that has caused major water contamination problems in economically depressed areas. The EPA justified this move by touting cost savings for the utility sector of between $31 and $100 million annually.

According to "Fumes Across the Fence-Line," a recent report published by the Clean Air Task Force and the NAACP, more than 1 million African-Americans live within a half-mile of oil and gas wells and processing and storage facilities. And more than 6 million live in counties with oil refineries that expose them to increased risk of cancer. Dirty air produced by industry is responsible for more than 138,000 asthma attacks and more than 100,000 missed school days each year.

Andrew Wheeler, the new acting administrator of the EPA, could heed this report and champion these struggles -- holding polluters accountable for poisoning communities of color. In other words, the EPA could finish what it started in 2016.

Now is the time to act. One thousand more deaths is too high a price to pay. We call on Wheeler to dust off EJ 2020 and recommit the agency to clean energy abundance, fulfilling the EPA's mission to protect public health and environment for all Americans.

The Washington Post (Opinion): Coal helped make America great. Now it's holding us back. What Trump's EPA gets wrong about coal.
https://www.washingtonpost.com/opinions/2018/08/28/coal-helped-make-america-great-now-its-holding-us-back/?utm_term=.64a891469fca
By Thor Hogan, Professor of Politics and Sustainability, Earlham College, August 28 at 6:00 AM

The Environmental Protection Agency announced new rules last week to eliminate President Barack Obama's signature Clean Power Plan. The decision was unsurprising, given President Trump's devotion to promoting coal and coal miners and promising to restore them to their glory days.

This move, however, is shortsighted and dangerous. It ignores the fact that although coal played a significant role in pushing the United States toward global predominance in the 19th and 20th centuries, it simultaneously did crippling environmental damage — damage that must be stopped before it is too late. As a nation, our objective should be to leverage the advantages that our coal wealth bestowed upon us to make an economically and environmentally beneficial transition to desperately needed clean-energy resources.

While water power and wood-fired steam were the United States' most important early energy sources, Pennsylvania anthracite began to make inroads after canals were dug in the 1820s and 1830s, allowing coal delivery to industrial towns along the Atlantic seaboard. Factories quickly emerged in the iron, glass, paper and textile industries, with coal-fired steam driving the specialized machines critical to the success of these manufacturing works. Steam-powered cities such as Boston, Providence, Buffalo, New York, Baltimore, Philadelphia and Pittsburgh propelled the national economy.

This paved the way for the inauguration of the Hydrocarbon Age in the mid-1860s. While coal had been just one of several energy sources, it became an essential component of the American way of life.

Coal-fired steel manufacturing, in particular, developed into the nation's most important industrial frontier. It was used to construct continent-straddling railroad networks and vertically expanding urban centers. In the 20th century, coal became the central force behind the electrification revolution. This dramatically expanded its importance and led to yet another wave of massive economic growth.

Disturbingly, most of the increase in coal use during the late 19th century and throughout the 20th century did not involve relatively clean-burning anthracite. Instead, the more readily available and dirtier-burning bituminous coal came to the fore.

While coal was powering economic, political and social progress, it was also birthing a climate crisis that has come to threaten humanity's ability to survive on this planet.

Climate science began to emerge in 1896, when Swedish chemist Svante Arrhenius published research suggesting that increased atmospheric concentrations of carbon dioxide from the burning of coal could produce a greenhouse effect that would alter the global climate.

Significant efforts to understand global warming, however, arose only in the mid-20th century. In the 1950s, Roger Revelle, director of the Scripps Institution of Oceanography, conducted research proving that the oceans could not absorb all of the carbon dioxide being pumped into the atmosphere. That same decade, he began a collaboration with Charles David Keeling to measure atmospheric carbon dioxide contributions. This eventually spawned the famous Keeling Curve, a simple chart that clearly showed that the share of carbon dioxide in the atmosphere was increasing dramatically.

Although for some time it could be plausibly argued that climate science wasn't mature enough to mandate aggressive actions to address global warming, that level of certainty was achieved long ago, and the conclusions were unimpeachable: The carbon dioxide emitted from coal-fired power plants around the world has played an outsize role in creating the global warming that is radically altering our climate.

For most, this contradiction is hard to reconcile. Coal should be good or bad. But it is critical for everyday Americans and policymakers alike to chart a path forward that acknowledges the benefits coal provided, while also embracing the need to eliminate its use, to safeguard the advances that it delivered. This will allow us to praise the historic contributions made by coal miners from West Virginia to Wyoming, while at the same time doing what our forebears have always done when faced with new and dire challenges — adopt forward-thinking policies aimed at ensuring national success.

But Americans have been slow to accept these ideas. It wasn't until about a decade ago that the American government began to take the crisis seriously.

After legislative efforts to create a cap-and-trade program failed in Congress, Obama recognized the need to act unilaterally. He used his executive powers to fashion the Clean Power Plan, a far-reaching program that promoted state-based approaches to replacing coal-fired power plants with cleaner sources of electricity. His objective was not to hurt coal miners, as Trump might contend, but rather to provide climate security to the entire nation while creating millions of good-paying green jobs.

But now, that vision for our collective future is under assault. Trump is tearing down the foundations of a badly needed sustainability revolution. Gutting the Clean Power Plan follows a long line of anti-environmental moves by the Trump administration, including withdrawal from the Paris climate agreement. It is highly dubious that this will provide any benefits to coal miners, but it is guaranteed to compromise the well-being of all Americans.

We are all vulnerable to extreme, climate-change-related weather events, sea-level rises, water scarcity and food insecurity. Models predict that the number of Category 4 and 5 hurricanes hitting the United States could increase by 45 to 87 percent in coming years. We are already seeing the effects of increased flooding and wildfires that cause billions of dollars of damage.

Sea levels are expected to rise by at least three feet by 2100, although some experts predict accelerated melting of the Greenland and West Antarctic ice sheets could lead to far greater increases. Desertification, aquifer depletion

and reduced snowmelt are drastically reducing the amount of water available for agriculture, which is already compromising our ability to feed ourselves and could lead to mass migrations capable of threatening our national and economic security.

Taking into account that Republicans control all levers of government, there is little that progressives can do to stop the actions of the Trump administration before the midterm elections. But Democrats should be running on a message rooted in the need to provide the American people with climate security — and they need to do it in a way that convinces Americans that protecting our climate can be done while expanding the economy.

Democrats need to develop a comprehensive sustainability revolution. The centerpiece of such a program should be a carbon tax to fund clean-energy research and nationwide infrastructure renewal. But this tax should also be coupled with a reduction in payroll taxes for working Americans, which would alleviate concerns that a carbon tax would have a negative economic impact while addressing the other great challenge facing the nation — income inequality.

This would put our country back onto a path toward mitigating the dangers posed by the climate crisis and do it in a politically and economically palatable way. Once again, our goal should be to replicate the economic advances provided by coal, but this time with clean-energy resources. Our future demands nothing less.

Axios Generate - Number of the day: 1 million
https://link.axios.com/click/14290335.4843/aHR0cDovL3d3dy5ldi12b2x1bWVzLmNvbS8_dXRtX3NvdXJjZT1uZXdzbGV0dGVyJnV0bV9tZWRpdW09ZW1haWwmdXRtX2NhbXBhaWduPW5ld3NsZXR0ZXJfYXhpb3NnZW5lcmF0ZSZzdHJlYW09dG9wLXN0b3JpZXM/5ab3babc3f92a47853d88a9dB3b5597ef
By Ben Geman, August 28, 2018

Europe's electric vehicle fleet now totals over one million vehicles on the strength of sales in the first half of 2018 that are 42% above last year's levels for the period, according to the data tracking firm EV Volumes.

Why it matters: The figure, which includes battery EVs and plug-in hybrids, is a symbolic milestone that nonetheless signals the rapid growth of the technology, albeit from a very small base.

- EVs are now 2.2% of the European market, they said.

The big picture: Via The Guardian, "Europe hit the [1 million] milestone nearly a year after China, which has a much larger car market, but ahead of the US, which is expected to reach the landmark later this year driven by the appetite for Tesla's latest model."

- Sales in the first half of the year totaled 195,000 vehicles, according to EV Volumes.

The intrigue: They expect the continent's fleet to reach 1.35 million by year's end, but also warned that a "caveat" for high growth during the second half of the year is availability of supply.

- "Our tracking of plug-in vehicle inventory shows an average of only 4 days of supply on stock and 2 months of order back-log," their report notes.

- "Models with more than 10, 000 unfulfilled orders, each, are Hyundai Kona, VW e-Golf, Jaguar i-Pace and Nissan Leaf and obviously the Tesla Model 3, all of them BEVs."

Bloomberg News: Melting Ice In the Arctic Is Opening a New Energy Trade Route
LNG shippers are taking advantage of open waters as ice caps stage one of their largest retreats on record.
https://www.bloomberg.com/news/articles/2018-08-28/arctic-ice-melt-opens-lng-energy-trade-route-near-north-

pole?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axiosgenerate&stream=top-stories

By Jeremy Hodges , Anna Shiryaevskaya , and Dina Khrennikova
August 28, 2018, 12:00 AM EDT

A new trade route for energy supplies is opening up north of the Arctic Circle as some of the warmest temperatures on record shrink ice caps that used to lock ships out of the area.

This year is likely to rank among the top 10 for the amount of sea ice melting in the Arctic Ocean after heat waves across the northern hemisphere this summer. While that's alarming to environmentalists concerned about global warming, ship owners carrying liquefied natural gas and other goods see it as an opportunity. Their cargoes have traversed the region for the first time this year without icebreakers, shaving days off shipping times and unlocking supplies from difficult-to-reach fields in Siberia.

More navigable waters are a boost for Russian President Vladimir Putin's effort to expand his nation's reach in the gas market and for energy companies such as Total SA and Novatek PJSC, which are leading Arctic developments. They also help reduce shipping costs for LNG, benefiting buyers and traders of the fuel from PetroChina Co. to Gunvor Group Ltd.

"There is a growth trend for volumes transported via the Northern Sea Route this year," said Sergei Balmasov, head of the Arctic Logistics Information Office, a consultancy in Murmansk, Russia. "The reason is an increase in LNG exports."

While shorter shipping journeys reduce emissions, environmentalists are concerned that more traffic through the Arctic will add to the amount of black carbon—particles of pure carbon—settling in the snow from tanker smokestacks. When that soot darkens the surface of the ice, it speeds up the warming process by absorbing more of the Sun's energy.

And with the shipping season through the Arctic starting earlier and ending later, tankers will spend more time in the area and spew more of their pollution onto the ice.

Turbulent weather in the area also churns the seas, making it almost impossible to clean up anything that's spilled. The International Maritime Organization is considering rules that would ban burning heavy fuel oil in Arctic waters, extending restrictions already in place in the Antarctic.

"It's a major concern for us because as the ice melts we are seeing more and more shipping," said Sian Prior, lead adviser for the Clean Arctic Alliance, an environmental group.

Scientists are seeing a rapid change in the Arctic. The Bering Sea between Alaska and Russia lost about half its ice coverage during a two-week period in February, while the most northern weather station in Greenland recorded temperatures above freezing for 60 hours that month. The previous record was 16 hours by the end of April 2011. The mercury topped an unprecedented 30 degrees Celsius (86 degrees Fahrenheit) north of the Arctic Circle on July 30 in Banak, Norway.

Ice begins melting in the Arctic as spring approaches in the northern hemisphere, and then it usually starts building again toward the end of September as the days grow shorter and cooler. A total of 5.7 million square kilometers (2.2 million square miles) of ice covered the Arctic in July, according to the Colorado-based National Snow & Ice Data Center. Through the first two weeks of August, ice extent declined by 65,000 square kilometers each day, according to the NSIDC.

"The ice has been retreating by about 10 percent every decade during the last 30 years," said Miguel Angel Morales Maqueda, senior lecturer in Oceanography at Newcastle University in northern England. "There is no other known explanation than climatic change. If it isn't climactic change, then we don't know what it is."

This season is likely headed for the the ninth biggest retreat since satellite measurements began, not as extreme as bigger melting seasons in 2012 and 2007, according to Julienne Stroeve, Professor of Polar Observation & Modelling, University College London.

"The total ice extent loss is being slowed by winds pushing the ice southwards," Stroeve said in a message sent from an Arctic research trip. "We likely still have a month of sea ice retreat. The ocean is still warm enough to melt some ice even if air temperatures cool."

LNG exporters are taking advantage of the open waters, most notably around the Yamal LNG gas liquefaction plant in northern Siberia. The project owned by Total, Novatek and their Chinese partners has custom-built ARC 7 tankers rugged enough to cut through whatever ice remains in the area. That enables them to sail without help from icebreakers west to Europe year round and east to Asia during the summer months. In the coming years, more routes will open for ships to sail without an icebreaker.

The Yamal venture's Christophe de Margerie was the world's first ice-breaking LNG tanker built and collected Yamal's first cargo to make the the trip westward through the Northern Sea Route.

In early 2018 though, the Eduard Toll, became the first LNG tanker to ever use the full Northern Sea Route in the winter. It traveled from a South Korean shipyard to Sabetta and collected a cargo there from the Yamal LNG plant, then delivered it to France. That shaved about 3,000 nautical miles off the traditional route through the Suez Canal.

In July China received two cargoes from Yamal from the first LNG ships to cross the Arctic without help from ice breakers. The net voyage time from the port of Sabetta through the Northern Sea Route to the destination the Chinese port of Jiangsu Rudong was completed in 19 days, compared with 35 days for the traditional eastern route via the Suez Canal and the Strait of Malacca.

Routes like that may save Yamal $46 million in shipping costs for the remainder of the year, those savings could quadruple by 2023, Bloomberg NEF said in a note.

Traffic is picking up. The Northern Sea Route saw 9.7 million tons of cargo shipped through it in 2017, according to the Russian Federal Agency for Maritime and River Transport. There were 615 voyages along the Northern Sea Route this year through July 15, about the same as in 2017, said Balmasov at Arctic Logistics. The Russian government is targeting cargo traffic through that route totaling 80 million tons by 2024.

"The main difference to 2017 is LNG deliveries from the port of Sabetta," Balmasov said. "Our data show that as of early July, 34 tankers were dispatched from Sabetta towards European ports, and one voyage was east-bound."

Since then, two more ships have moved from Yamal to Asian markets in the east, though the most icy part of the Northern Sea Route.

Message

From: Flores, Daniel [Daniel.Flores@mail.house.gov]
Sent: 9/18/2018 7:54:39 PM
To: Brazauskas, Joseph [brazauskas.joseph@epa.gov]
Subject: RE: test

Looks like 9/28 in the afternoon. Anything in there work for you?

Daniel M. Flores
Chief Counsel
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
Committee on the Judiciary
United States House of Representatives
(202) 226-8685 (ph)
Ex. 6 Personal Privacy (PP) *(cell)*
(202) 225-3746 (fax)
Daniel.Flores@mail.house.gov

From: Brazauskas, Joseph <brazauskas.joseph@epa.gov>
Sent: Tuesday, September 18, 2018 2:28 PM
To: Flores, Daniel <Daniel.Flores@mail.house.gov>
Subject: Re: test

Yes, no problem Daniel, what are some good days and times next week?

Sent from my iPhone

On Sep 18, 2018, at 11:09 AM, Flores, Daniel <Daniel.Flores@mail.house.gov> wrote:

> Joe, fyi, Brittany has asked again to reschedule my meeting with her for another day, which will have to be sometime next week. How we about if we put our meeting over until next week as well?
>
> All the best,
>
> Daniel
>
> Sent from my iPhone
>
> On Sep 17, 2018, at 1:12 PM, Brazauskas, Joseph <brazauskas.joseph@epa.gov> wrote:
>
>> test
>>
>> **Joseph A. Brazauskas**
>> Associate Deputy General Counsel
>> U.S. Environmental Protection Agency
>> (202) 564-5189

Message

From: Peter Robertson [peterrobertson@pebblepartnership.com]
Sent: 9/18/2018 4:35:11 PM
To: Brazauskas, Joseph [brazauskas.joseph@epa.gov]
Subject: Hey!

Joe,

Hope all is well. Would love to catch up with you to see how things are going generally, and (of course) also to see if you're hearing anything at all about Pebble.

Let me know if you have time for a quick call.

Best,

Peter

Peter D. Robertson
The Pebble Partnership
1330 Connecticut Avenue, NW
Washington, DC 20036

202-629-3392

Message

From: Epp, Timothy [Epp.Timothy@epa.gov]
Sent: 9/18/2018 12:27:32 PM
To: Brazauskas, Joseph [brazauskas.joseph@epa.gov]
CC: Blake, Wendy [Blake.Wendy@epa.gov]
Subject: draft FOIA regulations
Attachments: FOIA Regulations Sept 18.docx

Hi Joe,
The current draft of the FOIA regulations is attached.
Tim

Timothy R. Epp
Acting Director, National FOIA Office
Acting Associate General Counsel
Pesticides & Toxic Substances Law Office
Office of General Counsel
U.S. Environmental Protection Agency
Tel. 202-564-2830

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6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

EPA–HQ–OGCEI–2016–####

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RIN 2025-AA38

Public Information, **Freedom of Information Act** and Privacy Act **Regulations**

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AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This rule notice proposes revisions to the Environmental Protection Agency's (EPA or the Agency) regulations under the Freedom of Information Act (FOIA or the Act), regulations, whichThis action supports the Agency's mission by providing proposing updates to the public with the process by which to request access to the public may access information about EPA actions and activities. EPA proposes changes to incorporate all necessarya number of modifications to the Act resulting fromits FOIA regulations necessitated required by amendments to the Act in 2007, 2009, and 2016, and to make additional other discretionary enhancements to the regulations in order to streamline the Agency's processing of FOIA requests, to simplify and modernizeupdate the Agency's fee structure, and to provide more specific informationclearer guidance regarding what constitutesson how to make a proper FOIA request to aid the requester community, and to update certain provisions affected by the Agency's use of new technology to track and process FOIA requests.

Commented [A1]: Is this word workable? It seems we are doing more than simplifying since we are changing the rates.

Commented [A2]: Feels redundant and possibly defensive.

DATES: Comments must be received within 30 days after publication of this notice in the Federal Register. The proposed rule will become effective on the date of publication of the final rule.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA– HQ–OEI–2016–####, at [HYPERLINK "http://www.regulations.gov"]. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The

DRAFT

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EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Multimedia submissions (e.g., audio, video) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (e.g., on the Web). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit [HYPERLINK "http://www2.epa.gov/dockets/commenting-epa-dockets"].

FOR FURTHER INFORMATION CONTACT: Larry F. Gottesman, Agency FOIA Officer, U.S. EPA, 1200 Pennsylvania Avenue N.W., Mail Code 2310A, Washington, DC 20460; telephone, 202-566-1667; email, [HYPERLINK "mailto:gottesman.larry@epa.gov"].

Commented [GA3]: Why not the Director of the National FOIA Office?

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

I. Scope of this Action
II. Background
A. Background on EPA's FOIA Regulations and FOIA Processes
B. Why EPA is Proposing Changes to its FOIA Regulations
III. Revisions related to the 2007, 2009, and 2016 Amendments to FOIA
A. Revisions Related to the 2007 Amendments to ~~the~~ FOIA
~~A.~~B. Revisions Related to the 2009 Amendments to FOIA
~~B.~~C. Revisions Related to the 2016 Amendments to ~~the~~ FOIA
IV. Improvements and Clarifications to EPA's FOIA Process
A. Submission of Proper Requests
~~A.~~B. Use of Multitrack Processing for Complex Requests
~~B.~~C. Aggregating Multiple Requests

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~~C.~~ Authority to Respond to Requests

D. ~~Responding to Requests~~

E. Administrative Appeals

V. FOIA Fees and Fee Waivers

A. Minimum Billable Amounts

B. Fee Waiver Certification

~~A.~~C. Tolling of Deadlines to Process Fee Waivers

~~B.~~D. Fees for Review in Addition to Fees for Search

E. Fee Rate Schedule

VI. Other Changes

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

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B. Paperwork Reduction Act

C. Regulatory Flexibility Act

D. Unfunded Mandates Reform Act

E. Executive Order 13132: Federalism

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

I. National Technology Transfer and Advancement Act

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

K. Congressional Review Act

I. Scope of this Action

This notice proposes various changes to the Agency's Freedom of Information Act (FOIA or the Act)FOIA regulations at 40 CFR Part 2, to implement statutory updates and make other discretionary changes to improve the Agency's FOIA process. These changes, if finalized, that would would affect anyll individuals andor entities that request records from EPA under the Act.

II. Background

A. Background on EPA's FOIA Regulations and FOIA Processes.

EPA is proposing a number of changes to update and modernize its FOIA regulations in light of changes in statutory requirements, improvements in information technology, and the identification of opportunities to improve and streamline the FOIA process resulting from the Agency's experience and lessons learned under its existing FOIA regulations. EPA's FOIA regulations at 40 CFR Part 2 set forth the process and administrative rules by which FOIA requests are handled across the Agency. They cover such topics as where and how to make a

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proper FOIA request to the Agency; who within the Agency is responsible for responding to FOIA requests; how and when the Agency will respond to requests; administrative appeals of initial FOIA determinations; and how FOIA fees are charged and processed. These regulations have not been substantively updated since 2002. *See* 67 FR 67303 (Nov. 5, 2002). Since that time, Congress has enacted three laws amending FOIA. In 2007, Congress amended the FOIA, 5 U.S.C. § 552, when it passed the OPEN Government Act of 2007, which addressed several procedural issues that concern FOIA administration. In 2009, Congress passed the OPEN FOIA Act of 2009, which revised the requirements of FOIA Exemption 3 regarding records exempted from disclosure by other statutes, a change that did not require a modification to EPA's FOIA regulations. Congress amended the FOIA again in 2016 in the FOIA Improvement Act, Public Law No. 114-185, addressing a range of procedural issues

among other changes.

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In order to EPA's FOIA regulations are supplemented by a number of guidance materials and processing procedures that guide requesters and Agency staff.[1] Outside of EPA, the Department of Justice's Office of Information Policy (OIP) provides guidance and resources government-wide to assist FOIA requesters and agencies in their implementation of FOIA.[2] Within the Agency, effectively implement the FOIA and EPA's FOIA regulations, EPA's National FOIA Office located in EPA Headquarters provides leadership, direction, and support for FOIA activities.

EPA has undertaken improvements to its FOIA process in recent years. The National FOIA Office staff members work in conjunction with the Agency's FOIA community to develop policies and procedures for administering statutory and regulatory requirements under the Act. In October of 2012, the Agency began using an online interface called FOIAonline to receive and process requests called FOIAonline.[3] FOIAonline allows requesters to submit FOIA requests to all participating agencies, track the status of requests, search for requests submitted by others, and generate up-to-the-minute reports on FOIA processing. In April 2018, EPA announced the creation of a new National FOIA Office within the Office of General Counsel (OGC). The new National FOIA Office brings together the FOIA program staff from the Office of Environmental

[1] *See* https://www.epa.gov/foia/foia-resources.
[2] *See* https://www.justice.gov/oip.
[3] *See* https://www.foiaonline.gov/foiaonline/action/public/home.

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Information (OEI) (where the Office was previously housed) and the staff from the FOIA Expert Assistance Team (FEAT) within OGC. The National FOIA Office staff members work in conjunction with the Agency's FOIA community to develop policies and procedures for administering statutory and regulatory requirements under the Act. Under the new structure, the relevantEPA's program offices (such as the Office of Air and Radiation, or the Office of Water, the Office of Land and Emergency Management, etc.) continue to be assignedresponsible for responding to FOIA requests relevant to theirthe work they perform. In addition, each of EPA's ten regional offices continues to operate a FOIA office, which processes FOIA requests relevant to its region.

B. This proposed action and the creation of the new National FOIA Office within OGC are parts of a multi-pronged approach to improving FOIA processing at EPA. In addition to these steps, the Agency has adopted a Strategic Measure to reduce the backlog of FOIA requests and meet statutory deadlines for responding to FOIA requests.[4] EPA has also undertaken a Lean Government project to improve its internal FOIA processing. Lean Government initiatives at EPA are designed to identify and eliminate waste in programmatic and operational processes, improve efficiency and effectiveness, and improve the quality, transparency and speed of processing.[5] EPA's Lean process for FOIA is ongoing.

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C. *Why EPA is Proposing Changes to its FOIA Regulations.*

EPA is proposing changes to update and modernize its FOIA regulations in light of changes in statutory requirements, improvements in information technology, and the identification of opportunities to improve and streamline the FOIA process resulting from theideas for improvement generated by the Agency's FOIA staff and requesters based on their experience under the existing FOIA regulations. Since 2002, the last time the regulations were substantively revised, Congress has enacted three laws amending FOIA, 5 U.S.C. § 552. In 2007, Congress passed the Openness Promotes Effectiveness in our National Government (or OPEN Government) Act of 2007, which addressed several procedural issues that concern FOIA

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[4] U.S. EPA, FY 2018-2022 EPA Strategic Plan, Objective 2.2, at 26 (Feb. 12, 2018), *available at* https://www.epa.gov/sites/production/files/2018-02/documents/fy-2018-2022-epa-strategic-plan.pdf.
[5] U.S. EPA, Lean Government: Successful Mission Delivery through Process Improvement, [HYPERLINK "https://www.epa.gov/lean/lean-government"] (last visited June 11, 2018).

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administration. In 2009, Congress passed the OPEN FOIA Act of 2009, which revised the requirements of FOIA Exemption 3 regarding records exempted from disclosure by other statutes. Congress amended FOIA again in 2016 in the FOIA Improvement Act, addressing a range of procedural and substantive issues and directing Agencies to amend their FOIA regulations to incorporate required changes.

~~The FOIA was amended in 2007, 2009 and 2016; therefore,~~ EPA is proposing to revise its regulations to ensure that its regulations comport with the requirements of FOIA as amended. This set of changes will bring EPA's regulations in line with the current statute.

In addition, ~~EPA proposes revisions to its regulations to help increase transparency about EPA's work through FOIA, to reflect developments in FOIA case law, and to reflect the impacts of technology on the Agency's ability to respond to FOIA requests. Finally,~~ EPA is also proposing a number of changes~~es~~ to clarify, streamline, and reorganize the regulatory language to improve ~~the~~ public~~'s ability to read and~~ understanding of the process and requirements contained in EPA's FOIA regulations. EPA proposes to make a series of improvements to its process for handling FOIA requests: providing guidance through clarifying language regarding what constitutes a proper FOIA request and proposing or requesting comment on procedural mechanisms to efficiently manage overlapping, broad, or otherwise complex FOIA requests; centralizing and streamlining the intake process for receiving FOIA requests into the Agency; streamlining and clarifying which EPA officials have authority to make initial release and withholding determinations and appeal determinations; and centralizing and streamlining the agency's processing of administrative appeals.

Second, EPA is proposing a number of changes to its FOIA fee structure: raising the threshold billable amount from $14 to $50; reducing staff categories for purposes of calculating billable time from three to two (eliminating the clerical category); basing the remaining two pay rates on the General Schedule (GS) pay scale; reducing duplication fees to $0.10/page; clarifying the requirement of automatic tolling of deadlines pending resolution of fee waiver requests; and adding a certification statement requirement for fee waivers.

Finally, EPA is proposing several other minor changes to the regulations, including: revising Privacy Act request submission instructions; clarifying the process for referring a request to another agency or office; clarifying the basis for obtaining expedited treatment of a request; removing the list of FOIA exemptions as duplicative of the statute; and clarifying the

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impact of interim responses on appeal rights. Other non-substantive and/or conforming changes to the regulations are listed in Section XX below.

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III. Revisions Related to the Amendments to FOIA

This ~~rule~~ action proposes revisions to the Agency's FOIA regulations to incorporate required changes brought about by the amendments to FOIA under the OPEN Government Act of 2007, Public Law 110–175, 121 Stat. 2524 ("2007 Amendments"), the OPEN FOIA Act of 2009, Pub. L. 111-83, 123 Stat. 2142 ("2009 Amendments"), and the FOIA Improvement Act of 2016, Public Law 114-185, 130 Stat. 538 ("2016 Amendments").

A. Revisions Related to the 2007 Amendments to ~~the~~ FOIA

EPA proposes to update the Agency's definition of a "representative of the news media" to reflect the statutory definition provided by the 2007 A~~a~~mendments. Section 3 of the ~~Open~~OPEN Government Act amends 5 U.S.C. § 552(a)(4)(A)(ii) by providing a definition of "a representative of the news media" directly in the statute. The provision defines the term "news;"; gives examples of news-media entities such as "television or radio stations broadcasting to the public at large,"; recognizes the evolution of "methods of news delivery" through, for example, "electronic dissemination" and notes that news-media entities might make their products available by "free distribution to the general public,"; and includes provisions for a "freelance journalist." ~~By proposing to adopt this statutory definition, EPA would not consider whether a representative of the news media distributes his or her work for free or for a cost or whether the representative of the news media distributes his or her work solely by electronic means when evaluating whether that requester is considered to be a representative of the news media~~EPA proposes to incorporate by reference the statutory definition.

The 2007 amendments to FOIA also limited the amount of time an agency has to ~~re-~~route a ~~misdirected~~ request ~~(i.e., a request sent to an incorrect component of the agency that is otherwise designated to receive requests)~~to the appropriate component of the agency to ten working-days or less. 5 U.S.C. § 552 (a)(6)(A)(ii). In light of this change, and in order to minimize the number of misdirected requests sent to the Agency, EPA is proposing revisions to the location~~s~~ to which FOIA requests may be properly submitted. EPA proposes to make the National FOIA Office the point of entry for all requests. Further, EPA proposes to accept FOIA requests only via two methods, all of which would go to the National FOIA Office:; (1) electronically through the EPA's FOIA submission website (or other electronic government

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submission website that may be established pursuant to 5 U.S.C. § 552(m)[5]; or, (2) by U.S. Mail or overnight service to EPA's National FOIA Office at EPA Headquarters in Washington, DC. The receiving address is:or (3) by overnight delivery service to National Freedom of Information Officer, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW; Room 5315B, Washington, DC 20004.

Commented [SD6]: Needs explanation it seems.

Under EPA's cCurrently regulations, FOIA requests may be submitted to the National FOIA Office at EPA Headquarters, as well as to each of EPA's ten Regional Offices through various means. If these proposed revisions are finalized, EPA would no longer accept FOIA requests sent (1) to any office by facsimile,; (2) to any office by email; or (3) to Regional FOIA Offices by U.S. Mail or other non-electronic means. Under the proposed regulations, if a FOIA request were erroneously submitted to an EPA program or regional office, it would not be considered received by the Agency. Consistent with the 2007 amendments to the Act, these methods and offices will no longer be considered "components of the agency" that are "designated in the agency's regulations ... to receive requests." Because of this, neither the statutory deadlines for response, nor the tolling provisions of the Act, as amended, would be triggered by such misdirected requests. Until hes requester would therefore need to submits a new request via one of the three acceptable methods identified above. Only when a request has properly been submitted in that manner would EPA's timelines to respond begin to run. ~~(1) electronically through the EPA's FOIA submission website (or other electronic government submission website that may be established pursuant to 5 U.S.C. § 552(m)) (2) by U.S. Mail to EPA's National FOIA Office at EPA Headquarters in Washington, DC; or (3) by overnight delivery service to National Freedom of Information Officer, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW, Room 6312B, Washington, DC 20004.~~

By reducing the number of methods for submitting a FOIA request to the Agency, the proposed regulations would help streamline the submission process for the public and ensure the proper delivery of the request to the most appropriate EPA office through the most reliable means. The National FOIA Office would be responsible for routing the FOIA request to the proper office or offices upon receipt. EPA proposes to allow the National FOIA Office up to ten

[5] This subsection was added to FOIA by the FOIA Improvement Act of 2016, and provides for the Office of Management and Budget (OMB), in consultation with the Attorney General, to ensure the operation of a consolidated online request portal to receive FOIA requests to any agency from a single website. This online system is not yet in operation.

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working days to assign the FOIA request to the appropriate EPA office. This is consistent with the provision of the Act added in 2007 authorizing the twenty-day period for response to requests to commence "not later than ten days after the request is first received by any component of the agency that is designated in the agency's regulations . . . to receive requests . . . ." 5 U.S.C. 552(a)(6)(A)(ii). Thus, the twenty working-day period would commence on the date the requester is notified that their request has been assigned to the appropriate EPA office, which date may be no more than ten working days from the date the FOIA request is received via one of the three acceptable methods identified above.

The proposed regulations would inform requesters that requests transmitted by means other than those listed in the regulations would not be accepted for processing by the Agency, ~~in order~~ to ensure that requesters understand the consequence of failing to submit a request through the approved means. As explained above, among other things, such misdirected requests will not trigger the clock for any statutory deadlines. EPA is also proposing to remove certain existing provisions in 40 CFR § 2.102(a) and (b) regarding the routing of requests ~~in order to provide consistency with the~~to conform with the proposed approach for the submission of requests.

In addition, ~~C~~consistent with the 2007 A~~a~~mendments to 5 U.S.C. § 552(a)(6)(A)(ii), EPA is proposing to revise the regulations regarding when the Agency's time period for responding to a request will be tolled. The statute provides ~~(i.e., when the~~ 20 working~~-day time period to respond~~ days within which agencies must determine whether to comply with a FOIA request ~~to FOIA requests can be paused~~and respond to the requester~~)~~. ~~According to~~Under the ~~FOIA~~2007 Amendments, agencies may toll the response time once during the first 20 working days after receipt of a request by the proper office ~~in order~~ to obtain necessary clarification from a requester, and as many times as necessary to address issues related to fees. ~~The changes to clarify the tolling practices are proposed because it will effectuate the 2007 amendments to the FOIA regarding tolling. (EPA is proposing other changes relating to fee issues, which are discussed in Section IV.D. below).~~

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The 2007 Amendments to ~~the~~ FOIA required agencies to make the FOIA Public Liaison available to requesters to resolve disputes. Therefore, EPA proposes to include information about

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the existence and role of EPA's FOIA Public Liaison, who is available to work with requesters and Agency staff concerning issues related to the Agency's response to FOIA requests.

B. Revisions Related to the 2009 Amendments to FOIA

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~~B.~~ In 2009, Congress passed the OPEN FOIA Act, which revised the requirements of FOIA Exemption 3, 5 U.S.C. § 552(b)(3), regarding records exempted from disclosure by other statutes. The changes to Exemption 3 in the OPEN FOIA Act of 2009 would require changes to EPA regulations if EPA were to retain the list of statutory exemptions currently contained in its regulations. However, EPA is proposing to repeal the list of the FOIA exemptions in its regulations at 40 CFR § 2.105. EPA believes providing this list of exemptions by regulation is unnecessary and redundant of the statute. Further, by removing the list of exemptions from its regulations, any future changes in FOIA's exemptions that Congress may enact will not require conforming amendments in EPA's regulations. The removal of the list of exemptions will also reduce confusion and assist with public understanding of the FOIA process, as it will eliminate any potential for inconsistency between EPA's regulations and the statute. By undertaking this change, no further changes to EPA's regulations would be required by the 2009 Amendments.

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C. Revisions Related to the 2016 Amendments to ~~the~~ FOIA

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The 2016 Amendments established new requirements for providing notification of assistance from public liaisons. When agencies make determinations on requests they now must offer the services of their FOIA Public Liaison and must notify requesters of the dispute resolution services provided by the Office of Government Information Services (OGIS). They must also allow requesters a period of at least 90 days within which to file an administrative appeal. Specifically, agencies must include in their notification to the requester: "the right of such person to seek assistance from the FOIA Public Liaison of the agency," and, in the case of an adverse determination: the right to appeal within a period of time "that is not less than 90 days after the date of such adverse determination," and "the right of such person to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services." To implement these changes, EPA proposes regulations requiring the agency to include information about the right to seek assistance from the FOIA Public Liaison in final responses to a request, and in the case of an adverse determination, of the existence and role of OGIS in providing dispute resolution services in FOIA-related matters. EPA also proposes regulations requiring the agency to include information about the existence and role of the OGIS

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when any request for an extension exceeds the 10-day period, as required by the 2016 Amendments. EPA proposes to amend the time period allowed in the regulations for submitting an administrative appeal of a FOIA response from 30 calendar days to 90 calendar days.

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~~The proposed regulations would reflect the 2016 Amendments to the FOIA which~~The 2016 Amendments limited agencies' ability to charge for search or duplication fees for certain requests. Specifically, the law limited agencies from assessing search fees (or, for educational or noncommercial scientific institutions or representatives of the news media, as identified at 5 U.S.C. § 552(a)(4)(A)(ii)), duplication fees[7]) if an agency's response time is delayed beyond statutory deadlines. 5 U.S.C. § 552(a)(4)(viii). In general, the deadline for determining whether to comply with a FOIA request is 20 working days. When agencies determine that "unusual" circumstances apply to the processing of a request, and they have provided timely written notice to the requester, a delay may be excused for an additional 10 working days. However, if the agency fails to comply with the extended time limit, it may not charge search fees (or, for educational or noncommercial scientific institutions or representatives of the news media, duplication fees). The law contains an exception: if unusual circumstances apply (as defined by 5 U.S.C. § 552(a)(6)(B)(iii)) and more than 5,000 pages are necessary to respond to the request, agencies may charge search fees (or, for educational or noncommercial scientific institutions or representatives of the news media, duplication fees) if timely written notice has been made to the requester and "the agency has discussed with the requester via written mail, electronic mail, or telephone (or made not less than 3 good-faith attempts to do so) how the requester could effectively limit the scope of the request [under 5 U.S.C. § 552(a)(6)(B)(ii)]." *Id.* § 552(a)(4)(viii)(II)(bb). Finally, if a court determines that "exceptional circumstances" (as defined in the statute) exist, the agency's failure to comply with a time limit "shall be excused for the length of time provided by the court order." *Id.* § 552(a)(4)(viii)(II)(cc).

To implement these provisions of the FOIA Improvement Act of 2016, EPA proposes ~~to~~ not to charge search fees (or, for educational or noncommercial scientific institutions or representatives of the news media, duplication fees) ~~(or duplication fees to news media or educational requesters)~~ if the Agency fails to ~~comply~~ meet~~with~~ FOIA's ~~a time limit set forth~~20 working-day period to determine whether to comply with a request~~in FOIA~~ (or the 30 working-day response time where "unusual circumstances" exist), ~~unless the conditions described in the~~

[7] Such requesters are already exempt from paying search fees.

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remainder of this paragraph are met. EPA proposes to charge search fees for up to 10 days after a statutory deadline if "unusual circumstances" (as defined in the FOIA) exist, and timely written notice is provided to the requester. EPA also proposes to charge search fees (or, for educational or noncommercial scientific institutions or representatives of the news media, duplication fees) (or duplication fees to news media or educational requesters) if: (1) "unusual circumstances" (as defined in the FOIA) exist; (2) timely written notice is provided to the requester; (3) more than 5,000 pages are necessary to respond to the request; and (4) Agency staff have made at least three good faith attempts to discuss limiting the scope of the request with the requester as provided for in § 552(a)(6)(B)(ii), which includes notice of the availability of the FOIA Public Liaison and ; and the Agency has notified the requester of the right to seek dispute resolution services from the Office of Government Information Services (OGIS) at the National Archives and Records Administration (NARA).

Commented [SD9]: This is more faithful to the statute.

Finally, EPA proposes to include a provision permitting the Agency to charge certain appropriate fees when "exceptional circumstances" exist consistent with this provision of the 2016 Aamendments to this provision in the statute. Specifically, EPA proposes to charge search fees (or, for educational or noncommercial scientific institutions or representatives of the news media, duplication fees) (or duplication fees to news media or educational requesters) if a court determines that "exceptional circumstances," as defined by FOIA in 5 U.S.C. §552(a)(6)(C), exist. The ability to charge such fees in this instance is proposed to continue so long as EPA meets the deadlines. For an extension of the length of time provided for by the Court order. EPA proposes not to charge search fees (or duplication fees to news media or educational requesters) if the Agency fails to comply with a time limit set forth in FOIA under any circumstances other than those described above.

Commented [SD10]: As worded here and above, our proposal appeared to deviate from the statute. The statute says the failure to meet the statutory deadline is excused and search fees may be assessed. Here, we seemed to be saying that search fees that accrue during these periods can be assessed. I don't know if this was intentional, but it doesn't seem in line with the statute so I have corrected this.

As a result of the 2016 Amendments, EPA also proposes to include information about the right to seek assistance from the FOIA Public Liaison in final responses to a request, and in the case of an adverse determination, of the existence and role of OGIS in providing dispute resolution services in FOIA-related matters. EPA also proposes to include information about the existence and role of the OGIS when any request for an extension exceeds the 10-day period, as required by the 2016 Amendments. Further, EPA proposes to amend the time period for

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submitting an administrative appeal of a FOIA response from 30 calendar days to 90 calendar days, in order to reflect the 2016 amendments.

Finally, as noted above, EPA proposes to amend the regulations to permit electronic submission of FOIA requests to the Agency through an agency- or government-wide electronic submission tool that may be approved in the future pursuant to 5 U.S.C. § 552(m), added by the 2016 Amendments, in addition to permitting electronic submission through the Agency's current electronic submission tool, FOIAonline. EPA proposes to centralize its FOIA processes to improve response time and customer service. Therefore, requests and appeals must be submitted through EPA's electronic FOIA management system before 5:00p.m. Eastern Time to be considered as received on that business day.

IV. Improvements and Clarifications to EPA's FOIA Process

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The Agency is taking this opportunity to propose additional changes to its regulations to improve the FOIA process.

A. Submission of Proper Requests

The proposed regulations include revisions intended to clarify EPA's FOIA process and enhance the Agency's ability to respond to FOIA requests. Simple improvements include proposed clearer instructions on when and how to make a Privacy Act request (a request for records about the requester himself/herself that are maintained by EPA in a Privacy Act system of records) or requests for third-party records (records concerning a third party or topic of interest), and a proposed clarification to requesters on administrative appeals in the context of interim or partial responses. These changes are proposed to address common process-related questions in these circumstances.

EPA also proposes to revise the provision describing the requirements for a proper request. These changes are proposed in order to improve the public's ability to more quickly and efficiently obtain the information it seeks and to reduce the amount of staff time and resources required to work with requesters on a proper scope for a request before the Agency can begin processing it. EPA proposes to update the definition of a reasonable description of records to reflect the standard that has emerged in case law interpreting FOIA's provision that requests "reasonably describe[]" the records sought, 5 U.S.C. § 552(a)(3)(A)(i) this provision of the FOIA. EPA proposes to define a "reasonable description of records" as a description that

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enables EPA personnel familiar with the subject matter to identify and locate the records sought using a process that is not unreasonably burdensome to or disruptive of EPA operations.

This standard is derivable from the language of FOIA, congressional intent, and relevant case law. In discussing the "reasonably describes" standard, a 1974 House report noted that requests must "be sufficient . . . to enable a professional employee of the agency who was familiar with the subject area of the request to locate the record with a reasonable amount of effort." H.R. Rept. No. 93-876, 93d Cong. 2d Sess. (1974), at 6. Case law generally reflects that, in most cases, proper FOIA requests should relate to a particular "subject area." For instance, a request for all records "pertaining to" a general topic has been found too vague as "the lack of clarity leaves the agency to guess at the [requester's] intent." *Sack v. CIA*, 53 F. Supp. 3d 154 (D.D.C. 2014). *See also Dale v. IRS*, 238 F. Supp. 99, 104 (D.D.C. 2002) (request for "any and all documents" relating to an individual, absent additional description, too broad since "agency employees would not know where to begin searching").

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Requests for records that are not "reasonably described" within the meaning of FOIA also pose a risk of undue burden on limited agency resources and staff time. *See Hainey v. Dep't of the Interior*, No. 11-cv-1725, 2013 WL 659090 (D.D.C. Feb. 25, 2013) (finding request for all communications between a 25-employee task force over a two-year period unreasonably burdensome); *AFGE, Local 2782 v. U.S. Dept. of Commerce*, 907 F.2d 203 (D.D.C. 1990) (finding request for "every chronological office file and correspondent file, internal and external, for every branch office, staff office [etc.]" unreasonable); *Landmark Legal Found. v. DOJ*, No. 15-1698, 2016 WL 5675706 (D.D.C. Sept. 30, 2016) ("A request for all personal emails and other forms of communications by all employees within the three divisions named, along with other Department of Justice employees in leadership positions, is unreasonably burdensome.").

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The standard EPA proposes is in line with this case law and not intended to supplant or narrow the scope of proper requests under the statute. The Agency's intention is to provide guidance to requesters in how to make a proper request, which gives the Agency the appropriate level of detail in order to conduct a search ~~efficiently and~~ without undue burden on the Agency.

~~Specifically,~~ EPA also proposes to amend the regulations to ~~notify~~notify requesters that application of this standard to two common types of ~~categorical~~ improper requests will usually result in a finding that the records are not reasonably described. ~~In addition to~~EPA would preserv~~eing~~ the ~~multiple~~ illustrative descriptive elements for records ~~that~~ currently ~~exist~~ in the

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Agency's regulations (*e.g.*, date, title, author). In addition, the proposed regulations would first specify that requests that ask for "all records relating to" or "all records that in any way refer to" a topic, with no additional description, do not reasonably describe the requested records and would be considered an improper request. This provision is proposed in order to notify requesters , both experienced and inexperienced, that greater specificity is required to enable EPA staff personnel to conduct a search for records. While EPA staff personnel may be able to identify a subset of records that are likely responsive to a broadly worded request, it is impossible for staff to identify all the records that would be responsive to such a broadly worded request with enough certainty to satisfy the Agency's obligations to conduct a reasonable search. Requests of this nature also interfere with a requester's ability to obtain the specific documents he or she is seeking, and have a negative impact on staff's ability to process specific other requests in the request queue. This change is therefore proposed to provide greater clarity to requesters about the elements required for a description of records that is reasonable under the statute and to improve the Agency's processing efficiency.

Second, EPA proposes to amend the regulations to notify requesters that a request for "all documents" or "all emails" belonging to an individual with no description of a particular subject matterarea would be evaluated carefully under this section and in most circumstances would not reasonably describe the requested records and will be considered an improper request. By proposing these provisionsis revision, EPA similarly hopes tointends to provide clarity on a secondthat this common type of request that often does not reasonably describe requested records. While this second type of categorical request includes some additional specificityis in theory more bounded beyondthan the "all records relating to" or "all records that in any way refer to" requests, the request, in most cases, still does not reasonably describe the records in a manner that enables EPA personnel familiar with the subject matter area to identify and locate the records sought using a process that is not unreasonably burdensome to or disruptive of EPA operations. The purpose of FOIA is to provide transparency on the conduct of governmental actions, operations, and policies. Requests for all of an individual's communications or documents, untethered to particular subject areas of governmental action in which they are or may be involved, will typically engender significant privacy interests and are of questionable value to the statutory purpose. *Cf. Dep't of the Air Force v. Rose*, 425 U.S. 352, 372 (1976) (noting in applying Exemption 6 of FOIA (relating to protection of personal privacy) that

Commented [GA12]: Is this still permissible given recent cases and DOJ's reluctance to defend this position in certain circumstances?

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Congress sought to balance "the individual's right of privacy against the preservation of the basic purpose of the [FOIA] to open *agency action* to the light of public scrutiny") (emphasis added).

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EPA proposes to include these provisions to encourage requesters to strive to provide the greatest specificity possible at the initiation of a request to help the Agency identify the records that are sought. The proposed changes are intended to help a requester provide a focused request to enable the Agency to efficiently conduct targeted searches to locate the information of interest while minimizing the number of records that are not of primary interest to the requester or only tangentially related to the topic of the request but which can be swept into an overly broad or imprecise request. Consequently, the public would be better able to craft requests that allow EPA to locate and provide responsive records that are of greatest interest while minimizing process-based inefficiencies generated by categorical requests. By encouraging requesters to craft reasonably specific and well-defined categories of records, the proposal would enable EPA staff personnel to shift the time and resources spent clarifying improper requests with a requester to performing the actual search and processing of records.

Finally, EPA proposes to clarify that certain common types of requests for non-existent records that are not in existence are not proper FOIA requests, in order to aid requesters in understanding what constitutes a proper request, and (b) help to minimize the number of these types of improper requests received by the Agency. These three types of requests are: requests for the creation of new records; requests for records that don't do not exist even if a document may be expected to come into existence at a later time; and requests that ask questions rather than request records. This clarification is intended to aid requesters in understanding what constitutes a proper request and to help minimize the number of these types of improper requests received by the Agency. EPA proposes to address three common types of requests for records not in existence, and to which the AgencyThese clarifications are in line with case law. *See Jean-Pierre v. Fed. Bureau of Prisons*, 880 F. Supp. 2d 95, 103 (D.D.C. 2012) (no agency response required to "questions disguised as FOIA requests"); *Service Women's Action Network v. Dep't of Def.*, 888 F. Supp. 2d 231, 241 (D. Conn. 2012) (no duty to respond to requests to aggregate or compile statistical data); *Frank v. U.S. Dep't of Justice*, 941 F. Supp. 4, 4-5 (D.D.C. 1996) ("FOIA . . . does not establish a research service.").

is not obligated to respond, in order to help inform the requesting public about what types of records and information can properly be obtained under FOIA. EPA does not intend by

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this proposal to limit its ability to compile or aggregate records in order to release them to a requester in a usable format. Record formatting, such as compilation of separate files onto a CD-ROM, or into a single electronic file, for delivery to requesters is routine under FOIA. This kind of compilation of existing records is distinct from requests that seek the creation of an entirely new record.

Where additional information is determined to be required in order for a request to reasonably describe the records sought, EPA may contact the requester to obtain such information. Currently, the regulations provide that the time necessary to obtain this information will be excluded from the statutory working-day period EPA has to respond to a request. EPA proposes to modify this provision to instead provide that if the requester does not respond within 20 working days, the request will be closed. Under the 2007 Amendments, agencies may toll the 20-day period only once while awaiting information reasonably requested from the requester. This rule is now provided for separately in the proposed regulations, and may be applied in the context of a need to "reasonably describe" the records sought as discussed here, or in other circumstances.

Commented [GA13]: We should make clear that the request is tolled during this time. Otherwise we could have a situation where the requester responds on the 19th day, leaving us only 1 day to respond.

B. Use of Multitrack Processing for Complex Requests

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The EPA is proposing modest changes to the regulatory provision for multitrack processing, to provide clarity on the ability of offices to use multiple processing tracks in order to manage requests based on their degree of complexity. EPA is considering whether further changes are warranted to its multitrack regulation and requests comment on other approaches to handle complex FOIA requests in an efficient manner. For instance, one option the Agency is considering is explicitly identifying and requiring the use of a new track by all offices for the most difficult or complex (but nonetheless proper) FOIA requests. The use of multitrack processing is expressly authorized by FOIA to allow agencies to organize their responses efficiently "based on the amount of work or time (or both) involved in processing requests." 5 U.S.C. § 552(a)(6)(D)(i). EPA's current regulations at § 2.104(c) allow for the administrative creation of three or more tracks based on the complexity of requests. Currently, EPA offices use simple, complex, and expedited tracks, typically with all but the simplest FOIA requests and those approved for expedited processing placed in the complex track. *See* 40 C.F.R. 2.104(c). EPA's experience is that the current multitrack system under this provision is under-utilized and does not deliver the efficiency benefits envisioned by Congress. Other agencies have created a

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special track for "exceptional or voluminous" requests. The Department of Interior provides such a track for requests where processing may involve a very large number of potentially responsive records and will take over 60 workdays to process. 43 C.F.R. § 2.15(c).

By statute, the use of multitrack processing cannot alter the statutory deadline for agencies to determine whether to comply with a FOIA request. *See* 5 U.S.C. § 552(a)(6)(D)(iii). However, as the D.C. Circuit Court of Appeals recognized in a recent case, the initial determination required under § 552(a)(6)(A) is not identical to the completion of processing of the FOIA request. *See Citizens for Responsibility and Ethics in Washington v. Federal Election Commission*, 711 F.3d 180, 186-88 (D.C. Cir. 2013). EPA recognizes, as did the court, that upon a determination to comply with a request, records must be made "promptly available." 5 U.S.C. § 552(a)(3)(A). The meaning of "promptly," however, is necessarily context-specific. While the court there believed that "promptly" "typically would mean within days or a few weeks . . . not months or years" after the determination to comply, *id.* at 188, the court did not opine on any specific length of time that may be appropriate for particularly complex requests.

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The statute, by providing for the use of multitrack processing in recognition of the varying degrees of complexity of FOIA requests, contemplates that longer timelines to process complex requests are appropriate. Further, the specific solution offered by Congress, i.e., the use of multiple tracks, reflects in EPA's view a concern that particularly complex or broad FOIA requests should not hamper the ability of agencies to timelier respond to simpler requests. In addition, the statute authorizes agencies to establish regulations "stating the time, place, fees (if any), and procedures to be followed" by requesters. *Id.* § 552(a)(3)(A). This provision indicates that agencies have some discretion with respect to the timing of request processing, which may be exercised through appropriate rulemaking.

Therefore, EPA requests comment on potential changes to its multitrack regulations to clarify and strengthen their use to manage exceptional or voluminous FOIA requests. EPA is specifically considering the addition of a track for requests determined to be exceptional or voluminous. How such requests are defined could be based on the time to complete processing of such requests, e.g., 60 working days, six months, or longer. Other methods of defining exceptional or voluminous could include the degree of inter-office coordination required, a specific threshold number of potentially-responsive records (e.g., over 5,000), or the degree of novelty of a request or the degree of review under FOIA exemptions that a request would likely

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require. For example, a request for all records of deliberation of the agency in reaching a particular decision would likely require extensive review for withholding under Exemption 5 (deliberative process). Requests related to the internal communications of specific senior officials would likewise typically require extensive review under multiple FOIA exemptions. Such requests, even if not entailing voluminous amounts of records, could nonetheless be deemed exceptional if review and production can reasonably be anticipated to take a significant amount of time.

As with the existing regulations, under a more robust approach to multitrack processing, EPA would notify requesters of how their requests would be tracked and offer the opportunity to narrow the scope of the request to place their request on a different track. Requests placed into tracks could be queued within each track, so as not to disrupt the processing time of requests already in that track or in other tracks. Tracks may continue to be managed by each office or component within the agency, who are in the best position to manage large or complex requests in light of their FOIA workloads.

~~B.~~ EPA further requests comment on other mechanisms that could be used within the multitrack approach to provide consistency, transparency, and predictability for the requester community. For instance, the agency is considering whether to establish a presumptive rate of record production for requests in an exceptional voluminous track, such as 400 records per month. EPA could also maintain a publicly available "estimated wait time" that the public could use to judge the approximate dates by which to expect to begin receiving records for an exceptional or voluminous request. Before filing such requests, a potential requester could check the agency's website, and see that, based on the size of the current queue, if their request is deemed exceptional or voluminous, then the wait time before receiving documents might be 4 months, 6 months, or even a year or more in the future. Requesters would then be able to consider narrowing the scope of their request prior to making it, or consider whether an existing request already in process may satisfy their needs. The potential for such requesters to join or aggregate their request to an existing request is discussed in the following section.

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~~*Aggregating Multiple* EPA proposes to include information, based on well-developed case law, that the EPA is not required to respond to requests for the creation of new~~

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records, requests for records that don't exist even if a document may be expected to come into existence at a later time, or requests that ask questions rather than request documents.

C. *Responding to Requests*

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EPA proposes to provide the FOIA contact information for another agency when notifying requesters that their request requires referral to another agency. EPA proposes including the FOIA Contact information for the other agency, as provided on FOIA.gov ([HYPERLINK "http://www.foia.gov"]) to which EPA has referred the request in order to better assist requesters in communicating with the other agency regarding the status of their request.

EPA is not proposing a change to the regulatory provision establishing the standard cutoff date for searches performed by EPA offices when responding to a FOIA request, and proposes to leave the standard cutoff date as the date a request is received by the Agency to preserve the transparency, and clarity that this provision provides to requesters and to EPA offices alike. However, EPA proposes to eliminate the requirement in the Agency's current regulations that EPA notify the requester if the Agency uses a search cutoff date other than the date of the request. EPA is proposing this change to further reduce variability in the cutoff date of the request to permit staff to adequately plan searches for documents. This change also would provide both the Agency and the requester with greater transparency and consistency regarding the Agency's proposed scope of the request. Using the date of receipt as the cutoff date for responsive records allows both the requester and the Agency to clearly understand what the date range of a FOIA search will be, and permit requesters to easily reference the date of a prior request as a start date for any later request. Additionally, in practice, when circumstances arise where a later cutoff date is advisable, EPA employees processing the request will as a matter of course, contact the requester if such a later date is proposed, because it would generally impact the timeline for a response to a request, as well as the billable fees. Therefore, the provision requiring notice of use of a different cutoff date is redundant and unnecessary and is therefore proposed for removal.

Commented [DS14]: Upon further discussion, the current recommendation is that it would be better not to reopen this provision in this action. Options around this will be teed up for Matt.

Alternatively, EPA is requesting comment on whether the Agency should instead revise the search cutoff date provision to change the cutoff date to the date the search for records begins. Benefits of such a proposed change that EPA has identified include a potentially greater number of responsive records being made available to requesters by expanding the relevant date range. Drawbacks of such a proposal include the potential for increased timeframe for responses

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~~to requests due to a potential greater volume of documents, additional review and duplication costs to requesters, and the potential for confusion over the cutoff date used since the date used will be more variable and require greater communication between the Agency and requester about the date used in each specific request. EPA did not propose a change to the cutoff date because it appears the potential drawbacks outweighed the potential benefits that EPA identified, however the Agency is seeking public input on this provision in order to fully assess the benefits and drawbacks of such a change.~~

~~Further,~~ EPA proposes changes to clarify that it may aggregate clearly related requests submitted by the same requester, or group of requesters acting in concert, when the Agency reasonably believes that the requests involve clearly related matters and are equivalent to a single request. An aggregated group of requests would be considered a single request for all purposes under the~~se~~ regulations, including evaluation of whether unusual circumstances exist. This proposal would more closely track the statutory language at 5 U.S.C. § 552(a)(6)(A)(iv), concerning the aggregation of requests, ~~by agencies~~ than EPA's current regulations. The current regulations at 40 CFR § 2.107(*j*) which permit aggregation of requests in instances where the requesters are attempting to avoid fees. This provision implements section 9c of the Office of Management and Budget's (OMB) 1987 FOIA Fee Schedule Guidelines, which authorizes aggregating of requests in such circumstances, *see* 52 FR 10012, 10016-17, 10019-20 (March 27, 1987) (further discussed in Section V below), but does not address the statutory provision regarding aggregation. By ~~more closely tracking the statutory language~~broadening the circumstances under which aggregation of multiple requests is appropriate, as authorized by the statute, EPA will be able to aggregate requests under a broader set of conditions, thus enabling greater processing efficiency for the requests, and reducing duplicative or inefficient efforts by staff to respond to requests that could be properly aggregated under the statute.

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EPA requests comment on further steps that could be taken in the regulations regarding aggregation of requests to improve efficiency. For instance, EPA requests comment on whether it should provide for one or more requesters to voluntarily aggregate their requests. Such an approach may be desirable for a requester where an existing request is already in process and the Agency's response would provide the relevant records sought by the later requester. Requesters

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could opt for such aggregation even if the conditions established by regulation for mandatory aggregation are not met.

In light of the authorization for agencies to establish by regulation procedures for handling requests, including as related to "timing" (5 U.S.C. § 552(a)(3)(A)), EPA is also considering a provision that would deem the date of receipt of requests that are aggregated as the date of the last such aggregated request. The deadlines for agency response would run from this date, rather than from the date of receipt of any of the prior aggregated requests. The agency recognizes that some limitation may be appropriate on this approach, such as a limitation on aggregation of requests to those received within a certain window of time, e.g., 30 working days from the date of the first request. (Note a 30-day window would be consistent with the presumptive time limit for aggregation based on fees issues at section 9c in OMB's FOIA Fee guidelines.) If a later FOIA request is submitted beyond that window that could qualify for aggregation, in whole or in part, with those requests that had been aggregated already, EPA could nonetheless consolidate this request with the ongoing aggregated FOIA request, subject to the schedule already developed for production of records in that existing request.

EPA also requests comment on whether and how to provide rules for aggregation of requests with requests already in litigation. In recent years, this scenario has become a common occurrence. EPA is considering rules for the aggregation of requests, or portions of requests to the extent they are overlapping, with requests already in litigation. Under such a rule, the later-requesting party would be placed on an administrative schedule for document production that is tied to the production of documents in the litigation. EPA believes it would be appropriate for such a party not to be able to initiate its own litigation for production of the same records in dispute in such circumstances. Both administrative and judicial economy would be served by consolidating such requests and managing the production of the documents through a single process under the existing litigation. This is in practice already commonly negotiated between

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EPA and multiple requesters as a means of managing in a rational and consistent way multiple requests for the same records, where one or more such requests is in litigation.

In all cases where EPA would aggregate requests, EPA would provide notice to the requester(s), with the opportunity to modify or narrow request(s) such that the basis for aggregation is no longer present.

EPA invites comment on all aspects of its proposal to develop aggregation procedures such as laid out in this section.

Authority to Respond to Requests

D.

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EPA ~~also~~ proposes to revise the existing regulatory provisions regarding which officials have authority to ~~the~~ approv~~al of~~ release and withholding decisions across the Agency. Currently, the regulations contain a potential inconsistency: § 2.103(b) empowers the "head of an office, or that individual's designee" to grant or deny a request; however, § 2.104(h) delegates using slightly different language, and states that "denials" may only be issued by division directors or equivalent.

EPA proposes ~~by proposing to~~to simplify and consolidate the~~se~~ two existing regulatory provisions regarding the authority to approve release and withholding decisions into one provision ~~that addresses the authority to approve release and withholding decisions by the Agency~~. This authority would be provided to the Administrator and Deputy Administrator and all assistant administrator-level positions and regional administrator positions in the agency, or their deputies, and certain other office heads. This change is proposed to eliminate the~~s~~ potential conflict in the existing regulations and to ensure consistency of responses across the Agency.

In addition, confusion has arisen in the agency with respect to the current limitation on further delegation, due to varying organizational structures within different programs and regional offices, which can make it difficult to determine who is equivalent to a "division director." The agency recognizes that unlimited delegation could pose a concern of uneven and inconsistent approaches to FOIA implementation. This change in the regulations is not intended to affect the agency's use of delegation directives- to set forth specific rules and limitations regarding who may be delegated FOIA decision making authority. However, it is not necessary to set forth such delegations, and limitations, in agency regulations. In addition, further improvements to EPA's internal FOIA procedures are ongoing through the Lean Government

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initiative. By using less prescriptive language in the regulations, the Agency will provide itself with the flexibility to make improvements to the delegation process, including appropriate limits on re-delegation.

EPA is also proposing to require that initial determinations regarding fee waiver requests and expedited processing requests be made by the Agency FOIA Officer or his or her designee to ensure prompt and consistent resolution of these types of requests in a central location.

~~The proposed regulations would further clarify that a requester's desire to comment on a proposed Agency rulemaking or an upcoming court deadline would not meet the criteria for expedited processing of a FOIA request. EPA is proposing this additional provision because EPA receives numerous requests for expedited processing requests for rulemakings with defined public comment timelines and generally does not find that these expedited processing requests meet either of the standards for expedited treatment. By proposing this clarification, EPA hopes to minimize the number of these commonly-denied requests for expedited processing as a matter of efficiency of staff time and resources.~~

~~D.~~E. Administrative Appeals

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~~Finally,~~ EPA proposes to revise the provisions of its regulations relating to administrative appeals to further streamline the appeals process. Like the proposed changes for receipt of FOIA requests, EPA proposes to accept administrative appeals through fewer, centralized means ~~in order~~ to ensure timely receipt by the Agency of the appeal. EPA is proposing to accept appeals only by (1) electronic means through the Agency's FOIA management system, or (2) by U.S. Mail to the National FOIA Office. In addition, EPA is proposing to remove a provision in its regulations that required the Office of the Administrator to process FOIA appeals received which relate to adverse determinations of a FOIA request made by the Office of General Counsel. EPA is proposing to remove this requirement from the regulations because the provision was rarely, if ever, used and because the work performed on FOIA requests assigned to the Office of General Counsel is structured such that the staff working on the initial response are distinct from the staff

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who work on processing FOIA administrative appeals. EPA is proposing this change to ensure the most efficient receipt and processing of FOIA appeals by the Agency.

~~EPA is also proposing to extend the time period for submission of administrative appeals from 30 days to 90 days consistent with the 2016 amendments to the FOIA.~~

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V. FOIA Fees and Fee Waivers

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EPA is proposing changes to how it processes FOIA fees and fee waivers, as well as to the fee amounts themselves. Federal agencies are authorized to promulgate such regulations pursuant to the requirements of 5 U.S.C. § 552(a)(4)(A). In addition, such regulations must conform to fee-schedule guidelines promulgated by the Office of Management and Budget (OMB). *Id.* § 552(a)(4)(A)(i); *see also* Freedom of Information Reform Act of 1986, Subtitle N of Pub. L. 99-570, 100 Stat. 3207, section 1803 (Oct. 27, 1986). OMB's Uniform Freedom of Information Act Fee Schedule and Guidelines (OMB Guidelines) were published in 1987. OMB noted at that time "it is quite appropriate . . . to require agencies to develop and diligently carry out programs that charge, collect and deposit fees for FOIA services where such activities are clearly permitted by statute." 52 FR 10012, 10012 (March 27, 1987). Section 7 of the OMB Guidelines provides, "Agencies should charge fees that recoup the full allowable direct costs they incur. Moreover, they shall use the most efficient and least costly methods to comply with requests for documents under FOIA." *Id.* at 10018.

~~E.~~ Different types of requesters as well as the purpose of their FOIA requests determine how fees are assessed under FOIA. "Commercial use" requesters may be charged for the agency's cost of searching for and reviewing records response to the request, as well as the costs of document duplication. When the requester is an educational or noncommercial scientific institution, or a representative of the news media, and the request is not sought for a commercial use, only the costs of duplication may be charged to the requester. For requesters not in the first two categories ("other" requesters), the costs of searching for records, and the costs of duplication, but not review costs, may be charged.

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~~F.~~ In addition, agencies are authorized to grant fee waivers where disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 40 CFR § 2.107(*l*). Under the recent amendments to FOIA, agencies have been further restricted from charging search or duplication fees to

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requesters to recover costs when the statutory response deadline is missed, except in certain narrow circumstances, see Section XX above.

The fees agencies collect under FOIA are typically insufficient to cover the costs of their FOIA programs, and this is the case for EPA. In fiscal year 2017, the most recent ~~time~~ fiscal year period for which data are available, EPA processed a total of 10,802 FOIA requests.[8] EPA's total costs for implementing its FOIA program in fiscal year 2017 were $17,839,933.75.[9] EPA collected fees in that time period of approximately $196,200~~11.26~~, covering approximately 1% of its total costs.[10] ~~Some~~A large portion, but not all, of this disparity can be explained by the statutory limitations on cost recovery explained above. The Agency believes additional efficiencies are available within the statutoryits fee structure and OMB Guidelines that will both improve and simplify cost recovery for the Agency and requesters (in many cases reducing requesters' costs), and more accurately reflect the direct costs to the Agency that it is currently experiencing.

~~G.~~

A. Minimum Billable Amounts~~First~~.

~~EPA proposes revisions to the Agency's fee schedule to streamline the FOIA billing process for both the Agency and the requesting public.~~ EPA is proposing to raise the minimum billable amount of a request from ~~over~~ $14.00 to $~~2~~50.00 ~~or more~~. Under the proposed rule, EPA would not collect fees if the total fee amount is less than $~~2~~50.00, after accounting for the first two hours of search time or the first one hundred pages of duplication.[11] Raising the minimum billable amount ~~substantially~~ in this manner will eliminate the cost of collecting fees where it is not economical to do so. The Act specifically directs Agencies not to collect fees in circumstances where the "costs of routine collection and processing of the fee are likely to equal

[8] EPA FOIA Annual Report for 10/01/2016 Through 09/30/2017, at 5, *available at* https://www.epa.gov/sites/production/files/2018-03/documents/2017_foia_annual_report.pdf

[9] *Id.* at 12.

[10] *Id.* at 13.

[11] For all requesters other than commercial requesters, the Act and EPA regulations provide that fees shall not be charged for the first two hours of search time or the first one hundred pages of duplication. 5 U.S.C. § 552(a)(4)(A)(iv)(II). EPA reads the statutory provision as giving requesters both of these, rather than only a choice of one or the other. *See* 40 C.F.R. § 2.107(d)(5). In other words, all noncommercial requesters get the first two hours of search time for free, *and* the first 100 pages of duplication for free. The discussion in this section of a billable threshold below which fees will not be assessed is with respect to the billable amounts accruing *after* the first two hours of search and first 100 pages of duplication have been provided. No change from this current approach is intended or being proposed in this action.

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or exceed the amount of the fee." 5 U.S.C. § 552(a)(4)(A)(iv)(I). The Agency reviewed fee collection records for FY2015 through the first half of FY2018 and determined that a $50 threshold would eliminate a large number of uneconomical fee collections, while having a minimal effect on the overall amount collected, and would in fact save the agency approximately $20,000 annually ~~to $30,000 in~~ in fee processing costs net of foregone revenue. The underlying data and calculations ~~for these conclusions~~ are provided in the docket (EPA-HQ-OGC-XXXX-XXX). According to data from this ~~time~~ period, at a $50 threshold, EPA would eliminate well over half the number of FOIA requesters currently subject to fee billing, ranging between 60 and 80% of all requesters depending on the year analyzed. At the same time, the total amount of fee revenue lost from not billing those requesters would only be around 10%. This amount of lost revenue is more than compensated by the savings generated from eliminating the costs of processing fees under $50. The Agency estimates that $50 is a reasonable estimate, on average, for the cost of processing fees associated with a FOIA request. This estimate takes into account the pay-grade of employees processing fees, and the amount of time spent processing fee issues, which includes both the fee collection process itself, including in many cases follow-up notices of non-payment (handled by EPA's Cincinnati Finance Center, and in serious cases, the U.S. Treasury), and the costs of reviewing fee waiver requests and appeals where the amounts in issue are lower than $50. Assuming $50 is a reasonable cost estimate for fee processing, it makes both economic sense and is in line with the statute to not assess fees below that amount. The data for FY2015-2018 indicate that the Agency's net gain would be on the order of $20,000 per year.

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Commented [GA18]: Repetitive of information provided above.

~~This, r~~~~Raising the minimum billable amount to $250.00 would also more accurately reflect the cost to the Agency of staff time spent processing fee waiver requests and appeals for smaller amounts that exceed the current minimum billable threshold, but that may ultimately cost the federal government more in staff time than it would collect from the fee.~~ In addition, moving to this higher threshold ~~should allow~~will reduce the financial burden on FOIA requesters, thus improving ~~to have greater~~ access to Agency information by enabling EPA ~~staff~~ personnel to process smaller ~~to mid-size~~ FOIA requests at no cost to the requester. EPA estimates that the FOIA requester community, in the aggregate, would save around $256,000 per year. Finally, EPA has reviewed other agencies' fee thresholds and finds a $50 figure to be in line with other agencies' practices. ~~In particular~~For example, the Department of the Interior applies a $50 threshold, *see* 43 CFR §2.37(g), and the General Services Administration has proposed to move

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to an over-$49 threshold, *see* 83 FR 28592, 28600 (June 20, 2018). ~~while other agencies' thresholds typically are in the $20-$25 range.~~ EPA's current threshold of $14 is low compared to other agencies. ~~To the extent that $50 may be a relatively high estimate of EPA's costs to process fees, the Agency nonetheless believes this figure is appropriate to begin applying now, accounting for inflation in the near-term.~~

EPA requests comment on whether other thresholds may be appropriate. For instance, EPA is considering raising the minimum billable threshold to $250.00. Such a change would create a more orderly and streamlined process for handling fee issues associated with responding to requests. Under this approach, a request would either be estimated to cost less than $250.00, eliminating the need to obtain any payment and allowing work on the request to commence immediately, or a request would be estimated to cost $250.00 or more and payment would be required before work is performed. While tying the threshold billable amount to the amount that triggers the prepayment requirement would provide greater administrative simplicity, the fees data available in the docket for recent fiscal years discussed above indicate that such a relatively high threshold would cause the Agency to forego as much as one third of its fee revenues. Assuming the cost of fee processing is not significantly greater than $50 per request (as discussed above), a $250 threshold would likely result in a net revenue loss to EPA. EPA also requests comment on whether the threshold amount should be lower than $50 or even kept at the current level of $14. As discussed above, whether it is economical to retain a lower threshold depends on the assumed average cost of processing FOIA fees. If EPA's assumption of $50 per fee collection is roughly correct, billable thresholds below $50 would tend to result in less savings to the agency.

Commented [GA19]: Then why would we propose this?

EPA is proposing to require advance payment in all cases where the FOIA bill is determined to be greater than $250. EPA is proposing to require a written assurance of payment where estimated fees are expected to be between $50 and $250. ~~### Raising the minimum billable amount to $250.00 would also more accurately reflect the cost to the Agency of staff time spent processing fee waiver requests and appeals for smaller amounts that exceed the current minimum billable threshold, but that may ultimately cost the federal government more in staff time than it would collect from the fee.~~ ~~The Act specifically directs Agencies not to collect~~

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fees in circumstances where the "costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee."

EPA's data indicate

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Further, by raising the minimum billable amount to $250.00, EPA would remove any barrier that fees might otherwise pose for some requesters. This proposed change should help increase the amount of information available to the public. This change would also create a more orderly and streamlined process for handling fee issues associated with responding to perfected requests. Under the proposed change, a request would either be estimated to cost less than $250.00, eliminating the need to obtain an assurance of payment and allowing work on the request to commence immediately, or a request would be estimated to cost $2250.00 or more and a written assurance of payment would be required before work is performed. EPA is also proposing to update the advanced payment provision to reflect that EPA may seek advance payment of the estimated cost if the fee estimate is $250.00 or more. EPA is proposing to clarify in the regulations that permit Agency employees may to review delinquency lists of other agencies in order to determine whether a requester is delinquent in paying another agency for a previous FOIA request before processing a new FOIA request for that requester. This is already the Agency's practice, as authorized by the Act, *see* 5 U.S.C. § 552(a)(4)(A)(v).

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B. Fee Waiver Certification

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EPA proposes to add a certification requirement to its fee waiver regulations. EPA, however, is not proposing revisions to the regulatory standard for qualification for a fee waiver. The standard to qualify for a fee waiver and the six factors used to evaluate each request's qualification for a fee waiver are not unique to EPA and are used by most, if not all, federal agencies to evaluate fee waiver requests. EPA has chosen not to alter, elaborate on, or otherwise amend this language, so that the requesting community can continue to benefit from the clarity and consistency that results from the use of the same standard across the federal government.

While EPA is not proposing to revise its regulatory standard for evaluating fee waiver requests, the Agency is proposing that requesters seeking a fee waiver under this standard certify that the supporting statements they provide are true and correct to the best of their knowledge and belief. Because the Agency evaluates fee waiver requests based on the information provided in the request itself, the proposed requirement is intended to help the Agency ensure that those seeking a waiver of fees are providing the Agency with the most accurate and complete

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information to permit the Agency to conclude with confidence that a request satisfies the legal standard.

EPA also proposes to clarify the requirements for making a proper fee waiver request including timeliness and completeness of the request. Under this proposal, EPA would ordinarily consider only the information provided to the Agency in support of a waiver or reduction of fees at the time of the initial submission of a FOIA request, in order to allow for an efficient review process by the Agency.

C. Tolling of Deadlines to Process Fee Waivers

EPA also proposes to clarify the impact of filing a fee waiver request or a fee waiver appeal on the time period for processing FOIA requests and appeals, respectively. Under the FOIA, agencies may toll the 20-day response periods under § 552(a)(6)(A) as many times as necessary to clarify with the requester any issues regarding fee assessment. *See* 5 U.S.C. § 552(a)(6)(A)(ii)(II). If a requester files a fee waiver request and does not make such a contemporaneous written assurance of payment above the $50 amount (which is the amount EPA is proposing to move to above which assurance of payment will be required), EPA is proposing to treat the request for a fee waiver as a demonstration of a requester's unwillingness to pay fees associated with the request, and a basis for tolling the response period to clarify fees pursuant to 5 U.S.C. § 552(a)(6)(A)(ii)(II). The response period would be tolled from the time of the fee waiver request until a fee waiver determination is completed, or until the requester provides a written contingent assurance of payment. This proposal would not affect requesters who choose to submit contemporaneously with their fee waiver request a written assurance of payment that is contingent on the outcome of the fee waiver decision, should they wish to permit EPA to begin processing the request prior to the resolution of all fee issues. ~~If a requester files a fee waiver request and does not make such a contemporaneous written assurance of payment above the de minimis amount, EPA is proposing to treat the request for a fee waiver as a demonstration of a requester's unwillingness to pay fees associated with the request, and a basis for tolling the response period to clarify fees pursuant to 5 U.S.C. § 552(a)(6)(A)(ii)(II). The response period would be tolled from the time of the fee waiver request until a fee waiver determination is completed.~~

EPA is proposing this provision in order to provide an orderly and efficient handling of the fee assessment issues for both the requester and the Agency. EPA proposes to impose

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immediate tolling in all such circumstances, including in cases where it is possible the total amount of fees assessed would not exceed the proposed minimum threshold billable amount of $50. It is often difficult to estimate with accuracy the total recoverable costs of a FOIA request before processing has begun. $50 reflects a relatively small amount of work that is frequently exceeded once the Agency begins work on a FOIA request. Even for noncommercial requesters, who would obtain two hours of work and 100 pages of duplication free of charge in addition to $50 worth of additional work before billing would begin, this amount of effort is generally quickly exceeded in many cases. Thus, for administrative simplicity and due to the difficulty of calculating with accuracy what the fee amount ultimately may be, EPA proposes to implement immediate tolling while fee waiver issues are being resolved, unless there is a contingent assurance of payment. In the alternative, EPA requests comment on whether to provide for the agency to conduct work up to the minimum billable amount before tolling would begin.

Commented [SD21]: Is there a tension here with whether we do this for assurance of payment for amounts over $50, and require payment over $250?

~~EPA is proposing this provision in order to provide an orderly and efficient handling of the fee assessment issues for both the requester and the Agency.~~ If the fee waiver is granted, then ~~there would be no remaining fee assessment issue~~the tolling would end as of the date notification is provided to the requester, and the Agency's statutory "clock" to respond~~response time~~ would begin~~resume~~. If the fee waiver request is denied, EPA ~~staff personnel~~ would notify the requester as soon as practicable that fee assessment issues remain and seek a written assurance of payment of the estimated cost from the requester. The clock would only begin~~re-start~~ when the Agency staff receive a written assurance of payment from the requester. This proposal would allow for an orderly and efficient process during the initial intake and processing of requests. ~~that are likely to exceed the minimum billable threshold of $250.00 and where a fee waiver is requested.~~

Commented [SD22]: I'm deleting this here and requesting comment on this approach above, while our main proposal would be to toll immediately, rather than after the minimal amount is reached. Note my comment above however. I think we may end up needing to take this approach.

D. Fees for Review in Addition to Fees for Search

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Another proposed change relates to clarifying how EPA would assess search fees for searches that require line-by-line review of a document to determine the document's responsiveness to a request. Under this proposal, ~~I~~if a request requires an EPA employee to conduct a line-by-line review of a document(s) for responsiveness, and the ~~the staff plan to also~~ employee reviews any~~any~~ such responsive document(s) within that set for exemptions at the same time (which constitutes separately billable "review" under the statute), EPA proposes to charge the reasonable estimate of time spent determining the responsiveness of the document as "search." The remaining time reviewing the document(s) for exemptions would be considered

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"review" and calculated and charged as appropriate for commercial requesters. Under this proposal, the EPA would not charge the requester twice for the exact same period of time. Rather, EPA personnel would track and make a reasonable division of the time they spend doing these separate tasks. In cases where search fees may be collected but not review fees, the proposed change will make clear that the portion of time spent by EPA personnel reviewing documents for responsiveness should be tracked and billed as a part of the search. In cases, where both search and review fees may be collected, the clarified distinction being drawn by the proposed change should not have an impact on the total amount of time billed to requesters.

Commented [GA23]: We will need to provide guidance to reviewers on this.

This change conforms the regulations to the actual experience of the Agency and its employees in the use of newer search and review technologies. Platforms that are currently in use by the Agency, such as Relativity software, allow for concurrent review for both responsiveness (an aspect of the "search") and application of exemptions (an aspect of "review"). This proposed change more accurately reflects the direct costs of searches that require EPA ~~staff~~ personnel to conduct a line-by-line review of documents to determine the responsiveness of a document. ~~This proposed change is also consistent with the definition of search used by the Department of Justice in its FOIA regulations, and tracks the existing definition of search in EPA's regulations.~~

Commented [GA24]: Do not think we gain anything by mentioning the name – recommend removing.

E. Fee Rate Schedule~~If a request requires an employee to conduct a line-by-line review of a document for responsiveness, and the staff plan to also review any responsive documents for exemptions at the same time, EPA proposes to charge the reasonable estimate of time spent determining the responsiveness of the document as "search." The remaining time would be considered "review" and calculated and charged as appropriate.~~

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~~Finally, several adjustments to direct costs are proposed. EPA proposes to decrease the duplication charge from 15 cents per page to 10 cents per page, to reflect a decrease in the overall cost of paper duplication to the Agency.~~ EPA ~~also~~ proposes changes to the ~~document search and review charges~~fee rate structure for staff time as currently set forth in EPA's regulations at § 2.107(c)(2), ~~from~~ (The current rates ~~are~~of $4.00 per quarter hour for clerical staff, $7.00 per quarter hour for professional staff, and $10.25 per quarter hour for managerial~~/supervisory~~ staff. These rates were last changed in 2002 and have not been adjusted for inflation since that time. *See* 67 FR 67306. EPA's experience in recent years is that these rates fail to allow for recovery of the agency's actual direct costs for processing FOIAs, as is

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authorized under FOIA and OMB's FOIA fee guidelines. In addition, the categories of staff no longer reflect how staff are currently organized to conduct FOIA work at the Agency.

EPA proposes to eliminate the use of "clerical," "professional," and "managerial" categories and to replace them with two categories of fee rates, tied to the federal government's General Schedule (GS) pay tables. GS levels delineate the pay grade of most career staff within the federal government and are maintained by the federal Office of Personnel Management (OPM).[12] Setting a two-tiered rate structure following the GS system will simplify the process for staff to calculate assessable fees, and it will provide certainty and avoid confusion both for the Agency and requesters, over what category a staff member responding to a FOIA falls under. In addition, the "clerical" field of employees at EPA is significantly smaller than when these rates were last adjusted in 2002, and the Agency's experience since that time is that the existing billing category for clerical work is rarely if ever used. Thus, EPA proposes to eliminate the rate for clerical staff and would only use rates based on two groups of GS levels in order to more accurately reflect the grade levels of personnel assigned to search and review documents in response to FOIA requests. Using an average rate across two general classes of employees for the sake of administrative simplicity and efficiency is expressly authorized by Section 7.a of the OMB Guidelines, *see* 52 FR at 10018 (providing that "agencies may establish an average rate for the range of grades typically involved.").

In addition, under the new fee structure, EPA~~to~~ proposes to allow the two rates to float based on a formula, rather than providing a fixed dollar amount. As OPM updates the GS pay scale over time in response to changes in federal employee compensation, the rates under the regulatory formula will adjust automatically. This will eliminate the need to change the FOIA regulations to account for inflation or cost of living adjustments in the federal pay scale.

The two formulas EPA proposes to use are as follows:~~d rates of $10.00 per quarter hour for personnel at the GS-12 level and below and $20.00 per quarter hour for personnel at the GS-13 level and above.~~

Commented [SD25]: Note: If we go with a formula approach, this section will need to be modified.

For personnel at GS-13 and above, the rate is calculated using an average of the Step 5 hourly rate for GS-13, -14, and -15, using the locality pay area of Washington-Baltimore.

[12] Office of Personnel Management, Pay & Leave: General Schedule Overview, https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/#url=Overview.

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Arlington, DC-MD-VA-WV-PA.[13] Then, EPA applies a 16% multiplier to account for the additional expense to the government of employee benefits, as is expressly authorized by Section 6.c of the OMB Guidelines (defining "direct costs"), *see* 52 FR at 10013. This is then divided into a quarterly-hour rate, and in order to reduce administrative costs of applying the rate, this amount is rounded to the nearest $5 increment.

Using the most recent GS pay table maintained by OPM (that is, as of January 2018), this formula yields an hourly rate of $72.73; divided into a quarterly hourly rate and rounded to the nearest $5 increment, the billable FOIA fee amount would be $20 per quarter hour.

For personnel at GS-12 and below, EPA proposes to use essentially the same series of calculations to arrive at the fee rate. EPA proposes to take the average of pay grades GS-9 to GS-12, Step 5, using the locality pay for Washington-Baltimore-Arlington, DC-MD-VA-WV-PA. ~~EPA proposes to eliminate the rate for clerical staff and would only use rates based on two groups of GS levels in order to more accurately reflect the grade levels of personnel assigned to search for and review documents in response to FOIA requests. The clerical field of employees is significantly smaller and the existing billing category for clerical work is rarely used.~~ applying the 16% multiplier to account for benefits yields, dividing into a quarter-hourly rate, and rounding to the nearest $5 increment. Under the January 2018 pay table, this yields a $10 per quarter hour billable FOIA fee for personnel in this category.

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For EPA personnel not under the GS system, EPA proposes that they should apply one of the two billing rates defined above, based on whether their hourly rate of pay is above or below GS-13, Step 1, at Washington-Baltimore-Arlington, DC-MD-VA-WV-PA locality pay rates under the contemporaneous GS pay table maintained by OPM.

EPA proposes a slight change in its approach for contractor billing. Under the current regulations, requesters are charged for the actual charges of the contractor to the agency up to but not exceeding the rate which would have been charged had EPA employees conducted the

Commented [SD26]: Note that this is arguably not consistent with OMB Guidelines at sec 7 "agencies should ensure that the ultimate cost to the requester is no greater than it would be if the agency itself had performed these tasks."

[13] Office of Personnel Management, Salary Table 2018-DCB (effective January 2018), *available at* [HYPERLINK "https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/DCB_h.pdf"]. In EPA's experience, and in light of its proposal to centralize the FOIA process through a single headquarters office, using this locality appropriately reflects the general class of employees working on FOIAs at these grades. https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/DCB_h.pdf. In EPA's experience, and in light of its proposal to centralize the FOIA process through a single headquarters office, using this locality appropriately reflects the general class of employees working on FOIAs at these grades.

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search. In practice, EPA has found this limitation difficult to implement as it is rarely clear what the appropriate rate would have been of a counterfactual EPA employee conducting the work that was done by the contractor. Thus, EPA proposes that ~~EPA also proposes to eliminate the use of vaguely defined terms such as clerical, professional and managerial to clearly defined GS levels in order to simplify the process for staff to calculate assessable fees and avoid confusion over what definition a staff member responding to a FOIA might fall under the prior definitions. Time billed for work performed by persons at the GS-12 level and below would be billed at $10.00 per quarter hour, and for persons at the GS-13 level and above (or equivalent pay scale) would be billed at $20.00 per quarter hour. W~~when search, review or duplication is performed by contractors, requesters would continue to be charged for the actual amount billed by the contractor to EPA,~~charges~~ subject to a limitation set to the *highest* rate an EPA employee would bill~~up to, but not exceeding $20.00 per quarter hour~~.

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Finally, ~~several adjustments to direct costs are proposed.~~ EPA proposes to decrease the duplication charge from 15 cents per page to 10 cents per page, to reflect a decrease in the overall cost of paper duplication to the Agency.

~~II.~~VI. Other Changes

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~~In proposed § 2.102,~~ EPA proposes to codify its current practice of posting nearly all FOIA responses online for the requesting public. EPA and other federal agencies are subject to a statutory, self-implementing "rule of three" codified in the 2016 Amendments to FOIA, which requires public posting of records requested three or more times. The proposed provision accommodates this requirement. Although EPA's general policy is to post responsive material in FOIAonline so that is available to the general public, EPA may in its discretion not post certain FOIA responses when not required by statute. For instance, one ~~The~~ exception to this practice is that EPA does not post certain responses to first-party requests that contain personal privacy information or confidential business information that may be releasable to a particular individual or company, but not to the public at large. This change is designed to improve transparency at EPA and to facilitate a more efficient exchange of information between the Agency and the requesting public under FOIA.

Additionally, EPA proposes to eliminate the listing of the nine exemptions available to agencies under FOIA at 5 U.S.C. § 552(b). This change is proposed ~~in order~~ to avoid duplication and to ensure that the Agency's regulations stay current with any changes to the statutory text.

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EPA proposes to remove the list of exemptions from the regulatory text because there is no need to repeat requirements that are specifically set forth by statute. *See supra* Section III.B.

The proposed regulations include improvements to provide clearer instructions on when and how to make a Privacy Act request (a request for records about the requester himself/herself that are maintained by EPA in a Privacy Act system of records) or requests for third-party records (records concerning a third party or topic of interest).

The proposed regulations would ~~further~~ clarify that a requester's desire to comment on a proposed Agency rulemaking or an upcoming court deadline would not meet the criteria for expedited processing of a FOIA request. EPA is proposing this ~~additional~~ provision because EPA receives numerous requests for expedited processing ~~requests~~ for rulemakings with defined public comment timelines and generally does not find that these expedited processing requests meet either of the standards for expedited treatment. By proposing this clarification, EPA hopes to minimize the number of these commonly-denied requests for expedited processing as a matter of efficiency for~~of~~ staff time and resources.

EPA proposes that all requests, appeals, and other communications from requesters, whether submitted through EPA's electronic FOIA management system or otherwise, must be received before 5:00 p.m. Eastern Time to be considered as received on that business day. Any communications received after 5:00 p.m. will be considered received on the next working-day (i.e., excluding weekends and federal holidays). This proposed timing rule will govern how the agency calculates its deadlines for action under FOIA, as well as deadlines requesters may face (such as the requirement to file administrative appeals within 90 days). These changes are proposed to address common process-related questions in these circumstances.

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EPA proposes to provide the FOIA contact information for another agency when notifying requesters that their request requires referral to another agency. EPA proposes including the FOIA Contact information for the other agency, as provided on FOIA.gov ([HYPERLINK "http://www.foia.gov"]) to which EPA has referred the request ~~in order~~ to better assist requesters in communicating with the other agency regarding the status of their request.

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Finally, because EPA proposes to replace the language of Subpart A completely, most of the provisions in the current regulations are proposed to be moved to a new section or sections

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under the reorganized regulations. In addition, certain portions of the existing regulatory text have been removed as duplicative of new language addressing the same requirements, or because the regulatory language was outdated or unnecessary. EPA proposes to remove provisions from the following current sections of the regulation specifically on the basis that the provision is superseded by other changes, or is unnecessary or duplicative of other provisions in the proposal or existing statutory requirements: §2.100(a), §2.101(a)(1)–(10), §2.101(b), §2.101(c), §2.102(a), §2.102(b), §2.101(d), §2.103(a), §2.103(e), §2.104(a)-(c), §2.104(e)(3), §2.104(e)(4), §2.104(j), §2.104(j)(1), §2.104(j)(3), §2.104(l), §2.105, §2.106, §2.107(b)(1), §2.107(b)(8), §2.107(c)(2)(iii), §2.107(d)(5), and §2.107(e).

For any provisions of the regulations where no change has been proposed (other than non-substantive renumbering or reformatting, such as identified in the paragraph above), and the EPA has not requested comment specifically on such provisions in this notice, the agency is not in this action reopening or reconsidering such provisions.

Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq*.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Submission of a FOIA request is a voluntary action that any member of the public,

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including small entities, can elect to do and the proposed rule relates to the procedures for submitting and processing a FOIA request for EPA records.

D. Unfunded Mandates Reform Act ("UMRA")

This action does not contain any unfunded mandates as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. *Executive Order 13132*: *Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. *Executive Order 13175*: *Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on Indian Tribal governments or on the relationship between the national government and the Indian Tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: *Protection of Children from Environmental Health and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: *Actions that Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This

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regulatory action is a procedural change and does not have any impact on human health or the environment.

K. Congressional Review Act

This rule is exempt from the Congressional Review Act because it is a rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties.

Commented [SD27]: Have we gotten a determination on this from anyone? Is this DOJ or OMB position for all FOIA regs? Need to consult w CCILO.

On first blush, my hunch is this is a rule that does not fall into this category due to the effects it has on outside parties.

Commented [SW28R27]: This is from the list of items that must be included (per Caryn M's office). Do you want the link?

Commented [SD29R27]: I think we should discuss with OP and CCILO.

List of Subjects in 40 CFR Part 2

Environmental Protection, Administrative practice and procedure, Confidential Business Information, Freedom of Information, government employees.

Dated: _____

_____

Steven Fine, Acting Chief Information Officer

Commented [GA30]: Head of National FOIA Office?

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For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR Part 2, as follows:

PART 2 — PUBLIC INFORMATION

1. The authority citation for part 2 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

2. Subpart A of Part 2 is revised to delete Section 2.100 through and including Section 2.108 and be replaced with the following:

Subpart A — Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.

2.101 General provisions.

2.102 Proactive disclosures of Agency records.

2.103 Requirements for making requests.

2.104 Responsibility for responding to requests.

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2.105 Timing of responses to requests.

2.106 Responses to requests.

2.107 Administrative appeals.

2.108 Preservation of records.

2.109 Fees.

2.110 Other rights and services.

Subpart A — Procedures for Disclosure of Records Under the Freedom of Information Act

§ 2.101 General provisions.

(a) This subpart contains the rules that the Environmental Protection Agency (EPA or Agency) follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended.

(b) Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under Subchapter A of Part 16 as well as under this subpart. EPA also follows certain rules for processing FOIA requests for records in its possession that may contain Confidential Business Information (CBI). Those rules are in Subpart B of this part.

(c) EPA's FOIA Public Liaison ([HYPERLINK "https://www.epa.gov/foia/public-liaison"]) is a supervisory official to whom requesters can raise concerns about the service the requester has received from EPA. The FOIA Public Liaison is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

Commented [SD31]: It seems this should directly track the language of Pub L 110-175, section 10, more closely.

§ 2.102 Proactive disclosures of Agency records.

(a) Records required by FOIA to be made available for public inspection and copying are accessible at [HYPERLINK "http://www.epa.gov/foia"]. EPA also makes records available through the Agency's electronic FOIA management system at [HYPERLINK "https://foiaonline.regulations.gov"]. EPA also proactively discloses records and information, through the Agency's website, [HYPERLINK "http://www.epa.gov"].

(b) In order to respond in full or in part to a FOIA request, EPA may notify a requester that the records the Agency has previously made available on its website or by its electronic FOIA management system are publicly available and direct the requester to the location where those records may be found. For records maintained for distribution by agencies operating under

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a statutorily-based fee schedule program, EPA will inform the requester where those records may be obtained.

§ 2.103 Requirements for making requests.

(a) *General information.*

(1) All requests for EPA records under FOIA must be made in writing and submitted by one of the following methods: (1) electronically to EPA's FOIA submission website at [HYPERLINK "https://foiaonline.regulations.gov"], or to an electronic government submission website established pursuant to 5 U.S.C. § 552(m); (2) by U.S. Mail sent to the following address: National Freedom of Information Officer, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (2310A), Washington, DC 20460; or (3) by overnight delivery service to National Freedom of Information Officer, U.S. Environmental Protection Agency, 1200301 PennsylvaniaConstitution Avenue, N.W., Room 6312B, Washington, DC 20004. EPA will not accept FOIA requests sent by email, facsimile, courier service, or by mail delivery to an address other than to the National FOIA Office located in Washington, DC, and the Agency will not re-route your request. The requester must include his/her full name and mailing address for EPA to process the request. Requests sent through EPA's FOIA submission website must also include an email address. When submitting a FOIA request, the requester should must provide an email address and daytime telephone number whenever possible so that EPA can quickly contact him/her about the request if needed. The requester should not provide his/her social security number when making a request for information under FOIA. Requests submitted electronically must be submitted through EPA's electronic FOIA management system before 5:00 p.m. Eastern Time to be considered received on that date. For requests submitted through U.S. Mail, the requester should must mark both the request letter and envelope "Freedom of Information Act Request."

Commented [GA32]: I believe that this mailcode has changed

Commented [GA33]: We should be consistent throughout the document in how we refer to this; in some places it is called an electronic FOIA management system. In others it is called EPA's FOIA submission website.

(2) If the requester is making a Privacy Act request for records about himself/herself, the request must verify his/her identity in accordance with the provisions in 40 CFR Part 16. In making a Privacy Act request, the requester must mail his/her request by U.S. Mail to EPA's National FOIA Office at: National Freedom of Information Office, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W. (2310A2822T), Washington, DC 20460. The requester must not include his/her social security number or other sensitive personally

Commented [GA34]: Is there a reason that we do not provide the overnight and FOIA Online options here?

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identifying information (for example, bank account or financial information). EPA's Privacy Office will contact the requester if any additional information is required to process the request.

(3) If the requester is making a Privacy Act request for records that pertain to a third party, he/she may ~~receive greater access by submitting either a~~be required to submit a notarized authorization signed by that individual or a declaration by that individual made in compliance with the requirements in 28 U.S.C. § 1746 authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (such as a copy of a death certificate or an obituary). ~~As an exercise of its administrative~~ In its discretion, EPA may require the requester to supply additional information, if necessary, in order to verify that a particular individual has consented to disclosure or is deceased.

(b) *Description of Requested Records.*

(1) *In General.* A FOIA request must reasonably describe the requested records in a manner that enables EPA personnel familiar with the subject matter to identify and locate the records sought using a process that is not unreasonably burdensome to or disruptive of EPA operations. A request may be overly broad when it is so inclusive that the Agency is unable to locate or identify the records requested based on the manner in which the office routinely organizes and accesses records. Whenever possible, the requester should provide specific information about each record requested such as the date; title or name; author; recipient; subject matter; and EPA office location of the record, and use reasonably specific well-defined categories to request groups of similar documents. ~~As a general rule, T~~the more specific the requester is about the records or type of records that he/she wants, the more likely EPA personnel will be able to locate the requested records.

(2) *Categorical requests.* A request that asks for "all records relating to" or "all records that in any way refer to" a topic, with no additional description, does not reasonably describe the requested records and is an improper request. A request for "all documents" or "all emails" belonging to an individual with no description of a subject matter will be evaluated carefully under this section and in most circumstances will be found to not reasonably describe the requested records and will be an improper request.

(c) *Clarification of insufficiently described records.* If EPA determines that a request does not reasonably describe the records sought, EPA will inform the requester what additional information is needed or why the request is otherwise insufficient and provide him/her with an

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opportunity to discuss and modify the request to meet the requirements of this section. Requesters who are attempting tointerested in reformulate or modifying such a request may discuss their request with the Agency staff contact or the FOIA Public Liaison. When a requester fails to provide sufficient detail within 20 working days after having been asked to reasonably describe the records sought, EPA will notify the requester in writing that the request has not been properly made, that no further action will be taken, and that the FOIA request is closed. Such notice is an adverse determination subject to administrative appeal under § 2.107 of this subpart.

(d) *Nonexistent records.* FOIA does not require the compilation or creation of a new record for the purpose of satisfying a FOIA request. FOIA does not require EPA to honor a request for a record not yet in existence, even where such a document may be expected to come into existence at a later time. FOIA also does not require EPA to answer written questions or interrogatories sent to the Agency in the form of a FOIA request.

§ 2.104 Responsibility for responding to requests.

(a) Upon receipt of a proper FOIA request under § 2.103 of this subpart, the National FOIA Office will, within 10 working days, assign the request to an appropriate lead office within the Agency for processing. In determining which records are within the scope of a request, an office will ordinarily include only those records in its possession as of the date the request was received by EPA. If any other date is used, the office will inform you of that date.Records that are responsive to a request include only those in the Agency's possession and control as of the date the request is received by the Agency either through the electronic submission system or by U.S. Mail to EPA's National FOIA Office, whichever applies.

(b) *Authority to grant or deny requests.* The Administrator, Deputy Administrator, Assistant Administrators, Deputy Assistant Administrators, Regional and Deputy Regional Administrators, General Counsel and Deputy General Counsels, Regional and Deputy Regional Counsels, Inspector General, and Agency FOIA Officer, or those individuals' delegates, are authorized to (1) make determinations required by 5 U.S.C. § 552(a)(6)(A), (2) issue initial decisions whether an initial determination to release or withhold a record in its entirety to release or withhold a record or a portion of a record on the basis of responsiveness or pursuant tounder any one or more exemptions under FOIA; (3) to issue a "no records" response; and (4) to manage the FOIA process in accordance with FOIA, this subpart, and the guidance and internal procedures of the National FOIA Office grant or deny any request for an Agency record.

Commented [SD35]: I've seen this provision in other FOIA regulations. Wouldn't it be useful to have here?

Commented [SW36R35]: 30 days is a very long time since we only have 20 days to process. Also we can contact most requesters through FOIAonline. If you are requiring this sentence then please give a much shorter time limit.

Commented [SD37R35]: I'm adjusting to 20 to be more in line with th eprior rule. See discussion in preamble.

Commented [SD38]: This provision potentially intersects with the search cut off rule, because if we go with date of search, then a request could potentially properly sweep in records created after the date of request. But I would suggest leaving as is for now.

Commented [GA39]: I think it would be helpful to provide a definition or description of the role of the lead office.

Commented [SD40]: Search cut off date. Using existing language to avoid reopening. Subject to continuing discussion though current recommendation is to leave as is. Also note relationship to provision in 2.103(d) immediately above.

Commented [DS41]: This is now covered in 103(d) immediately above.

Commented [SD42]: This language seemed unclear to me. I think we should be clear about the authorities here. I also want to draw a distinction between initial determinations required under the deadline in 552(a)(6) and actual release/withholding actions, which are to be "promptly" after. See discussion in preamble on the flexibility of "promptly" particularly in the case of complex or voluminous requests.

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(c) *Authority to grant or deny fee waivers or requests for expedited treatment.* EPA's Agency FOIA Officer or his or her designee(s) are authorized to grant or deny requests for fee waivers or requests for expedited processing.

(d) *Consultations and referrals.* When a request to EPA seeks records ~~in its possession~~ that originated with another federal agency, the EPA office processing the request will:

(1) Consult with the federal agency where the record or portion thereof originated and then respond to the request; ~~or~~

(2) Refer the request to the federal agency where the record or portion thereof originated and then notify the requester of the referral; or

(3) In cases where there is an applicable interagency agreement permitting response without consultation or referral, EPA may respond according to that agreement.

(e) *Notice of referral.* Whenever an EPA office ~~refers any~~ believes ~~part of~~ the decision making responsibility under § 2.104(b) of this subpart for responding to a request, or a portion of a request, should be referred to another federal agency or a different office within EPA, it will notify the requester of the referral and inform him/her of the FOIA contact information for the federal agency or office to which the request was referred unless identifying the recipient will disclose exempt information. Before making such referrals, the EPA office must obtain the concurrence of the National FOIA Office.

(f) *R~~Timing of r~~esponses to incoming consultations and referrals.* All consultations and referrals ~~received by EPA~~ from other federal agencies must be sent to the National FOIA Office for assignment within EPA and will be handled according to the date that the FOIA request was initially received by the first agency.

§ 2.105 Timing of responses to requests.

(a) *In general.* EPA will determine within 20 working days after the ~~receipt~~ assignment of a request to the appropriate office under § 2.104(a), and in no case later than 30 working days from the date of receipt of a request under § 2.104(a), whether to grant or deny the request in whole or in part and the reasons therefor, and promptly will make any responsive records available. The assigned EPA office will generally respond to requests in the order in which they are received, although this processing order may be affected by the multi-track processing system, unusual or exceptional circumstances, aggregation of requests, or requests for expedited processing, among other reasons.

Commented [SD43]: I suggest this for greater clarity here – e.g., if primary responsibility is referred to another agency or office, or as I have worded it here? When we say "any part of the responsibility" it could imply even minute requests or referrals, e.g., a legal question to OGC.

Commented [SW44R43]: This sentence is hard to understand. Do you mean when the other agency should make a "determination" or has an "interest?" Thanks for clarifying.

Commented [SD45R43]: I mean the FOAI should be reassigned and the other agency takes on the deicions making responsibility. Where an agency merely has an intereste, I think this would be covered by consultations under paragraph (d)

Commented [SD46]: I suggest we be forceful here. As worded, the assigned office could make reassignment without input or authorization from the National FOIA Office. I would make this mandatory, or lodge the referral power solely in the National FOIA Office. This would reduce jockeying among officers to pass off FOIA requests without supervision.

Commented [SW47R46]: Would centralization resolve this issue without including in the regs?

Commented [SD48R46]: I think we should make this explicit here. Once a FOIA is assigned to an office, it may not be clear the level of oversight NFO would continue to exercise.

Commented [SD49]: Again, it seems like we would want this to be centralized as well?

Commented [SW50R49]: Yes, please centralize.

Commented [SD51]: Since different offices are in charge of processing their own FOIAs, it seems odd to apply a FIFO rule agency-wide. E.g., why should OW wait for R7 to finish responding to earlier submitted FOIAs before it can release its own?

Commented [SD52]: To provide a basis for more efficient processing and weaken this as an enforceable term. Also note that there are so many caveats to this I wonder if it is even worth including this?

Commented [SD53]: I assume this all must be true? See comment above. Worth making a FIFO statement that is so heavily contingent?

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(b) *Tolling response time.* If it is deemed necessary to obtain clarification or additional information from the requester, EPA may toll its response time once for the time necessary to obtain this information, and such time will be excluded from the statutory 20 working-day period or any authorized extension of time that EPA has to respond to the request.

Commented [SD54]: Moving this to (b) as it is better logical order.

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(~~c~~b) *Multi-track processing.* All requests are assigned and processed within a track corresponding to the ~~in simple,~~ complexity of the request, ~~or~~unless they are placed on an expedited track~~s~~. All offices must designate a specific track for requests that are granted expedited processing in accordance with the standards in paragraph (f) of this section. An office must~~ay also~~ designate ~~additional~~ two or more processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. An office may consider factors such as the number of pages, amount of data involved, number and location of sources of documents, or the need for consultations or referrals in processing the request. Complex FOIA requests are generally those that involve voluminous amounts of data/information, multiple sources of documents, or the need for consultations or referrals. The Agency will advise you of the processing track in which your request has been placed and of the limits of the different processing tracks. The Agency will provide you the opportunity to limit the scope of your request in order to qualify for a different track.

Commented [SD55]: This is in the existing regs and I don't think we would want to lose these points. I've simplified the notification language.

~~(c) *Tolling response time.* If it is deemed necessary to obtain clarification or additional information from the requester, the time necessary to obtain this information will be excluded from the statutory 20 working-day period (or any authorized extension of time) that EPA has to respond to the request.~~

(d) *Unusual circumstances.* Whenever the statutory time limits for ~~processing~~ responding to a request cannot be met because of "unusual circumstances" as defined in FOIA and EPA extends the time limits on that basis, EPA will, before expiration of the 20 working-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be estimated to be completed. If the extension exceeds 10 working days, EPA will give the requester an opportunity to limit the scope of his/her request, modify the request, or agree to an alternative time period for processing, as described by FOIA. At that time EPA will also make available its FOIA Public Liaison and will notify the requester of his/her right to seek dispute resolution services from the Office of Government Information Services (OGIS) within the National Archives and Records Administration (NARA).

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(e) *Aggregating and disaggregating requests.*

Commented [SD56]: Flagging – see comment below.

(1) The Agency may aggregate two or more pending requests submitted by a single requester or by a group of related requesters, when the Agency reasonably believes the requests involve clearly related matters and are equivalent to a single request that would otherwise involve unusual circumstances, or when the Agency reasonably believes that a requester or group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees. An aggregated group of requests will be considered a single request for all purposes under these regulationsthis subpart, including evaluation of whether unusual circumstances exist.

Commented [SD57]: I believe we intend, and would want, to retain the existing regulatory language here, and with respect to the 30 day window, which I added below.

(2) The Agency may presume that multiple requests of the type described in paragraph (e)(1) of this section made within a 30 working-day period should be aggregated, and the deadline for Agency response will run from the date of receipt of the last such request. When requests are separated by a longer period, the Agency will aggregate them only if there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(3) The Agency may disaggregate a single request into multiple requests for separate processing, such as assignment on separate tracks or to different lead offices. The requester will be notified of disaggregation, and the disaggregated requests will be assigned distinct tracking numbers.

Commented [SD58]: Suggested by FEAT staff. Thoughts? If we keep, need a bit of discussion in preamble.

Commented [SW59R58]: If you keep this section please add text about how the requester may decline. This seems to benefit staff without any for the public. How would the tracking numbers and new due dates work if more than a day or two passes before the request is split? You've already discussed lead office and interim responses.

Commented [SD60R58]: That is worth discussing. Though it would make this wholly voluntary at which point query whether worth including in the regs. I welcome Denise or others' thoughts on this.

(f) *Expedited processing.*

(1) *Timeliness of Requests for Expedited Processing.* An expedited processing request must be made in writing and submitted at the time of the FOIA request. When the Eexpedited processing request that does not accompany the initial FOIA request, the expedited processing request ordinarily will be denied absent unusually compelling justification.

Commented [SD61]: I can envision scenarios in which after-arising grounds could justify transferring an existing FOIA to an expedited track. I think we should allow for this.

(2) Requests and appeals from the denial of a request for expedited processing will be processed on an expedited basisgranted in the following circumstanceswhenever it is determined that they involve:

(i) Circumstances in which Tthe lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

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(ii) An urgent need to inform the public about an actual or alleged federal government activity, if made is shown by a person requester primarily engaged in disseminating information to the public.

(3) If the requester seeks expedited processing, he/she must submit a statement, certified to be true and correct to the best of his/her knowledge and belief, explaining in detail the basis for making the request for expedited processing. For For requests under paragraph (f)(2)(ii) of this section: (i) examplein addition, if the requester is not a full-time member of the news media, then he/she must establish that his/her/the primary professional activity or occupation purpose of the request is information dissemination to the public; and (ii) If the requester fits within the category described in paragraph (f)(2)(ii) of this section, he/she/the requester must also establish a particular urgency to inform the public about the government activity involved in the request – one that extends beyond the public's general interest in knowing right to know about government operations or activities in general.

Commented [SD62]: It shouldn't be enough that it is news related right?

Commented [SD63]: Why do they have to prove that this is their full time occupation? If they can show the reason for this request is to get information out to the public, that should be enough.

Commented [SW64R63]: We've been following DOJ's lead on many of these sections.

Commented [SD65R63]: I would deviate from that here, if so, because I don't think their approach makes sense.

(4) EPA will notify the requester within 10 calendar days of the receipt of his/her request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request will be/is placed in the processing track for expedited requests, and the request will be processed as soon as practicable. If EPA denies the request for expedited processing, any appeal of that decision must comply with the procedures in § 2.107 of this subpart. Any appeal of a decision denying a request for expedited processing will be acted on expeditiously.

(5) EPA does not consider The need to comment on a proposed Agency regulation or prepare for an upcoming court deadline does not/as satisfying the requirements of paragraph (f)(2) of this section.

§ 2.106 Responses to requests.

(a) *Acknowledgements of requests.* Upon receipt of a request, EPA will send the requester an acknowledgement letter with an individualized request tracking number. If the requester submitted his/her request by EPA's electronic FOIA management system, he/she will receive an acknowledgement by that system.

(b) *Grants of requests.* Once an office or organization makes a determination to grant a request in full or in part, it will notify the requester in writing. EPA will inform the requester of

Commented [SD66]: I think for consistency we should just refer to office throughout.

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~~any fees charged under § 2.109 of this subpart and~~promptly disclose the requested records to him/her.

Commented [SD67]: There are different timing rules for fees based on various factors. This wording confuses things. Let's keep fees processing consolidated in 2.109

Commented [SD68]: Note – this is designed to draw a line between the CREW response required within 20 days, versus actual production of records which may take longer. See comment above and discussion in preamble.

(c) *Adverse determinations of requests.* An office ~~or organization~~ making an adverse determination or denying a request in any respect will notify the requester of that determination in writing. Adverse determinations include decisions that:

(1) the requested record is exempt from disclosure, in whole or in part;

(2) the request does not reasonably describe the records sought;

(3) the information requested is not a record subject to FOIA;

(4) the requested record does not exist or cannot be located;

(5) the requested record is not readily reproducible in the form or format sought by the requester; or

(6) decisions involving fees, fee categorization, fee waiver matters, or denials of requests for expedited processing.

(d) *Content of final or adverse determination letter.* The final determination letter will be issued by the appropriate official, in accordance with § 2.104 of this subpart, and will include:

(1) The name and title or position of the person responsible for the adverse determination;

(2) A brief statement of the reasons for the adverse determination, including any FOIA exemption(s) applied;

(3) If applicable, an estimate of the volume of any records or information withheld, for example, by providing the number of pages or some other reasonable form of estimation. This estimation is not required if the volume is otherwise indicated by ~~deletions~~ redactions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption;

(4) If applicable, a brief description of the ~~documents~~ records or information withheld or, if a large number of similar records are being withheld, ~~by~~ a descriptionbed of the category or categories of records being withheld, unless providing a description would harm an interest protected by an applicable exemption;

(5) A statement that ~~the~~ an adverse determination may be appealed under § 2.107 of this subpart, and notice of the requirements for submitting an administrative appeal; and

(6) A statement that the requester has the right to seek dispute resolution services from the EPA FOIA Public Liaison or OGIS.

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(e) *Markings on records released in part.* Records released in part will be annotated, whenever technically practicable, with the applicable FOIA exemption(s) at that part of the record from which the exempt information was deleted redacted unless doing so would harm an interest protected by an applicable exemption.

Commented [SD69]: I think redacted is the proper term, as deletion suggests the record is being modified.

§ 2.107 Administrative appeals.

(a) *Requirements for making an appeal.* A requester may appeal any adverse determination to the National FOIA Office. The appeal must be made in writing and must be received no later than 90 calendar days from the date of the letter communicating the Agency's adverse determination on the request. Appeals may be submitted electronically through EPA's electronic FOIA management system at [HYPERLINK "https://foiaonline.regulations.gov"]. If the requester wishes to submit an appeal by U.S. Mail, he/she should must mail the request to: National Freedom of Information Officer, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (2310A), Washington, DC 20460. The Agency will not consider appeals received after the 90 calendar day limit, and it will not consider appeals sent by facsimile or email. Appeals submitted electronically must be submitted through EPA's electronic FOIA management system before 5:00 p.m. Eastern Time on the due date to be considered timely. Appeals submitted by U.S. Mail must be stamped as received by staff in the EPA mail room on or before the due date to be considered timely. The due date is not extended to the next working day if it falls on a Saturday, Sunday, or federal holiday. The appeal letter should must clearly identify the office's determination that is being appealed and the assigned request tracking number. For appeals submitted through U.S. Mail, the requester should must mark both the appeal letter and envelope "Freedom of Information Act Appeal."

Commented [GA70]: What about the overnight address.

Commented [SD71]: This seems draconian – in every legal context I have ever seen, due dates are extended to the next working day.

(b) *Adjudication of appeals.* Unless the Administrator directs otherwise, the General Counsel or his or her designee will act on behalf of the Administrator on all appeals under this section, except that:

(1) The Counsel to the Inspector General will act on any appeal where the Inspector General or his or her designee has made the initial adverse determination; however, if the Counsel to the Inspector General has signed the initial adverse determination, the General Counsel or his or her designee will act on the appeal; and

(2) The Agency will administratively close an appeal if the adverse determination on the FOIA request becomes the subject of a lawsuit in federal court under the FOIA. Any further

Commented [SD72]: I think this is redundant or fairly implied, as anything an agency does is generally understood to be "administrative." Is some special meaning intended here?

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action on an appeal of or challenge to the adverse determination will take place through the lawsuit.

(c) *Decisions on appeals.* The requester will be notified of the decision on his/her appeal in writing, within 20 working days of when the appeal is received by the Agency.

(1) A decision affirming an adverse determination in whole or in part will contain a statement of the reason(s) for the decision, including any FOIA exemption(s) applied, and inform the requester of FOIA provisions for judicial review of the decision.

(2) If the adverse determination is reversed or modified in whole or in part on appeal, the decision will either provide the requested information that has been determined on appeal to be releasable, or the request will be ~~returned~~ remanded to the appropriate office ~~so that it may~~to be reprocessed in accordance with the appeal decision. If, as a result of a remand, the request is returned to the responding office for additional work not performed at the initial response stage ~~(such as review and redaction)~~, the requester may be billed for additional processing costs as appropriate.

(~~3~~d) ~~*Information to be provided with a decision on appeal.*~~ The Agency's written decision on an appeal will inform the requester of ~~his/her~~the right to judicial review.

Commented [GA73]: This is repetitive of statements above.

(~~d~~e) *When appeal is required.* Before seeking review by a court of an office's adverse determination, the requester must first submit a timely administrative appeal, unless the EPA has failed to respond to ~~his/her~~the request within the statutory time limits. ~~However, for FOIA responses provided on a rolling basis where the office has informed the requester that the response is an interim response.~~ (Where EPA has established a schedule of interim responses or productions of records, the 90-day time period for administrative appeal does not commence until the requester receives a final response from the Agency to his/her request. ~~Therefore, the requester should wait until he/she receives the final response from the Agency before filing an administrative appeal.~~

Commented [SD74]: Rolling basis is unclear. Tried to be a little more preceise in language here.

Commented [SD75]: "Should" doesn't carry any operative force, so as written I am inclined to strike this. Do we want to set a hard requirement that where there is a schedule of interim responses, the requester must wait until final? That seems in tension with the first provision of this section stating the requester may appeal any adverse decision (presumably as soon as they want to).

A requirement that requesters must wait until the final response before appealing could make sense.... On the other hand, I can envision various kinds of determinations that could be viewed as adverse, that occur prior to final response. Is it more or less efficient to force requesters to wait to appeal in those cases? If it is fundamental to the scope of the search, for instance, an appeal and remand at the end of that process would mean redoing a lot of work. Better to have the appeal resolved sooner?

§ 2.108 Preservation of records.

EPA will preserve all appropriate records and correspondence pertaining to a FOIA request until disposition or destruction is authorized pursuant to title 44 of the United States Code and any applicable records schedule. Copies of all responsive records ~~should~~ shall be maintained by the ~~appropriate program~~lead assigned office according to the appropriate records schedule. All personnel must comply with any litigation hold to which they are subject.

Commented [SD76]: I would suggest adding this. We have trouble sometimes explaining the importance of complying with lit holds.

Commented [GA77]: How about something like "this section does not alter any preservation requirements associated with litigation holds."?

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§ 2.109 Fees.

(a) *In general.* EPA will charge for processing requests under FOIA in accordance with the provisions of this section and OMB Guidelines. In order to resolve any fee issues that arise under this section, the requester may be contacted for additional information, and, with notice to the requester, the time it takes to resolve the fee issue will be excluded from the time the Agency has to respond to the request. The requester must pay fees electronically at [HYPERLINK "https://pay.gov/public/home"] or by check or money order made payable to the Treasury of the United States.

Commented [SD78]: While this is true, I believe the regs carry out the guidelines. This implies that we would consult the guidelines in some manner when processing fees under this regulation. I don't think we want to imply that (bc we don't do that, right?)

Commented [SD79]: I believe this provides some objective means of measuring the timing of tolling, and makes clear that tolling must be done by notice (rather than making internal judgments about tolling the requester is unaware of).

(b) *Definitions.* For purposes of this section:

(1) *Commercial-use request* is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can includinge furthering those such interests through litigation or participation in a legislative or other governmental process.

Commented [SD80]: I think we would want to cover this too – I intend for this language to cover lobbying on legislation, participation in rulemaking, etc.

(2) *Direct costs* are the Agency's expenses incurred when searching for, and duplicating, (and/or, in the case of commercial-use requests, reviewing) records to respond to a FOIA request. For example, Ddirect costs include billable staff time and other actual expenses including the salary of the individual performing the work (which is the basic rate of pay for the employee, plus 17 percent of that rate to cover benefits) and the cost of operating computers for searching and other processing functions and operating other electronic equipment, such as photocopiers, scanners, and electronic discovery tools. Direct costs do not include overhead expenses such as the cost of office space or the heating or lighting of a facility.

Commented [SD81]: We need to be clearer that costs include more than billable staff time. And duplication costs can include more than just the 10 cent per page.

Commented [SD82]: Th pay scale for employee time is handled below. We don't bill based on actual salary, so including this here is confusing and unnecessary.

(3) *Duplication* is the making ofreproducing (including by conversion to an electronic format) a copy of a record or the information contained in it (including by conversion to an electronic format), as necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among other formatas.

Commented [SD83]: This is the original language which I think is better.
"Reproducing a copy" implies that one copy is free.

(4) *Educational institution* is any school that operates a program of scholarly research. A requester in this category must show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial, organizational, or personal use, but rather are sought to further scholarly research. To fall within this fee category, the request must serve the scholarly research goal of the institution rather than an individual research goal or credit requirement.

Commented [SD84]: Overall, this last sentence is confusing and potentially unnecessary, but I have added a couple terms above (organizational or personal) to flesh out the limits I think we are trying to get at here. By organizational, I mean that a school may seek records that pertain to its own interests (such as government grants issues). I take it we would say this is not within the educational purpose that this requester category is created for.

The language here otherwise strikes me as too limiting. Clearly the statute contemplates that "educational" FOIA requests may come from students who are conducting research or course work for credit. And "individual research" is highly ambiguous. What is this referring to and why should it be excluded? Also, it is not necessarily the case that an institution has "goals" per se. The purpose of furthering scholarly research is captured in the sentence above.

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(5) *Noncommercial scientific institution* is an institution that is not operated on a "commercial" basis, as defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial, organizational, or personal use, but rathersought to further scientific research and not for a commercial use.

Commented [SD85]: Conforming to paragraph above.

(6) *Representative of the news media* is any person or entity organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast news to the public at large and publishers of periodicals that disseminate news and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. A request for records that supports the news-dissemination function of the requester will not be considered to be for a commercial use. A freelance journalist who demonstrates a solid basis for expecting publication through a news media entity will be considered to be a representative of the news media for that request. A publishing contract would provide the clearest evidence that publication is expected; however, the Agency will also consider a requester's past publication record in making this determination. EPA's decision to grant a requester media status will be made on a case-by-case basis based on evidence provided by the requester of his/her intended use of the requested information has the meaning provided at 5 U.S.C. § 552(a)(4)(A)(ii).

Commented [SD86]: Why not just cross-reference to the definition in the statute, rather than paraphrase it? What value are we adding here by trying to define this term in a manner that is almost but not quite identical to the statute?

As compared to education and noncommercial scientific institutions, this term now has a robust definition in the statute. Seems like we can just rely on that.

(7) O*ther requesters* are requestersare requesters that are not covered by one of the four categories above (commercial-use requesters, educational institutions, noncommercial scientific institutions, or representatives of the news media).

(8) *Review* is the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time does not

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~~include time spent resolving general legal or policy issues regarding the application of exemptions.~~ Review time ~~does~~ includes time spent determining whether information may be considered confidential business information or trade secrets, including ~~but not limited to~~ time spent obtaining, considering, and responding to any formal objection to disclosure made by a confidential business information submitter under 40 C.F.R Part 2, Subpart B. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Commented [SD87]: This phrase is redundant.

(9) *Search* is the process of looking for and retrieving records or information responsive to a request. ~~Search time~~It includes ~~the time required to conduct a~~ page-by-page or line-by-line ~~review~~ identification of information within records ~~to identify information that is responsive to the FOIA request,~~ and reasonable efforts ~~expended~~ to locate and retrieve information maintained in an electronic form or format, including through the use of electronic discovery tools.

Commented [SD88]: I suggest making no changes to this language from the current regs. Does this implicate the recent decision that agencies cannot distinguish between responsive and non-responsive material within an otherwise responsive record? To avoid reopening on this issue, I suggest keeping verbatim from current regulation, which is in any case sufficiently ambiguous in my mind, should anyone argue it is not in line with that case. As changed, the new wording would actually seem to be in greater conflict with the case law.

Also, I want to avoid use of the word "review" in defining "search" (though I know the statute does this too).

(c) *Charging fees.* In responding to FOIA requests, EPA will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (j~~k~~) of this section.

(1) ~~*Search* (i)~~ Search fees will be charged for all requests subject to the restrictions of paragraph (d) of this section. EPA may properly charge for time spent searching for responsive records, even if no responsive records are located or if the records are determined to be entirely exempt from disclosure. If a request requires EPA to conduct a line-by-line ~~review~~ inspection of a document for responsiveness, ~~and EPA also reviews any responsive documents for exemptions at the same time.~~ EPA will charge the reasonable estimate of time spent determining the document's responsiveness. Search fees will equal the direct costs of search. Personnel will bill their time at the following rates using the current Office of Personnel Management General Schedule (GS) pay table for Washington-Baltimore-Arlington, DC-MD-VA-WV-PA; ~~as the search portion of that review and will not charge for the estimated time spent reviewing for exemptions when billing requesters in the "other" fee category.~~

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Commented [SD89]: As worded, this was very confusing, and implies that the exact same time could be both review and search. I think it makes more sense to simply clarify that line by line searching for responsiveness is billable as search. Time spent reviewing for exemptions is review. EPA staff are expected to make a reasonable division of their time doing these tasks where only search can be billed. See preamble discussion.

(~~i~~i) ~~For each quarter hour spent by personnel searching for requested records, the fees will be as follows: personnel at a~~ GS-12 level or below (or equivalent pay scale)~~, $10.00 per quarter hour,~~: The average of GS-9 to GS-12 (Step 5), plus 16 percent, rounded to the nearest $5 increment per quarter hour.

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(ii) and personnel at a GS-13 level or above (or equivalent pay scale), $20.00 per quarter hour. The average of GS-13 to GS-15 (Step 5), plus 16 percent, rounded to the nearest $5 increment per quarter hour.

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(iii) For requests that require the retrieval of records stored by an agency at a Federal Records Center operated by NARA, additional costs will be charged in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) *Duplication.* Duplication fees will be charged for all requests, subject to the restrictions of paragraph (d) of this section. EPA will attempt in good faith to honor a requester's preference for receiving a record in a particular form or format, where it is readily reproducible by the Agency in the form or format requested, and may contact the requester to determine if a particular form or format meets the requester's needs, since some requested formats may not be readily reproducible. Duplication fees will equal the direct costs of duplication. Duplication fees for staff time will be charged at the same rates as those charged for search under paragraph (c)(1) of this section. When photocopies are supplied, EPA will provide a copy of each document per request at a cost of 10 cents per page. A page is a single side of standard 8½ by 11-inch paper.

(3) *Review.* Review fees will be charged only for commercial use requests, subject to the restrictions of paragraph (d) of this section. Review fees will be assessed only for the initial record review (*i.e.*, the review conducted by an office to determine whether an exemption applies to a particular record or portion of a record at the initial request phase, or on remand if not reviewed at the initial request phase). Assessable review fees for the initial review include the time spent both obtaining and considering any formal objection to disclosure made by a confidential business information submitter under 40 C.F.R. Part 2, Subpart B. Review fees will equal the direct costs of review. Review fees for staff time will be charged at the same rates as those charged for a search under paragraph (c)(1) of this section.

Commented [SD90]: This is duplicative of the definition of review above.

(4) *Other Costs.* Search costs may be charged for the actual costs of the Agency staff or contractor time and computer resource usage required to search for information in an electronic format requiring the use of advanced software or other tools. For electronic forms of duplication, other than a computer-generated printout, EPA will charge the direct costs of duplication. Such direct costs will include the costs of the requested electronic medium on which the copy is to be made and the actual operator time and computer resource usage required to produce the copy. When any search, review, or duplication task is performed by a contractors, EPA will charge for

Commented [SD91]: This is now more accurately reflected through the edits made above. The only additional point worth making is the one about how contractor billing will be handled.

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the actual costs up tofor staff time at the contractor's actual pay rate, but not exceeding, the $20.00 per quarter hourthe rate set under paragraph (c)(1)(ii) rate for Agency employees.

(d) *Limitations on charging fees.*

(1) Unless the records are sought for a commercial purpose, nNo search or review fees will be charged for requests by educational institutions (unless the records are sought for a commercial purpose), noncommercial scientific institutions, or representatives of the news media. No review fees will be charged for "other" use requestors."

(2) Search and review feesBillable staff time areis calculated by rounding to the nearest quarter-hour.

(3) Unless the records are sought for a commercial purposeExcept for requesters seeking records for a commercial use, EPA will not charge fees for:

(i) The first 100 pages of duplication, and

(ii) The first two hours of search time.

(4) (i) Whenever aIf the total fee calculated under paragraph (e) of this section is calculated to be less than $250.00, excluding the work conducted under paragraph (d)(3), no fee will be charged.

(5) If the total fee to be charged to the requester is estimated to be between $50.00 and $250.00, the Agency will notify the requester of the actual or estimated amount of the fee, and EPA will do no further work on the request until the requester agrees to pay the anticipated total fee in writing. This time will be excluded from the 20 working-day time limit, or any authorized extension of time that EPA has to respond to the request, and the deadline will be tolled until written assurance of payment is provided. If only a portion of the fee can be estimated readily, the Agency will advise the requester that the estimated fee may be only a portion of the total fee. Requesters may notify EPA in their initial request of willingness to pay up to $250. Where fee amounts are estimated to exceed $250.00, the provisions of paragraph (e) of this section apply.

(6) (i) If EPA fails to comply with the FOIA's time limits for responding to a request, EPA will not charge search fees, or, in the instances of requests from requesters described in paragraphs (b)(4)-(6) of this section, duplication fees, except as described in (d)(5)(ii)-(iv).

follows:

Commented [SD92]: I think it might be helpful to make this clear, assuming this is our intent. (Could look at other agencies' examples.)

Commented [SD93]: With the move to a $50 threshold, we need to explain what will happen when the fee is in the 50 – 250 range. I am following the existing regulations in requiring a written assurance of payment.

Commented [SW94R93]: I don't understand your issue.

Commented [SD95R93]: This provision was lacking from redrafted regs because we had been planning to set the threshold at $250. I am merely adding this back in to cover the range from $50 to $250.

Commented [SD96]: Formatting is all messed up here.

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(ii) If EPA has determined that unusual circumstances as defined by the FOIA apply and the Agency provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 working days.

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(iii) If EPA has determined that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to the request, EPA may charge search fees, or, in the case of requesters described in paragraph paragraphs (b)(4)-(6) of this section, may charge duplication fees, if the following steps are taken: EPA must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and the EPA must have discussed with the requester by written mail, e-mail, or telephone (or made not less than three good-faith attempts to do so) how he/she could effectively limit the scope of the request in accordance with 5 U.S.C. § 552(a)(6)(B)(ii), which includes notification to the requester of the availability of the FOIA Public Liaison and the right to seek dispute resolution services from the Office of Government Information Services. If this exception is satisfied, EPA may charge all applicable fees incurred in the processing of the request.

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(iiiv) If a court determines that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

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(e) *Notice of anticipated fees of $250.00 or more.* (1) When the Agency determines or estimates that the fees to be charged under this section will amount to $250.00 or more, after deducting the applicable 100 free pages and two hours of search time, the Agency will notify the requester of the actual or estimated amount of the fees and request advance payment, unless the requester has provided an assurance of payment for the total estimated amount of fees with his/her request. The amount over $250.00 is cumulative for multi-office or aggregated requests. If only a portion of the fee can be estimated readily, the Agency will advise the requester that the estimated fee may be only a portion of the total fee.

(2) When the requester has been notified that actual or estimated fees will amount to $250.00 or more, EPA will do no further work on the request until the requester agrees in writing to pay the estimated fee. Their time until payment is received will be excluded from the 20 working-day time limit, or any authorized extension of time that EPA has to respond to the request. A notice under this paragraph will offer the requester an opportunity to discuss the

Commented [SD97]: Under the statute we may require actual payment, not just assurance of payment. The current regulations authorize actual payment. As worded, this shifts it to an assurance of payment. I am guessing the policy direction would be to tighten rather than loosen this requirement.

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matter with Agency personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(3) If the requester has indicated a willingness to paypaid an initiallysome designated amount of fees, but the Agency estimates that the total fee will exceed that amount, the Agency will toll the processing of the request while it notifyies the requester of the estimated fees in excess of the designated amount, stop further processing of the request, and toll any deadline for responding to the request until additional payment is made. The Agency will inquire whether the requester wants to revise the designated amount to cover the estimated total fee or modify the request. Once the requester agrees in writing to pays the total estimated fee or other amount associated with the modified request as agreed to by EPA, the time to respond to the request (under the 20 working-day time limit, or any authorized extension of time) will resume from where it was at the date of the tolling notification. EPA will toll the time period as necessary to clarify fee issues throughout the processing of the request.

Commented [SD98]: Similarly, this provision is worded in terms of willingness to pay, whereas I think we want to insist on actual payment.

Commented [SD99]: This is duplicative of 2.109(a)

(4) If the requester has requested a fee waiver with his/her request under paragraph (j) of this section, and he/she has not otherwise provided an assurance of payment contingent on the fee waiver request decision, EPA will toll the response time for the request, until such time as the fee waiver request is granted or denied. If the requester files an administrative appeal of a fee waiver denial, EPA will toll the response time for the request, until such time as the fee waiver appeal is granted or denied.

(f) *Charges for other services.* Although not required to provide special services, if an EPA office chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged to the requester. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or providing records in a manner other than by EPA's electronic FOIA management system or the U.S. Mail.

(g) *Charging interest.* EPA may charge interest on any unpaid bill starting on the 31st day following the date the requester was billed. Interest charges will be assessed at the rate provided in 31 U.S.C. § 3717 and will accrue from the date of the billing until payment is received by the Agency. EPA will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset. No penalty will be assessed against the

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requester for exercising his/her statutory right to ask that a fee be waived or reduced or to dispute a billing. If a fee is under appeal or in litigation, penalties will be suspended upon notification.

(h) *Delinquent requesters.* (1) If the a requester or his/her organization fails to pay all fees within 60 calendar days of the fees' assessment, he/she and his/her organizationthe requester will be placed on the Agency's delinquency list. The Agency may share this list with other agencies and review other agencies'y delinquency lists. Subsequent FOIA requests may not be processed until payment of the overdue fees has first been made or the requester has been removed from any agencies' delinquency list.

Commented [SD100]: The rule regarding advance payment is covered below.

(i) *Advance payments.* (1) The Agency will not require advance payment of any fee, unless the requester has previously failed to pay fees in a timely fashion, or the Agency has determined that the fee will cost $250.00 or more. Payment owed for work already completed (that is, a prepayment before copies are sent to the requester) is not an advance payment.

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Commented [SD101]: This paragraph seems duplicative. I don't know what the last sentence means, but it doesn't seem necessary. Also it is not true that we will not require advance payment in other circumstances.The $250 issue is covered above.

(2) When athe requester has previously failed to pay a properly charged FOIA fee to the AgencyEPA, or any other federal agency, within 60 calendar days of the date of billing, the Agency willmay require the requester to pay the full amount due, plus any applicable interest, on that prior request before processing a new request. It may alsoand require the requester to make an advance payment of the full amount of any anticipated fee before the Agency begins to process a new request or continues to process a pending request from him/her.

Commented [SD102]: Why not strengthen?

Commented [SW103R102]: Sometimes it's an error that can be easily corrected.

Commented [SD104R102]: I think in those circumstances we could just say these provisions don't apply.

(3) When the Agency requires advance payment or payment due under paragraph (hi)(2) of this section, the request will not be considered received, and EPA will do no further work on the request until the required payment is made. If the requester does not pay the outstanding balance and the advance payment within 30 calendar days after the date of EPA's fee determination, the request will be closed.

(ij) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any other statute that specifically requires an agency to set and collect fees for particular types of records.

(jk) *Waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section when the Agency FOIA Officer, based on available information, determines that disclosure of the requested information is in the public interest because it is:

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(i) likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) is not primarily in the commercial interest of the requester.

(2) ~~*Timeliness of Requests for a Waiver or Reduction of Fees.*~~ A request for a waiver or reduction of FOIA fees must be made at the time of the initial submission of a FOIA request. An untimely request for a waiver or reduction of fees will be denied. If the requester seeks a waiver or reduction of fees, he/she must submit a statement, certified to be true and correct to the best of his/her knowledge and belief, explaining in detail the basis for making the request for such fee waiver or reduction. Requests for the waiver or reduction of fees must address the factors listed in paragraphs (~~j~~k)(3) and (~~j~~k)(4) of this section, insofar as they apply to each request.

(3) To determine whether the first fee waiver requirement ((~~j~~k)(1)(i) of this section) is met, EPA's Agency FOIA Officer will consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government." The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote ~~or attenuated~~.

Commented [SD105]: We said we were not changing the current regs. This is not in the current regs.

(ii) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding when nothing new would be added to the public's understanding.

(iii) The contribution to an understanding of the subject by the public is likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public will be considered. It will be presumed that a representative of the news media will satisfy this consideration.

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(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. The Agency FOIA Officer will not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is "important" enough to be made public.

(4) To determine whether the second fee waiver requirement ((ik)(1)(ii) of this section) is met, the Agency FOIA Officer will consider the following factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. The Agency FOIA Officer will consider any commercial interest of the requester (with reference to the definition of "commercial use request"), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure.

(ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The Agency FOIA Officer ordinarily will presume that when a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(5) When only some of the requested records satisfy the requirements for a waiver of fees, a waiver will be granted for only those records.

~~(6) EPA's Agency FOIA Officer will exercise discretion in considering the cost-effectiveness of the investment of administrative resources in deciding whether to grant waivers or reductions of fees and will consult the appropriate EPA offices as needed.~~

Commented [SD106]: I think this could cause confusion and provides somewhat unbounded discretion unless the bases are fleshed out further. I assume the idea we are getting at is that waivers might be granted for low-bill requests to avoid processing costs. I'm not sure this is consistent with the statutory basis for granting fee reduction based on a public interest. The assurance that fee collection is economical is being done through the shift to a $50 threshold. This language could also be read to go in the other direction, that we would deny fee waivers irrespective of the factors above based on some nebulous reason that it is not cost-effective or a good use of resources to do so. I think commenters would pounce on that concern.

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(67) When a fee waiver request is denied, EPA will do no further work on the request until it receives an assurance of payment or an appeal of the fee waiver adverse determination is made and a final appeal determination is made pursuant to §2.107 of this subpart.

§ 2.110 Other rights and services.

Nothing in this subpart may be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under FOIA.

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Message

From: POLITICO Huddle [huddledigest@politico.com]
Sent: 9/18/2018 11:58:05 AM
To: Brazauskas, Joseph [brazauskas.joseph@epa.gov]
Subject: POLITICO Huddle: NEW SCOTUS HEARING SET -- Groups launch dueling Kavanaugh ads -- THE DEMS POISED TO BECOME COMMITTEE CHAIRS -- OGR to investigate FEMA's Brock Long

09/18/2018 07:56 AM EDT

By Nolan D. McCaskill (nmccaskill@politico.com or @NolanDMcCaskill)

MCCONNELL MOVES TO SAVE KAVANAUGH -- Senate Majority Leader Mitch McConnell (R-Ky.) is all in on Supreme Court nominee Brett Kavanaugh. Senators say he made that clear during a private meeting Monday with Judiciary Committee Republicans and his leadership team inside his Senate office, where they devised a path forward. "He and the party committed to following Senate and committee rules, noticing a hearing for [Christine Blasey] Ford and Kavanaugh to appear in a week, rather than trying to change precedent and rush a hearing this week," Burgess and Bres report.

However, "McConnell is having to balance several competing factors: Republicans furious that Ford's allegation was made public so late in the process, especially since Sen. Dianne Feinstein of California, the top Democrat on the Judiciary Committee, was first contacted by Ford in July; a president who has faced repeated allegations of mistreating women himself; and the possibility that Republicans could lose control of the Senate in the midterms," they note. If Kavanaugh withdraws or lacks the votes to be confirmed, Republicans would likely try to confirm another nominee during a lame-duck session, a move sure to upset Democrats after the GOP blocked Merrick Garland in 2016. Much more: https://politi.co/2NlvFxz

HEARING SET -- Ford, who accuses Kavanaugh of sexually assaulting her decades ago, will testify publicly before the Senate Judiciary Committee on Monday. Judiciary Chairman Chuck Grassley (R-Iowa) said his staff reached out to Ford to hear her story and held a follow-up call with Kavanaugh. "As I said earlier, anyone who comes forward as Dr. Ford has done deserves to be heard," Grassley said. "To provide ample transparency, we will hold a public hearing Monday to give these recent allegations a full airing."

Kavanaugh issued a fresh denial Monday in a phone call with Sen. Orrin Hatch (R-Utah) and in a statement released by the White House. "This is a completely false allegation," he said. "I have never done anything like what the accuser describes -- to her or to anyone. Because this never happened, I had no idea who was making this accusation until she identified herself yesterday." White House spokesman Raj Shah added that Kavanaugh looks forward to clearing his name during a hearing. "He stands ready to testify [today] if the Senate is ready to hear him," Shah said. More: https://politi.co/2NiZyhK

Related: "Trump sticks with Kavanaugh as scandal escalates," by Nancy Cook: https://politi.co/2NnUoRF; "White House Hasn't Asked FBI to Vet Kavanaugh Allegations, Sources Say," from Bloomberg's Chris Strohm and Shannon Pettypiece: https://bloom.bg/2xj1618; and "Christine Blasey Ford feared an avalanche of attacks if she went public about Kavanaugh, friends say," per The Mercury News' Julia Prodis Sulek: https://bayareane.ws/2OyUXom

AD WARS -- Liberal and conservative groups are launching dueling ad campaigns on Kavanaugh. The conservative Judicial Crisis Network is planning a $1.5 million TV ad campaign that will feature a longtime friend of Kavanaugh. "We are not going to allow a last-minute smear campaign to destroy a good and decent man who has an unblemished personal record," said a person familiar with the ad buy. Meanwhile, the liberal group Demand Justice is running a $700,000 ad campaign aimed at pressuring four GOP senators to oppose

Kavanaugh: Lisa Murkowski of Alaska, Susan Collins of Maine, Cory Gardner of Colorado and Dean Heller of Nevada. More: https://politi.co/2NPP2hA; and the ad: http://bit.ly/2PLOeHY

Related read: "Red-state Dems call for more deliberation on Kavanaugh after assault allegations," via James Arkin: https://politi.co/2PN4U1K

GOOD MORNING! Thanks for reading Huddle, the play-by-play guide to all things Capitol Hill, on this Tuesday, Sept. 18.

MONDAY'S MOST CLICKED: Elana's report on the power Sen. Jeff Flake (R-Ariz.) now holds over the president's Supreme Court nominee was the winner.

THE DEMS POISED TO TORMENT TRUMP -- President Donald Trump said Rep. Jerrold Nadler (D-N.Y.) should "lose 200 pounds." He says Rep. Maxine Waters (D-Calif.) is "crazy" and has attacked Rep. Adam Schiff (D-Calif.) as "the leaking monster of no control." All three, however, have something else in common aside from being Democrats the president has gone after. "Soon he may have to call them chairmen," Bres and I write. "Fifty days out from a critical midterm election for Trump, these three Democrats may end up as full committee chairs next year."

With Democrats in charge, its committee chairs would include seven people of color and four women, a stark contrast to current GOP chairs, who are overwhelmingly white and male. The Democrats are also older, with many in their 70s and 80s. "Most importantly, these Democrats say they want to conduct 'vigorous oversight' of the Trump White House, something they claim has been non-existent in the Republican majority," we add. "Their questions cover a host of Trump scandals." Meet the Democrats: https://politi.co/2NkbaRU

Related: "Internal RNC Poll: Complacent Trump Voters May Cost GOP Control of Congress," by Bloomberg's Joshua Green: https://bloom.bg/2QHx92S

SPEAKING OF OVERSIGHT...

OGR INVESTIGATES FEMA ADMINISTRATOR -- House Republicans will investigate reports that FEMA Administrator Brock Long misused government vehicles to travel from Washington, D.C., to North Carolina. Oversight and Government Reform Committee Chairman Trey Gowdy (R-S.C.) requested in a letter Monday documentation and other information related to Long's use of government vehicles and the personnel who may have accompanied him. "Mr. Gowdy learned of the potential misuse last week from news reports, but he delayed starting an inquiry as FEMA girded for what was then Hurricane Florence, which was bearing down on the Carolina coast," The New York Times' Nicholas Fandos and Ron Nixon report. Long is already under investigation by the DHS inspector general. More: https://nyti.ms/2QF8NHe

Related: "Probe of FEMA Chief Brock Long Referred to Prosecutors," per The Wall Street Journal's Michael C. Bender: https://on.wsj.com/2NTNAdS

SENATE PASSES OPIOID PACKAGE -- The Senate passed a sweeping, bipartisan package of legislation aimed at combating the opioid epidemic. The bill, which contains more than 70 provisions, passed 99-1, with only Sen. Mike Lee (R-Utah) voting against it. "To become law, the package would need to be reconciled with legislation that passed the House of Representatives in June," The Wall Street Journal's Natalie Andrews writes. "Senate aides are optimistic the measures can be reconciled and passed by the end of the year." What's inside the bill: https://on.wsj.com/2Oze3uD

Related read: "Congress' latest opioid bill won't solve the crisis," from Brianna Ehley: https://politi.co/2pgdYkr

REMEMBER WHEN -- When former Trump campaign chairman Paul Manafort was indicted nearly a year ago for failing to register as a foreign agent, lawmakers said they would crack down on those who skirt the rules on lobbying for foreign interests. But efforts to strengthen the Foreign Agents Registration Act appears to be going nowhere -- fast. One of those lawmakers, Rep. Mike Johnson (R-La.), said there are "very fierce efforts to maintain the status quo." His bill would strengthen enforcement by giving DOJ more power to go after people who fail to register. And an identical bill was introduced in the Senate in October.

Sen. Elizabeth Warren (D-Mass.) even proposed barring Americans from lobbying on behalf of foreign governments and companies this summer. "But Johnson hasn't gotten a vote from the full House on his bill, and the Senate version hasn't even made it out of committee," Marianne Levine and Theodoric Meyer report. "Nor have Warren's or a separate House bill that gives the Justice Department more authority to investigate suspected violators. Meanwhile, Republicans and Democrats alike have complained the DOJ hasn't made enforcing FARA a priority." More: https://politi.co/2pgbEKf

SENATE PANEL NOT CONSULTED ABOUT REFUGEE CAP -- Secretary of State Mike Pompeo announced that the Trump administration will admit no more than 30,000 refugees in the coming year. The current cap is 45,000 and was 110,000 when the president took office. "The hawkish turn demonstrates President Donald Trump's willingness to push hard-line immigration policies in the run-up to the November midterm elections -- even after his controversial 'zero tolerance' border enforcement policy led to thousands of family separations and a court order to reunify parents and children," Ted Hesson and Nahal Toosi report. "The Trump administration is required by statute to consult with the Senate and House Judiciary committees regarding the proposed ceiling." However, an aide said the Senate meeting hasn't taken place. More: https://politi.co/2Ou65CS

COLLINS' CURVEBALL -- Indicted Rep. Chris Collins (R-N.Y.) will remain on the ballot after all, a decision that blindsided GOP party leaders who were planning to unveil their plan to replace him. "The shocker development, stemming from major concerns lodged by the congressman's criminal attorneys, was neither anticipated nor appreciated by [Erie County Republican Chairman Nicholas] Langworthy and the other Republican county chairmen who toiled for six weeks to find an election law loophole to remove Collins from the ballot," The Buffalo News' Robert J. McCarthy reports. Republicans were considering substituting Collins for a Town Board member post, which likely would have drawn a legal challenge from Democrats.

Just last week, Collins had signaled that he would go along with whatever party leaders suggested. But his lawyers overruled that plan over concerns that additional litigation from the ballot substitution could complicate his criminal case. Collins faces charges over alleged insider trading. The ballot will have Collins against Democrat Nathan McMurray. But it's unclear what Collins would do if he wins. "Will he resign?" McCarthy asks. "Or will he continue to serve in hopes of beating the charges on crimes he denies committing?" More: http://bit.ly/2PPzisr

DEM NOMINEE FEUDS WITH DCCC -- Andrew Janz has been able to get an army of small donors to catapult him to the top tier of the Democratic Party's online fundraisers. But he can't get the DCCC to return his calls. Janz is running to unseat House Intelligence Committee Chairman Devin Nunes (R-Calif.) but says House Democrats' campaign arm misled him about what support he could expect. After his June primary, Janz said, "A DCCC spokesperson basically told me to my face, 'Janz, you're on your own.'"

"Rifts between candidates and party committees such as the DCCC are not uncommon. The committees have limited resources and must focus attention on the nation's most competitive House contests," David Siders notes. "That often requires a form of political triage -- making tough decisions about sidelining races that are deemed too far out of reach. Yet it's rare for those disputes to spill into public view." Much more: https://politi.co/2OzPRs7

JOHN DINGELL RECOVERING -- Former Rep. John Dingell (D-Mich.) was admitted to the Henry Ford Hospital after appearing to suffer a heart attack Monday morning. His wife, Rep. Debbie Dingell (D-Mich.), said the 92-year-old former lawmaker is "alert and in good spirits, cracking jokes like always." "Our sincere thanks to all the medical professionals and nurses at our sides," she said. "We'll know more later." John Dingell retired in 2015 as the longest-serving member of Congress. He succeeded his father, John Dingell Sr., in 1955 and was succeeded by his wife, who still holds the seat. John Dingell "is one of the last World War II veterans who served in Congress before his retirement," Kyle adds. More: https://politi.co/2NhGDUJ

TODAY IN CONGRESS -- The Senate meets at 10 a.m. to resume consideration of the conference report to accompany the DOD and Labor, HHS, and Education Appropriations Act. Votes are expected as early as 12 p.m. **The House** is out.

AROUND THE HILL -- Sen. Robert Menendez (D-N.J.) will hold a news conference on the one-year anniversary of Hurricane Maria hitting Puerto Rico at 12 p.m. in the Senate Swamp.

Senate Republican and Democratic leaders will hold separate news conferences after their weekly policy lunches starting around 2 p.m. in the Ohio Clock Corridor.

Congress will host a ceremony to honor the 225th anniversary of the laying of the cornerstone of the U.S. Capitol at 6:30 p.m. in Statuary Hall.

MONDAY'S TRIVIA WINNER -- Marshall Yates was first to correctly guess that Clarence Thomas and Robert Bork are the last two Supreme Court nominees whose Senate Judiciary Committee votes to send their nominations to the floor with a favorable recommendation failed.

TODAY'S TRIVIA -- From: Marshall: How much time passed between Brett Kavanaugh's nomination and confirmation to the D.C. Circuit Court? The first person to correctly guess gets a mention in the next edition of Huddle. Send your best guess my way: nmccaskill@politico.com.

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By Kelsey Tamborrino | 09/18/2018 05:53 AM EDT

With help from Anthony Adragna and Darius Dixon

DECISION TIME: Today's shaping up to be a crucial day in determining whether Congress can actually resolve differences in its third minibus H.R. 6147 (115) that contains the Interior and Environment title. Senate Appropriations Chairman Richard Shelby (R-Ala.) told reporters he was huddling with other conferees to see if there's a path forward. "Have we reached a real impasse?" he asked. "Or are there some things we can jump over and work out?" Shelby acknowledged the riders in the House bill would complicate the task, which already faces an uphill path to the finish line before the Oct. 1 deadline.

Moving on disaster relief: Shelby said he'd like to get some funding to the hurricane-ravaged Carolinas before the end of the fiscal year if possible. "If we had some numbers — and if the administration and the House would work with us — I think we could do something ahead of time — be ahead of the curve a little bit," he said. "Do they have enough information to give us some information that we can act on while we're still here? Or do we have to wait until the flooding is all receded and they assess the damages, and then we have to act?"

SURVEYING THE DAMAGE: While Florence continues to bring flooding across several East Coast states, North Carolina continues to shoulder the brunt of the devastation. By officials' latest count, at least 32 people have died as a result of tropical depression Florence, with 25 of those from North Carolina. "This is a monumental disaster for our state," Gov. Roy Cooper said Monday. "This is an epic storm that is still continuing because the rivers are still rising."

While no significant pipeline issues have so far been reported, the Energy Department said coastal areas impacted by Florence "are experiencing widespread outages at retail fuel stations due to power outages and conditions preventing resupply from terminals." As of Monday afternoon, GasBuddy.com calculated 23 percent of North Carolina gas stations and 11 percent of South Carolina gas stations were reported out-of-service.

As of Monday night, about 400,000 utility customers in the region remained without power, mostly in North Carolina, according to the Associated Press. Duke Energy calculated it experienced a total of 1.5 million outages so far throughout Florence, but the company said it has already restored power for roughly 1.2 million of those customers and is working to get the rest of its customers online. "I've lived in North Carolina my entire life, and I've seen a lot of bad storms, a lot of bad hurricanes. But this is absolutely the worst," David Fountain, president of Duke Energy North Carolina, said on CNBC's "Squawk Box."

Several of North Carolina's open-air manure pits at hog farms have failed and are spilling pollution, the state's top environmental regulator warned. At one hog lagoon in Duplin County, North Carolina Department of Environmental Quality Secretary Michael Regan said the earthen dam was breached, according to the AP. There's also been several reports of lagoon levels going over their tops or being inundated in Jones and Pender counties. Regan said state investigators will visit the sites as conditions allow. The AP also reports based on data obtained from the National Inventory of Dams that North Carolina has 1,445 dams rated high hazard, and 185 structures that had conditions of poor or unsatisfactory during recent inspections, causing concern that the dams might not be able to hold up under the influx of flood waters.

Meanwhile, Florence's remnants brought rare tornadoes to Virginia, knocking out power for thousands of Dominion Energy customers in the Richmond area. Dominion spokesman David Botkins told the Richmond Times Dispatch there was "extensive damage," including to utility poles, transformers and wires.

IT'S TUESDAY! I'm your host, Kelsey Tamborrino. The U.S. Oil & Gas Association's Albert Modiano knew Sen. Claire McCaskill (D-Mo.) appeared on the television game show "High Rollers" and won. For today: Name the former presidents who visited all 50 states while in office. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter @kelseytam , @Morning_Energy and @POLITICOPro.

NO WORD: For those curious, Senate EPW Chairman John Barrasso (R-Wyo.) told ME as he scampered into the Senate chamber it remained unclear whether a vote on a broad water infrastructure package S. 3021 (115) would happen this week. "There's a lot going on," he quipped.

SEARCHING FOR A SEA CHANGE? Energy Secretary Rick Perry is in Bucharest, Romania, today for Day Two of the Three Seas Initiative Summit, where he will meet with heads of state and deliver closing remarks. The event brings together central European leaders in hopes of delivering the message that they want to be a "significant player" in the world's economy, according to remarks from Polish President Andrzej Duda. The trip follows Perry's meeting last week with Russian Energy Minister Alexander Novak, where the secretary told Novak that "Moscow can no longer use energy as an economic weapon." The White House has touted energy security before Baltic leaders in the past, previously detailing that the U.S. is seeking to diversify energy sources, supplies and routes throughout the region, including with the expansion of U.S. liquefied natural gas.

President Donald Trump sent a letter Monday to Romania President Klaus Iohannis saying the 12-member initiative could expand infrastructure and strengthen energy security, among other issues, according to the AP. Duda will be in Washington today to meet with the president, where trade and security matters are on tap.

** **Presented by Chevron:** Chevron and local partners are helping to provide DOERS with the hands-on technical training needed for today's jobs in the manufacturing and energy industries. Watch the video. **

WHERE'S ZINKE? Interior Secretary Ryan Zinke will hold a news conference today in Lafayette, La., to announce Land and Water Conservation Fund "funding to leverage public and private investment in America's state and local public parks."

— **The final countdown:** House Natural Resources Committee Democrats launched an online "#SaveLWCF" social initiative on Monday to highlight the conservation program ahead of its Sept. 30 funding deadline. As part of the effort, Natural Resources Democrats will tweet out an "LWCF success story" every hour until the end of the month.

PUTTING A FINER INDIAN POINT ON IT: After a famously long review process, the Nuclear Regulatory Commission approved new licenses Monday for both of Entergy Corp.'s Indian Point nuclear reactors. Yet it's something of a mixed blessing for the nuclear industry. The company spent 11 years trying to get the licenses renewed but instead of running for another 20 years — the normal length of an extension — the units will only be allowed to run through April 2024 and April 2025 as part of an agreement reached with New York state and Riverkeeper to close the reactors early.

Many, many, MANY Democratic politicians have raised hell about Indian Point over the decades, pouncing on every real and perceived flaw the plant had, especially after the attacks of Sept. 11, 2001, without really acting to shut the plant down. New York Gov. Andrew Cuomo proved himself to be dogged on the issue and last year's deal calls for Entergy to close the plant in 2021 but the extra few years is meant offer a buffer in case the state's grid operator says that reliability upgrades need to be made before the units can be taken offline.

AIR BILLS ON TAP TODAY: The Senate Environment and Public Works Committee holds a markup on a spate of targeted air pollution bills today, including S. 1857 (115), a bill from West Virginia Sen. Shelley Moore Capito that would delay emissions compliance deadlines for residential wood heaters and similar devices until May 15, 2023. The committee will also vote on the nomination of Harold Parker to be co-chair of the Northern Border Regional Commission, as well as four General Services Administration resolutions. **If you go:** The hearing begins at 9:55 a.m. in 406 Dirksen.

PASSING GAME: The Office of Government Ethics opted out of taking on a complaint from Rep. Don Beyer (D-Va.) and three other Democrats concerning acting EPA Administrator Andrew Wheeler's contacts with former clients, instead referring the complaint Monday to EPA's in-house ethics experts, Pro's Alex Guillén reports. The Democrats in July argued that since his arrival at EPA, Wheeler met with at least three former clients despite his ethics agreement. OGE Director Emory Rounds wrote Monday that "EPA is in the best position to ascertain the relevant facts and is responsible for monitoring its appointees' compliance with ethics requirements."

EPA CONSIDERS PARTIAL WAIVERS: EPA is weighing whether to give small refiners partial exemptions from the Renewable Fuel Standard, a spokesman tells Pro's Eric Wolff. The move would allow refiners to shed a portion of their requirements to blend ethanol with gasoline, after former Administrator Scott Pruitt sharply increased the number of economic hardship exemptions the agency issued to small refiners. "This issue is the subject of ongoing discussions" with the Department of Agriculture, the White House and DOE, EPA spokesman Michael Abboud said Monday.

ATLANTIC PIPELINE ALLOWED TO CONTINUE CONSTRUCTION: FERC staff lifted an agency order that halted work on the Atlantic Coast natural gas pipeline on Monday, allowing previously held-up portions to continue with construction, Pro's Darius Dixon reports via a letter to project developers. The pipeline builders were told to stop working on the project last month after the 4th Circuit Court of Appeals tossed out permits for letting the project cross land held by the National Park Service.

PUERTO RICO WATER ANNOUNCEMENT TODAY: To mark the one-year anniversary of Hurricane Maria's landfall, EPA Regional Administrator Pete Lopez will meet with Caribbean officials on how best to strengthen the partnerships formed during the emergency response. Lopez will also announce an agreement today on strengthening community drinking water systems in Puerto Rico, EPA said.

EDF ACTION PUTS $1M IN 4 RACES: EDF Action will detail a plan today to spend $1 million across four House races over the next four weeks. The plan will involve both direct mail and digital ads targeting Reps. Jason Lewis in Minnesota, Mike Coffman in Colorado, and Dana Rohrabacher in California, as well as Danny Tarkanian, who's running for an open seat in Nevada.

LOOKING TOWARD THE MIDTERMS: The political arm of the Environmental Working Group, known as EWG Action Fund, released a report this morning grading every House lawmaker on chemical policy and chemical safety votes. The action fund focused on 17 bills and amendments, which members voted on during both the 115th and 114th Congresses. An analysis from EWG Action found that 140 lawmakers voted against safeguards for toxic chemicals in every vote, while 149 members consistently voted for chemical safety protections.

Breaking it down: The scorecard comes a day after Michigan Reps. Debbie Dingell, Dan Kildee, Fred Upton and Tim Walberg introduced a bill to combat the spread of the toxic nonstick chemicals known as PFAS. Upton and Walberg both scored low marks under the scorecard, while they're facing races that the Cook Political Report listed as among the most competitive. Walberg voted against every measure on the EWG scorecard, garnering a 0 percent "pro-environment" score from the group. Upton voted against all but two measures, gaining an 18 percent score. Elsewhere on the card, North Carolina Rep. Richard Hudson also scored 0 percent — his district faces contamination of GenX, a PFAS chemical similar to PFOA and PFOS.

MAIL CALL! Massachusetts Sens. Ed Markey and Elizabeth Warren asked questions and requested documents from Columbia Gas of Massachusetts, NiSource and the Pipeline and Hazardous Materials Safety Administration on Monday related to last week's natural gas explosions in Lawrence, North Andover and Andover, Mass., that killed one person. "It is imperative that the people of the Commonwealth are provided an understanding of what caused this disaster and how you responded to it, in order to ensure that we never again face a similar tragedy," the senators write.

— **Four Democratic senators** wrote to OMB Program Associate Director Kathy Kraninger on Monday demanding that she hand over documents related to her role in transferring funds from FEMA to ICE amid hurricane season.

QUICK HITS

— "Trump's tariffs will make recovery from Hurricane Florence more expensive," McClatchy.

— "The rivers keep rising, but some in flood zones won't leave," The Associated Press.

— "Sources: Green Plains to shut down two Iowa ethanol plants," Reuters.

— "8 ways that EPA's helping the coal industry," E&E News.

— "Probe of FEMA chief Brock Long referred to prosecutors," The Wall Street Journal.

HAPPENING TODAY

8:15 a.m. — Energy Department holds InnovationXLab Energy Storage Summit, Menlo Park, Calif.

8:45 a.m. — The Hoover Institution hosts "MIT-Stanford Energy Game Changers Symposium," 1399 New York Avenue NW.

9:55 a.m. — Senate Environmental and Public Works Committee business meeting on various bills, 406 Dirksen.

10 a.m. — Senate Commerce Oceans, Atmosphere, Fisheries, and Coast Guard Subcommittee hearing on "Fish Fights: An Examination of Conflicts Over Ocean Resources," 253 Russell.

Noon — The Heritage Foundation discussion on "Supreme Court Preview of the 2018 Term," 214 Massachusetts Ave NE.

Noon — The Atlantic Council discussion on "Dispatches from Our Energy Future," 1030 15th Street NW.

Noon — The Information Technology and Innovation Foundation discussion on "Clean Energy Innovation: Making a Carbon Tax More Affordable," 2247 Rayburn.

Noon — New Jersey Sen. Bob Menendez news conference on the one-year anniversary of Hurricane Maria hitting Puerto Rico, Senate Swamp.

Noon — Kleinman Center for Energy Policy discussion on "Effective Climate Action: The Case for Greenhouse Gas Neutrality," Philadelphia.

12:30 p.m. — The Washington Legal Foundation briefing on "The U.S. Supreme Court: October Term 2018 Preview," 2009 Massachusetts Avenue NW.

2:30 p.m. — Senate Armed Services Cybersecurity Subcommittee closed hearing on "Interagency Coordination in the Protection of Critical Infrastructure," SVC-217.

3 p.m. — World Resources Institute forum on "Carbon Removal as a Climate Solution," 10 G Street NE.

4 p.m. — The Atlantic Council discussion on "Hacker-Powered Security: Voices on Coordinated Vulnerability Disclosure," 1030 15th Street NW.

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Stories from POLITICO Pro

DOE: Perry pressed Russian energy official on grid cyberattacks Back

By Darius Dixon | 09/13/2018 12:01 PM EDT

Energy Secretary Rick Perry signaled his "disappointment" in Russian attempts to undermine the U.S. electric grid in a meeting today with his Kremlin counterpart in Moscow, according to DOE.

Perry and Russian Energy Minister Alexander Novak also discussed how to use their prowess in oil and natural gas production to "ensure world energy market stability, transparency, and sustainability," DOE spokesperson Shaylyn Hynes said in a readout of the meeting.

Hynes said Perry expressed his "disappointment and concern about Russia's continued attempts to infiltrate the American electric grid." A Wall Street Journal report this summer that some cybersecurity experts have criticized said that officials at the Department of Homeland Security have been warning utility executives since 2014 about a long-running campaign by Russian-affiliated hackers to infiltrate U.S. critical infrastructure.

Perry made it clear that "Moscow can no longer use energy as an economic weapon," Hynes said. DOE has sought to leverage recent data showing that the U.S. recently overtook Russia as the world's largest crude oil producer for the first time in nearly two decades.

Despite the tensions over issues like the Nordstream 2 gas pipeline and attempted cyberattacks, the two men pledged to continue having an open line of communication.

Perry and Novak, Hynes said, agreed to continue this "previously dormant energy dialogue and to search for ways to work together, within the guidelines and limitations of our current bilateral relationship. The future of our energy relations is predicated on successfully addressing our broader disagreements."

To view online click here.

Back

Ethics agency refers Democrats' Wheeler complaint to EPA Back

By Alex Guillén | 09/17/2018 06:00 PM EDT

The Office of Government Ethics today referred a complaint from four House Democrats about acting Administrator Andrew Wheeler's contacts with former clients to EPA's in-house ethics experts.

Rep. Don Beyer (D-Va.) and three other Democrats in July argued that since his arrival at EPA, Wheeler met with at least three former clients when his ethics agreement indicated he would generally avoid meeting with former clients for two years.

"EPA is in the best position to ascertain the relevant facts and is responsible for monitoring its appointees' compliance with ethics requirements," wrote OGE Director Emory Rounds.

EPA already determined that the three companies in question do not meet the president's definition of "former client" because Wheeler did not work with them in the two years prior to arriving at EPA, Rounds noted. Wheeler is also able to meet with former clients when they are part of a larger group setting.

"Acting Administrator Wheeler understands his obligations under federal ethics laws and the Trump Ethics Pledge that he signed, and continues to work with EPA career ethics officials to fulfill these obligations," an EPA spokesman said in a statement. "On May 24, 2018, he issued a recusal statement that detailed his obligations concerning lobbying clients in the past two years before he rejoined the agency."

WHAT'S NEXT: Rounds said he has forwarded the lawmakers' inquiry to EPA's ethics officials for follow-up.

To view online click here.

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House Democrats call for investigation of Wheeler meetings with former clients Back

By Emily Holden | 07/27/2018 05:46 PM EDT

House Democrats are asking the Office of Government Ethics to review acting EPA Administrator Andrew Wheeler's meetings with companies that employed him as a lobbyist.

Rep. Don Beyer (D-Va.) and several colleagues sent a letter to the independent agency today following reporting from E&E News that Wheeler met with at least three former clients in recent months as deputy administrator. They pointed to previous Administrator Scott Pruitt's resignation "under a cloud of ethical controversy" among the reasons for their concern.

"That context, Wheeler's past work as a coal lobbyist, and the many conflicts of interest which that work naturally presents to his leadership of the EPA demand that his meetings and communications be carefully scrutinized so that he is held to the highest ethical standard," wrote Beyer and Reps. Raja Krishnamoorthi (D-Ill.), Pramila Jayapal (D-Wash.), and Jamie Raskin (D-Md.).

EPA ethics reviews essentially operate on the honor system to ensure Wheeler is abiding by the Trump administration's pledge to avoid dealing with companies for whom he lobbied within the previous two years.

"We rely on the disclosures of an individual," ethics official Justina Fugh told POLITICO.

But public forms list Wheeler as a lobbyist for former clients less than two years before he was sworn in as deputy administrator on April 20. For example, Wheeler's former firm, Faegre Baker Daniels, did not disclose that it stopped lobbying for Darling Ingredients until May 31, 2016.

Fugh said Darling was not on a list Wheeler had submitted of lobbying clients in the prior two years. She said he also can meet with past clients that are subject to the pledge in certain group settings.

WHAT'S NEXT: The Democrats asked OGE to determine whether Wheeler had violated his pledge and to clarify its terms.

To view online click here.

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EPA weighs partial biofuel waivers to small refiners Back

By Eric Wolff | 09/17/2018 04:26 PM EDT

EPA is considering allowing small refiners to receive partial exemptions from the Renewable Fuel Standard, according to a spokesman, a move that would allow them to shed a portion of their requirements to blend ethanol with gasoline.

"This issue is the subject of ongoing discussions" with the Department of Agriculture, the White House, and the Department of Energy, EPA spokesman Michael Abboud said.

Former EPA Administrator Scott Pruitt sharply increased the number of economic hardship exemptions the agency issued to small refiners, infuriating ethanol producers who said allowing the fuel processors to shed their blending requirements undermined the program. Ethanol industry officials say they expect EPA to continue liberally issuing the exemptions in the future.

Emily Skor, CEO of ethanol producers trade group Growth Energy, told reporters that acting EPA Administrator Andrew Wheeler is considering several options to tamp down battles between the oil and biofuels industries, including the changing the criteria refiners must meet for economic hardship.

"He's inherited a lot, " she said.

To view online click here.

Back

FERC says work can continue on Atlantic Coast pipeline Back

By Darius Dixon | 09/17/2018 04:50 PM EDT

FERC staff lifted an agency order today that had halted work on the Atlantic Coast natural gas pipeline, according to a letter to project developers this afternoon.

The pipeline builders were told to stop working on the project last month after the 4th Circuit Court of Appeals tossed out permits for letting the project cross land held by the National Park Service. However, on Friday, the Park Service issued a new right of way permit for crossing the Blue Ridge Parkway.

"Construction activities along project areas, which had previously received a notice to proceed may now continue," FERC Director of Energy Projects Terry Turpin wrote.

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Back

GOP appropriators approved cash transfer from FEMA to ICE Back

By Jennifer Scholtes | 09/12/2018 02:33 PM EDT

Congressional spending leaders signed off this summer on a Department of Homeland Security money shuffle that's now fueling Democratic jabs at the Trump administration's "misplaced" priorities as a hurricane of historic force spins toward the Eastern Seaboard.

Republican appropriators in both chambers gave the go-ahead several weeks ago for the Trump administration to transfer $9.7 million from FEMA to Immigration and Customs Enforcement, according to lawmakers and aides on the spending committees.

The reprogramming request is one of dozens congressional spending leaders approve each month.

Unspent money from several other agencies — including TSA, the Coast Guard, and Customs and Border Protection — were also transferred to plus-up accounts for ICE by a total of about $200 million and the Secret Service by nearly $1.6 million, according to a document and request POLITICO reported last week.

"It has been no secret that President Trump's obsession with his wall, mass deportation, and the indiscriminate detention of children comes at a hefty price - a price that robs our country of its values and its resources," Senate Appropriations ranking Democrat, Sen. Patrick Leahy (D-Vt.), said in a statement Wednesday afternoon. "This case is no different, and now our Eastern Coast is left even more vulnerable in the path of Hurricane Florence."

Sen. Jeff Merkley (D-Ore.) first made headlines late Tuesday by saying on MSNBC that "just as hurricane season is starting ... the administration is working hard to find funds for additional detention camps."

A senior GOP aide said the FEMA money comes from accounts for things like administrative travel, agency IT support and infrastructure maintenance, and that the leftover funds would have otherwise gone unspent.

The reprogramming request DHS sent to lawmakers lists amounts transferred to ICE from FEMA regional operations, response and recovery, mitigation, "preparedness and protection," as well as "mission support." That

money has been redistributed to ICE "custody operations" and "transportation and removal," as well as Secret Service work.

Aides from FEMA and DHS criticized reports of the funding switch via their official Twitter accounts, beginning a tit-for-tat with Merkley's office.

DHS press secretary Tyler Houlton tweeted Tuesday that the money came from "routine operating expenses" and that Merkley's statements on MSNBC are a "sorry attempt to push a false agenda." FEMA spokeswoman Jenny Burke tweeted Wednesday that the senator's office told the agency that "It's a TV hit, you take it where you can."

Firing back, Merkley spokeswoman Martina McLennan said "it's not surprising to see a defensive and completely fallacious response from the Trump administration to their irresponsible and dangerous decision to move money from FEMA to pursue their family separation agenda."

"If the president had done more than tossed paper towels at storm victims ... maybe he would understand why stripping money from FEMA to pay for locking up families at the border is so troubling ..." she said.

Other Democratic lawmakers have joined in deriding the Trump administration over the DHS transfers.

Rep. Bennie Thompson of Mississippi, the top Democrat on the House Homeland Security Committee, said in a statement Wednesday that "this is yet another example of the Trump Administration's outrageously misplaced homeland security priorities."

"The 2017 hurricane season made painfully clear that FEMA has limited capacity to respond to multiple disasters as it is," Thompson said. "With Hurricane Florence bearing down on the Carolinas and Puerto Rico still struggling after Maria, FEMA absolutely cannot afford to have any of its resources diverted."

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Subject: Day Ahead: Senate making third minibus moves — Trump, Poland's Duda huddle — Perry heads to Romania

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POLITICOPRO
Day Ahead

09/18/2018 05:00 AM EDT

By KAITLYN BURTON (kburton@politico.com; @knicoleburton)

***PROGRAMMING NOTE**: The next Day Ahead will publish Thursday, Sept. 20, unless the Senate is not in session.*

DRIVING THE DAY — Senate lawmakers could vote as soon as today to approve the third minibus spending package, which includes the Defense and Labor-HHS-Education titles, Sarah Ferris and Anthony Adragna report . It also contains stopgap funding (through Dec. 7) for all other federal agencies that don't have a full-year budget by Oct. 1, they add.

The bundle would then go to the House, and eventually President **Donald Trump** for his signature. Senate Appropriations Chairman **Richard Shelby** (R-Ala.) told reporters Monday that Vice President **Mike Pence** said Trump plans to sign the legislation, H.R. 6157 (115).

At the White House, Trump sits down with Polish President **Andrzej Duda**.

HAPPY TUESDAY AND WELCOME TO DAY AHEAD! Send thoughts and tips to kburton@politico.com (@knicoleburton).

HOUSE FLOOR

The House is out until Tuesday, Sept. 25.

SENATE FLOOR

The Senate convenes at 10 a.m. to consider the conference report for the third minibus. The chamber will recess from 12:30 to 2:15 p.m. for the weekly policy lunches.

MARKUP SPOTLIGHT

TODAY:

— 9:55 a.m. Senate Environment markup of six bills. One measure, S. 1857 (115), would delay emissions compliance deadlines for residential wood heaters and similar devices. The panel will also consider a nomination and four General Services Administration resolutions. Location TBD.

— 10 a.m. Senate Foreign Relations markup of nine nominations, including **Mark Rosen** to be U.S. executive director of the International Monetary Fund. 419 Dirksen.

— Senate Finance markup of two nominations: **Michael Faulkender** to be assistant Treasury secretary for economic policy and **Elizabeth Darling** to be HHS commissioner on children, youth and families. Time and location TBD.

— Senate Veterans' Affairs markup of two VA nominations: **Tamara Bonzanto** to be assistant secretary for accountability and whistleblower protection and **James Gfrerer** to be assistant secretary for information and technology. Time and location TBD.

COMMITTEE HEARINGS

TODAY:

— 10 a.m. Senate Homeland Security hearing on the Flores settlement agreement, which curtails the federal government's ability to keep minors in immigration custody and sets standards for their treatment while there, as Josh Gerstein has explained. 342 Dirksen.

— 10 a.m. Senate HELP hearing on lowering health care costs. 430 Dirksen.

— 10 a.m. Senate Banking hearing on financial technology. 538 Dirksen.

— 10 a.m. Senate Commerce subcommittee hearing on ocean resources. 253 Russell.

— Senate Foreign Relations hearing on U.S.-Russia arms control efforts. The hearing will get going after the panel's markup concludes. 419 Dirksen.

POTUS HAPPENINGS

11:30 a.m. Trump participates in a signing ceremony for the "biodefense national security presidential memorandum." Oval Office.

12:15 p.m. Trump welcomes Duda. South Portico.

12:25 p.m. Trump meets with Duda. Oval Office.

12:50 p.m. Trump participates in an expanded bilateral working lunch with Duda. Cabinet Room.

2:10 p.m. Trump hosts a joint press conference with Duda. East Room.

2:40 p.m. Trump sees off Duda. South Portico.

3 p.m. Trump meets with Secretary of State **Mike Pompeo**. Oval Office.

VPOTUS DIGEST

Not provided.

ON THE HORIZON

TECHNOLOGY

The Trump administration is set to host a summit Sept. 24 on quantum computing, Steven Overly reports. Tech giants IBM and Intel are among those on the guest list.

The White House will also host an event on 5G later that week.

CONGRESS

ANOTHER KAVANAUGH HEARING: The Senate Judiciary Committee expects to hear from the woman accusing **Brett Kavanaugh** of sexual assault, **Christine Blasey Ford**, as well as the Supreme Court nominee himself, Elana Schor, Rebecca Morin and Burgess Everett report. "Anyone who comes forward as Dr. Ford has done deserves to be heard," Judiciary Chairman **Chuck Grassley** (R-Iowa) said. "To provide ample transparency, we will hold a public hearing Monday to give these recent allegations a full airing." It's set for Monday, Sept. 24. More here.

DEFENSE

$13B FORCE: "A new Space Force would include more than 13,000 personnel and cost just under $13 billion over five years, according to a report from Air Force Secretary **Heather Wilson**," Jacqueline Klimas writes . "The Sept. 14 memo, obtained by POLITICO, recommends standing up the Space Force headquarters in fiscal 2020 and having the

remainder of the new military services in place by the end of fiscal 2021. The transition would include moving several groups into the new service, including space programs at DARPA, national security programs at NASA and the space traffic management portion of the Commerce Department."

FOR THE ROAD

WHERE IN THE WORLD IS TRUMP'S CABINET?:

— 4 p.m. Pompeo meets with World Bank President **Jim Yong Kim**.

— Interior Secretary **Ryan Zinke** heads to Lafayette, La., to make an announcement on Land and Water Conservation Fund funding.

— Energy Secretary **Rick Perry** is in Romania for the Three Seas Initiative Summit.

ON THE CALENDAR:

— 12:30 p.m. The Washington Legal Foundation holds a briefing on the Supreme Court's October term. Follow along here.

Check out POLITICO Pro's calendar for additional committee activity, events and more.

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To: Brazauskas, Joseph [brazauskas.joseph@epa.gov]
Subject: RE: test

Thanks! Turns out I had used the link that was missing the first "s". I look forward to seeing you tomorrow.

Daniel M. Flores
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test

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POLITICO PLAYBOOK PM

BY ANNA PALMER, JAKE SHERMAN, DANIEL LIPPMAN AND ELI OKUN

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Sent: 9/17/2018 4:58:35 PM
To: Brazauskas, Joseph [brazauskas.joseph@epa.gov]
Subject: Playbook PM: Kavanaugh confirmation in chaos

NEW: MICHIGAN DEMOCRATIC REP. DEBBIE DINGELL sent an email statement about her husband, **FORMER REP. JOHN DINGELL:** "It appears John Dingell had a heart attack early this morning. He's alert and in good spirits, cracking jokes like always. He's in the process of being admitted to Henry Ford Hospital. Our sincere thanks to all the medical professionals and nurses at our sides. We'll know more later."

DIGGING IN ... BRETT KAVANAUGH released a statement saying **CHRISTINE BLASEY FORD** is wrong, characterizing her sexual assault accusation as "a completely false allegation."

KAVANAUGH: "I have never done anything like what the accuser describes -- to her or to anyone. Because this never happened, I had no idea who was making this accusation until she identified herself yesterday. I am willing to talk to the Senate Judiciary Committee in any way the Committee deems appropriate to refute this false allegation, from 36 years ago, and defend my integrity."

-- THE SWING VOTE -- @SenatorCollins: "Professor Ford and Judge Kavanaugh should both testify under oath before the Judiciary Committee."

-- CNN is reporting that Kavanaugh has hired **BETH WILKINSON,** a high-end D.C. attorney.

-- KAVANAUGH went to the White House this morning.

-- **MEANWHILE, DEMOCRATS** are asking **SENATE GOP LEADERSHIP** and **JUDICIARY CHAIRMAN CHUCK GRASSLEY (R-IOWA)** to delay the hearing. ***The letter, from all 10 committee Democrats***

THE POLITICO LEDE-ALL ... ELANA SCHOR and **REBECCA MORIN: "Confirmation in turmoil as Kavanaugh accuser agrees to testify":** "Less than 24 hours after Ford publicly came forward against Kavanaugh, her attorney said that she 'will do whatever is necessary to make sure that the Senate Judiciary Committee has the full story,' including providing testimony. Judiciary Chairman Chuck Grassley (R-Iowa) already had begun seeking follow-up calls for senators on Ford's charges but has yet to comment Monday on potential testimony — which could further imperil a committee vote on Kavanaugh that's still set for Thursday. ...

"Although Republicans said Sunday night that they would seek a follow-up call, Ford's attorney told CNN in a separate interview that lawmakers have yet to contact her client regarding a potential appearance before the committee." POLITICO

-- **BURGESS EVERETT, "Judicial Crisis Network to launch $1.5M pro-Kavanaugh ad campaign":** POLITICO

NEW: SENATE LEADERSHIP FUND, which is closely aligned with Senate Majority Leader Mitch McConnell (R-Ky.), hasn't made a decision yet on how it will engage on Kavanaugh following the allegations. The group has already run a couple of pro-Kavanaugh ads. "We are evaluating, but it's too soon to definitively state what our course of action will be," a spokesman said.

SAN FRANCISCO CHRONICLE EDITORIAL: "Editorial: A disturbing 11th-hour allegation against Kavanaugh": "Sen. Dianne Feinstein's treatment of a more than 3-decade-old sexual assault allegation against Supreme Court nominee Brett Kavanaugh was unfair all around. It was unfair to Kavanaugh, unfair to his accuser and unfair to Feinstein's colleagues — Democrats and Republicans alike — on the Senate Judiciary Committee.

"Feinstein, a California Democrat, took the worst possible course by waiting until almost a week after Kavanaugh's confirmation hearing was completed to ominously announce that she had turned over 'information from an individual' about Kavanaugh to the FBI, and adding that she would be honoring the woman's 'strongly requested' confidentiality.

"Feinstein has been around Washington long enough to know that her opaque statement guaranteed that the contents of the letter, sent by a Stanford law professor on behalf of the accuser, would be pursued and publicized in short order. And they were." S.F. Chronicle

-- GRASSLEY STATEMENT: "The standard procedure for updates to any nominee's background investigation file is to conduct separate follow-up calls with relevant parties. In this case, that would entail phone calls with at least Judge Kavanaugh and Dr. Ford. Consistent with that practice, I asked Senator Feinstein's office yesterday to join me in scheduling these follow-ups. Thus far, they have refused. But as a necessary step in evaluating these claims, I'll continue working to set them up."

Good Monday afternoon. THE CHARLOTTE OBSERVER'S MARK PRICE: "Florence death toll rises to 19, including three young children, Carolinas officials say"

A message from UnitedHealth Group:

44 million Americans live in areas with primary care physician shortages, and the demand for primary care will increase significantly in the coming years. A new UnitedHealth Group research report finds that Nurse Practitioners can help close the primary care gap by 70 percent. Learn more.

WHAT'S ON THE PRESIDENT'S MIND -- @realDonaldTrump at 10:23 a.m.: "'Lisa Page Testimony-- NO EVIDENCE OF COLLUSION BEFORE MUELLER APPOINTMENT.' @FoxNews by Catherine

Herridge. Therefore, the case should never have been allowed to be brought. It is a totally illegal Witch Hunt!"

... at 10:36 a.m.: "Immediately after Comey's firing Peter Strzok texted to his lover, Lisa Page 'We need to Open the case we've been waiting on now while Andy (McCabe, also fired) is acting. Page answered, 'We need to lock in (redacted). In a formal chargeable way. Soon.' Wow, a conspiracy caught?"

2018 WATCH ... "Gun control group's political arm pouring millions into midterm elections," by WaPo's Katie Zezima: "The fund, the political arm of the gun control group Everytown for Gun Safety, plans to spend $8 million to $10 million in Georgia, Michigan, Nevada and New Mexico as an initial investment in the election. It will include contributions to candidates, as well as independent expenditures such as mail, television, radio and digital ads." WaPo

-- "Collins, under indictment, to remain on congressional ballot," by The Buffalo News' Robert J. McCarthy: "The [four] sources, who asked not to be identified, say Collins has heeded the advice of his criminal attorneys who fear the potential complications of protracted election law challenges almost sure to be initiated by Democrats if he removed his name from the congressional ballot.

"'It's very fair to say there's been a drastic shift,' said one of the sources, referring to the congressman's earlier commitment to cooperate with local GOP officials to find a substitute candidate." The Buffalo News

-- NEWSWEEK'S NICOLE GOODKIND: "Ted Cruz Campaign Is Mailing Donation Requests Disguised as Legal Summonses": "Ted Cruz's Texas senatorial campaign has sent hundreds of thousands of mailers seeking donations that are meant to look like official county summons, a high-ranking campaign official confirmed to Newsweek.

"The brown envelopes read 'SUMMONS ENCLOSED-OPEN IMMEDIATELY' in large black letters, and have a return address of 'official county summons.' While the letter inside the envelope was a donation form for the Cruz campaign, there was some fear that some

voters might be confused by the mailer and believe that they were required by law to pay a fee. ... Mailers of this kind are not illegal, as long as they include a clear disclaimer that the communication was paid for." Newsweek

GALLUP'S FRANK NEWPORT: "Record-Low 12% Cite Economic Issues as Top U.S. Problem"

2020 WATCH -- "Bloomberg May Run for President as a Democrat. His Views on Policing and #MeToo Could Be a Problem," by NYT's Alexander Burns in Seattle and Sydney Ember in Las Vegas: "Michael R. Bloomberg is actively considering a campaign for president as a Democrat in 2020, concluding that it would be his only path to the White House even as he voices stark disagreements with progressives on defining issues including bank regulation, stop-and-frisk police tactics and the #MeToo movement. ...

"Mr. Bloomberg, who has repeatedly explored running for president as an independent in the past, said in an interview that he now firmly believes only a major-party nominee can win the White House. ... Despite his obvious divergence from the Democratic Party on some key issues, advisers to Mr. Bloomberg believe he would have a plausible route to its presidential nomination if he stood out as a lonely moderate in a field of conventional liberals." NYT

-- DEMOCRATS are swearing off corporate PAC money. The party is becoming more and more liberal. Is Bloomberg the man for the moment?

TRADE WARS -- "Trump's nasty fight with China's middle class could extend the trade war," by WaPo's Danielle Paquette in Beijing: "As the trade war between the world's two largest economies unfolds on the international stage, analysts say Trump's brash approach to try to win concessions from Beijing has provoked a public fury that could ultimately thwart his efforts.

"Chinese President Xi Jinping's iron grip on power depends on healthy support from the nation's exploding middle class, and now that middle class, angered with Trump's escalating threats, expects

China's leader to respond with strength. This could make finding a compromise to end the escalation even more difficult. ... Before this latest Twitter onslaught, public opinion in China appeared in recent months to be leaning in Trump's favor. ... But to some Chinese, the U.S. president just looks like a bully." WaPo

-- **"For Apple, U.S.-China Trade Fight Grows Riskier,"** by WSJ's Tripp Mickle: WSJ

ON THE WORLD STAGE -- NYT'S DAVID SANGER, "North Korea's Trump-Era Strategy: Keep Making A-Bombs, but Quietly": "[Kim Jong Un] appears to be changing his approach, current and former American intelligence officials say, tailoring it to his reading of the man he met for a few hours three months ago in Singapore: President Trump.

"North Korea is making nuclear fuel and building weapons as actively as ever, the publicly available evidence suggests. But he now appears to be borrowing a page from Israel, Pakistan and India: He is keeping quiet about it, conducting no public nuclear demonstrations and creating no crises, allowing Mr. Trump to portray a denuclearization effort as on track." NYT

BRYAN BENDER and **JACQUELINE KLIMAS: "Trump's Space Force struggling to launch":** "The anti-Space Force movement — which includes generals and Republican and Democratic lawmakers — fears that carving the new branch out of the Air Force would siphon resources from other defense programs, strip them of authority or even weaken the military. They include lawmakers who serve on committees with direct jurisdiction over the issue ...

"They pose a potentially fatal danger to the president's proposal, which needs Congress to overcome a host of financial and logistical obstacles to carry out what would be the most sweeping U.S. military reorganization since the creation of the Air Force out of the Army Air Forces in 1947. Already, some leading players are predicting Trump will not get everything he wants." POLITICO

HEADLINES THE PRESIDENT WILL LIKE -- "Bombshell Washington Post Story On Trump Passport Crackdown Withheld, Distorted Key Facts," by HuffPost's Roque Planas in Austin, Texas: "On Aug. 29, The Washington Post published a bombshell report alleging that the Trump administration had orchestrated a campaign to systematically deny passports to Latinos born along the border. ... But the Post's report withheld key data, mischaracterized information and lobbed an allegation of fraud at a deceased doctor without speaking to his family members, who complained publicly, HuffPost has found. The piece has been substantially altered three times, including Thursday after multiple queries from HuffPost.

"The paper cited a number of specific policies to support its allegation of a crackdown: supposedly heightened scrutiny of birth certificates signed by midwives suspected of peddling fraudulent documents, supposedly unprecedented passport denials to people born far from the border, and a supposedly new focus on babies delivered by one Texas doctor. All three practices predate Trump." HuffPost

SCOOP -- "WikiLeaks docs show Assange bid for Russian visa," by AP's Raphael Satter: "The Nov. 30, 2010 missive is part of a much larger trove of WikiLeaks emails, chat logs, financial records, secretly recorded footage and other documents leaked to The Associated Press. The files provide both an intimate look at the radical transparency organization and an early hint of Assange's budding relationship with Moscow." AP

WHAT MICHAEL FLYNN IS UP TO -- "Former Trump adviser Michael Flynn, who has been laying low, makes rare public speech," by ABC's James Gordon Meek and Matthew Mosk: "Flynn's remarks on Friday were notable for what they left out. He did not mention President Trump, who fired him as national security adviser three weeks into the presidency. He said nothing about special counsel Robert Mueller's investigation ... Flynn's friends say his failing to generate headlines means mission accomplished." ABC

MEDIAWATCH -- Viet Dinh is now chief legal and policy officer at Fox, the new company being spun off after Disney's acquisition of 21st

Century Fox. He previously was an independent director on the 21st Century Fox board and a partner at Kirkland & Ellis.

-- **Colin Wilhelm** will be a financial and economic policy reporter at the Washington Examiner. He is currently a financial services reporter for POLITICO Pro.

WEEKEND WEDDINGS -- OBAMA ALUMNI -- Paul Rosen, a partner at the law firm Crowell and Moring and former chief of staff to former DHS Secretary Jeh Johnson, married **Casey Hernandez,** VP of content strategy for Herbalife Nutrition and a former senior Treasury communications official. Pool report: "The couple's first dance was to 'California Stars' by Wilco & Billy Bragg, and guests danced to a mariachi band performing the Horah." ***Wedding pic*** ... ***NYT announcement***

-- **Marissa Padilla,** VP for communications and public affairs at Global Strategy Group and a Sen. Tom Udall (D-N.M.) and Obama DOT and HHS alum, married **Michael Collins,** a principal at Mehlman Castagnetti and former chief of staff for Sen. Udall. ***With a pic. NYT announcement***

-- **Katie Niederee,** communications director for the majority staff on the Senate Finance Committee and a Sen. Jerry Moran (R-Kan.) alum, on Saturday married **Jon Rosborough,** program director at Statler Nagle. ***Wedding pic*** ... ***Another pic*** ... ***NYT announcement***

WELCOME TO THE WORLD -- Scott Eisner, SVP of African affairs at the U.S. Chamber, and **Ashley Eisner,** director of events and Chamber initiatives at the U.S. Chamber, welcomed Noa Catherine Eisner, who joins big sister Olivia. ***Pic***

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Subject: Morning Energy, presented by Chevron: Taking a look at Florence's landfall — Texas offers up coal example — Gov. Jerry Brown's satellite imagery

By Kelsey Tamborrino | 09/17/2018 05:47 AM EDT

With help from Annie Snider and Darius Dixon

FLORENCE'S FURY: Florence made landfall in North Carolina on Friday as a Category 1 hurricane and has since been downgraded to a tropical depression, but not without claiming at least 17 lives. Now, forecasters say the storm is expected to continue to produce excessive rainfall as it turns to the Mid-Atlantic and southern New England this week.

The storm's aftermath is spread across several states, after particularly targeting the Carolinas, and causing catastrophic flooding and massive outages. Roads to Wilmington, N.C., were cut off Sunday by the deluge of water. About 703,000 customers in North Carolina and about 52,000 customers in South Carolina reported electricity outages yesterday morning. President Donald Trump announced a disaster declaration in North Carolina, where gas stations are running low on fuel.

Coal ash collapse: Duke Energy said Saturday that heavy rains from Florence had caused the collapse of a slope in the coal ash landfill at a closed plant outside Wilmington. About 2,000 cubic yards of the toxic waste was displaced, the company said in a statement — roughly enough to fill two-thirds of an Olympic-sized swimming pool — although it could not say how much reached a lake that the plant used as a cooling pond or if any coal ash reached the Cape Fear River. Environmental groups that have been fighting in court to force the cleanup of coal ash pits pointed out that the lake is used for recreation and fishing. "After this storm, we hope that Duke Energy will commit itself to removing its ash from all its unlined waterfront pits and, if it refuses, that the state of North Carolina will require it to remove the ash from these unlined pits," Frank Holleman with the Southern Environmental Law Center said in a statement.

** **Presented by Chevron:** Chevron is helping to inspire future DOERS to use STEM for the good of us all. Watch the video. **

Manure lagoons have fared better so far, with North Carolina Gov. Roy Cooper telling reporters Sunday that the state's 4,000 lagoons were holding out. "We are closely monitoring hog lagoons, and we haven't had any reports of issues," he said, according to Bloomberg News. Florence hit the heart of North Carolina's hog farming industry, including Duplin County, which is home to 45 times as many hogs as humans.

Operators of the Colonial Pipeline — a key point for delivering fuel from the Gulf Coast to the Northeast — said it continues to operate at full capacity as of Sunday, while Kinder Morgan declared terminals in South Carolina also open and operational. Kinder Morgan added it was working with authorities to re-enter its facilities in Wilmington today, as well as resume construction activities on the Elba Island LNG terminal.

Related responses: Democrats ripped the Trump administration ahead of the impending storm for ignoring climate change. Democrats like Nancy Pelosi, John Kerry and Al Gore warned Friday that failing to take action on climate would leave the U.S. at the mercy of more extreme weather events like Florence, POLITICO's Anthony Adragna reports . "Every night on the television news is like a nature hike through the Book of

Revelation, and we've got to connect the dots between the cause and the effect," Gore told an audience in San Francisco.

— At FEMA, Administrator Brock Long praised the government's response to Florence and Trump's involvement in storm preparation. "I don't see any holes," he said on "Fox News Sunday." Long would not say, however, if he agrees with the Puerto Rican government-backed assessment that credited hurricanes Irma and Maria with nearly 3,000 deaths on the island last year.

— But on the Hill, the GOP-led House and Senate have so far been less aggressive in investigating the federal disaster response in Puerto Rico when compared to their response to Hurricane Katrina, which crashed into the Gulf Coast in 2005, POLITICO's Danny Vinik reports.

WELCOME TO MONDAY! I'm your host, Kelsey Tamborrino. Nicolette Nye from the National Ocean Industries Association knew former President Franklin D. Roosevelt issued the most executive orders, with 3,721 orders over four terms. For today: Which current senator appeared — and won — on the former TV game show "High Rollers"? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter @kelseytam, @Morning_Energy and @POLITICOPro.

TEXAS POWERS THROUGH: As Energy Secretary Rick Perry argues coal power plant shutdowns could put the nation's grid at risk, Texas is shrugging off fears that less coal leads to outages. Pro's Eric Wolff reports this morning on the resilience of the Texas grid following a summer of tight power supplies. Texas, Eric writes, "could offer lessons to other grid operators struggling to confront the retirements of coal or nuclear power plants."

Breaking it down: Power market advocates pointed to Texas' success this summer as an example of market forces sending the right signals to power plant owners to keep the lights on, or to retire. "Power plants that are uneconomic should shut down," said Pat Wood, former chairman of both Texas' grid operator and FERC. The state's power market, meanwhile, was helped by three key factors this summer: generators taking advantage of high wholesale prices to run rarely used plants, customers who cut demand during peak times, and a windy summer that kept wind turbines spinning. Read more.

SOME SATELLITE IMAGERY: California Gov. Jerry Brown closed out Friday's Global Climate Action Summit by announcing the launch of California's "own damn satellite to figure out where the pollution is and how we're going to end it." The state will work alongside the San Francisco-based Planet Labs to launch a satellite capable of tracking climate-altering methane emissions, Brown said. The effort will draw from the California Air Resources Board's expertise, POLITICO's Jeremy B. White reports.

INTERIOR CHIEF'S DESIGN CONNECTION SHEDS NEW LIGHT: Interior chief of staff Scott Hommel's July financial disclosure form shows that Hommel's wife Lucretia's interior design firm Snobz Design is worth up to $50,000. The form, released Friday, comes after an earlier POLITICO report that highlighted work Lucretia Hommel did for Kimberly Bellissimo, a political consultant who has worked for Interior Secretary Ryan Zinke. Hommel also listed his wife as owning DMConsulting, a business he reported as being worth up to $15,000, Pro's Ben Lefebvre reports.

Also released: Assistant Secretary for Insular and International Affairs Doug Domenech's financial disclosure form, which listed an income of $7,306 received from the conservative think tank Texas Public Policy Foundation, where he worked as a director until January 2017.

EPA SCIENCE OFFICIAL EXITS: Richard Yamada, the head of EPA's Office of Research and Development, is leaving the agency, Pro's Annie Snider reports. Yamada played crucial roles in some of the agency's most controversial science policies, including the Trump administration's "secret science" policy that limits the agency's use of health studies. "Richard has been a valuable member of the EPA team. I'm sorry to see

him leave, but he has an exciting new opportunity, and we all wish him the best in his next endeavor," acting Administrator Andrew Wheeler said in a statement.

MORE TIME NEEDED ON CPP: The Trump administration and its supporters urged a federal court to give EPA more time to repeal the Clean Power Plan in filings Friday, as well as install its recently proposed replacement rule, Pro's Alex Guillén reports. The filings were in response to an earlier request from Democratic attorneys general and environmentalists that the eight-judge panel issue its ruling on the Clean Power Plan now.

STUDIES FIND ETHANOL DEMAND DOING FINE: Two studies out last week showed low costs have kept ethanol in the fuel system, even as EPA has expanded refinery waivers that ethanol producers have said are undermining the Renewable Fuel Standard. University of Illinois economist Scott Irwin found that ethanol blend rates hadn't budged when accounting for seasonal changes in consumption, Eric reports, while refining giant Valero released a separate study prepared by Charles River Associates that came to a similar conclusion, arguing that as long as the price of Renewable Identification Number stayed above a certain level, fuel would be blended at the usual rates.

In response to the Irwin report, Renewable Fuels Association Executive Vice President Geoff Cooper — the incoming CEO of the group — said the "economic incentive to expand blending that was previously shouldered by the RIN must now be shouldered primarily by the ethanol-gasoline spread. This results in artificially low ethanol prices and highly compressed margins — also known as 'economic harm' — for ethanol producers."

AND THEN THERE WERE 98: After 49 years of generating electricity, today the nation's oldest commercial nuclear reactor powers down forever. The Oyster Creek plant is closing more than a decade before its license expires under an agreement with the state of New Jersey that shortened the reactor's lifespan in exchange for waiving a requirement that new cooling systems be built. The fuel will be removed from the 608-megawatt unit over the next two weeks, starting today, according to Exelon's filings with the Nuclear Regulatory Commission earlier this year. Unlike almost any other power plant type, once a nuclear plant begins the decommissioning process, there's no undoing it. The spent fuel rods stay on-site with nowhere to go and big chunks of the plants are eventually dismantled and taken away — a process, in Oyster Creek's case, that Exelon says will take 60 years (10 years longer than it provided electricity). The U.S. nuclear fleet dips to 98 reactors.

MAIL CALL! YOU'RE INVITED: Pennsylvania Sen. Pat Toomey (R-Pa.) invited Wheeler to visit Monroe Energy and Philadelphia Energy Solutions, two oil refineries in the Philadelphia area, in a letter last week. "The RFS picks winners and losers amongst sources of energy, and has named merchant refiners, particularly those in the Philadelphia region, the losers," Toomey wrote.

— **Phasing out:** A spate of major air conditioning and refrigerator manufacturers and the Natural Resources Defense Council signed onto a letter to the California Air Resources Board supporting the replacement of super-polluting hydrofluorocarbons in home air conditioning systems nationwide with safer refrigerants by 2023. The letter comes as several states last week committed to reducing their use of HFCs.

— **Ride along:** Close to 100 House lawmakers sent a letter urging leadership to reject anti-wildlife riders in the final version of the Interior-Environment fiscal 2019 spending bill, including any that could be seen as an attack on the Endangered Species Act and wildlife.

WHERE'S PERRY? The Energy secretary continues his foreign travels today in Vienna for the 2018 International Atomic Energy Agency General Conference.

MAKING HISTOR-IC LEASING: The House Natural Resource Committee will hold an oversight hearing on the challenges in the leasing of historic buildings in the Natural Park system. The field hearing in Hot Springs National Park, Ark., comes days after the committee advanced bipartisan legislation, H.R. 6510 (115) ,

that would create a dedicated funding source to address billions in the maintenance backlog on the nation's public lands.

MOVERS, SHAKERS: Ann Navaro is joining Bracewell as a partner in the firm's Environmental Strategies Group, after working the past two years within the Interior Department where she most recently as counselor to the solicitor. Navaro also previously held senior legal and policy positions at the U.S. Army Corps of Engineers and DOI. She also spent 14 years handling litigation in the Environment and Natural Resources Division at Justice Department.

— **National Association of Energy Service Companies** announced Timothy Unruh as the trade group's next executive director beginning Jan. 1, 2019. Unruh most recently served in as director of the Energy Department's federal energy management program and as deputy assistant secretary of renewable power.

QUICK HITS

— "New gas leak reported in Lawrence was unrelated to previous incident," WBZ-TV.

— "GAO may weigh in on Zinke's temporary filling of political positions," Federal News Radio.

— "As administration pursues ANWR drilling, Trump official accuses federal employees of creating 'road bumps,'" KTOO Public Media.

— "Former Colorado nuke site opens to public as wildlife refuge," The Associated Press.

— "Facing heat for 2017, FEMA ramps up hurricane prep for Florence," McClatchy.

— "Big-game hunters infuriated by Trump elephant trophy debacle," The Hill.

— "Hurricane Florence's surge is expected to hit homes that already cost the government millions," ProPublica.

HAPPENING THIS WEEK

MONDAY

9 a.m. — The Georgetown University Law Center's Supreme Court Institute media briefing on "Anticipating the Supreme Court's October Term 2018: What to Expect," 120 F Street NW.

10 a.m. — The Aspen Institute book discussion on "Guide to Chinese Climate Policy," 2300 N Street NW.

10:30 a.m. — The Cato Institute symposium on "The Supreme Court: Past and Prologue," 1000 Massachusetts Avenue NW.

Noon — Center for Climate and Energy Solutions webinar on "Picking Up Speed: An Outlook for Electric Vehicles."

1 p.m. — The American Bar Association webinar on "On the Docket: Previewing the 2018 Supreme Court Term."

1:30 a.m. — Plant Oil Powered Diesel Inc. discussion on "Carbon Tax - Industry, Environmentalist and Citizen Views," TBA.

3 p.m. — House Natural Resources Committee field hearing on "Historic Leasing in the National Park System: Assessing Challenges and Building on Successes," Hot Springs National Park, Ark.

TUESDAY

9:45 a.m. — Senate Environmental and Public Works Committee business meeting on various bills.

10 a.m. — Senate Commerce Oceans, Atmosphere, Fisheries, and Coast Guard Subcommittee hearing on "Fish Fights: An Examination of Conflicts Over Ocean Resources," 253 Russell.

Noon — The Heritage Foundation discussion on "Supreme Court Preview of the 2018 Term," 214 Massachusetts Ave NE.

Noon — The Information Technology and Innovation Foundation discussion on "Clean Energy Innovation: Making a Carbon Tax More Affordable," 2247 Rayburn.

Noon — The Atlantic Council discussion on "Dispatches from Our Energy Future," 1030 15th Street NW.

12:30 p.m. — The Washington Legal Foundation briefing on "The U.S. Supreme Court: October Term 2018 Preview," 2009 Massachusetts Avenue NW.

2:30 p.m. — Senate Armed Services Cybersecurity Subcommittee closed hearing on "Interagency Coordination in the Protection of Critical Infrastructure," SVC-217.

THURSDAY

9 a.m. — The Woodrow Wilson Center's China Environment Forum discussion on "Urban Waste Revolution: Turning China's Sludge and Garbage Mountains into Low-Carbon Solutions," 1300 Pennsylvania Avenue NW.

9:30 a.m. — Senate Judiciary Committee business meeting on Brett Kavanaugh's nomination to the Supreme Court, 216 Hart.

11 a.m. — National Journal webinar on "The Changing Energy Grid."

FRIDAY

9 a.m. — Business Network for Offshore Wind and the Sierra Club Virginia Chapter host 2018 Virginia Offshore Wind Executive Summit, Norfolk, Va.

Noon — The Federalist Society for Law and Public Policy Studies discussion on "Supreme Court Preview: What Is in Store for October Term 2018?" 1127 Connecticut Avenue NW.

Noon — The Heritage Foundation discussion on "The Fuel Cell Corporate Scandal in Delaware: Citizens Forces to Subsidize BloomEnergy Boondoggle," 214 Massachusetts Ave NE.

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Stories from POLITICO Pro

Wilmington cut off as flooding fears rise Back

By Associated Press | 09/16/2018 03:49 PM EDT

WILMINGTON, N.C. — Catastrophic flooding from Florence spread across the Carolinas on Sunday, with roads to Wilmington cut off by the epic deluge and muddy river water swamping entire neighborhoods miles inland. "The risk to life is rising with the angry waters," Gov. Roy Cooper declared as the storm's death toll climbed to 17.

The storm continued to crawl westward, dumping more than 30 inches (75 centimeters) of rain in spots since Friday, and fears of historic flooding grew. Tens of thousands were ordered evacuated from communities along the state's steadily rising rivers — with the Cape Fear, Little River, Lumber, Waccamaw and Pee Dee rivers all projected to burst their banks.

In Wilmington, with roads leading in and out of the city underwater and streams still swelling upward, residents waited for hours outside stores and restaurants for basic necessities like water. Police guarded the door of one store, and only 10 people were allowed inside at a time.

Woody White, chairman of the board of commissioners of New Hanover County, said officials were planning for food and water to be flown into the coastal city of nearly 120,000 people.

"Our roads are flooded," he said. "There is no access to Wilmington."

About 70 miles (115 kilometers) away from the coast, residents near the Lumber River stepped from their homes directly into boats floating in their front yards; river forecasts showed the scene could be repeated in towns as far as 250 miles (400 kilometers) inland as waters rise for days.

Downgraded overnight to a tropical depression, Florence was still massive. But with radar showing parts of the storm over six Southeastern states and flood worries spreading into southern Virginia and West Virginia, North and South Carolina were still in the bull's-eye.

Half way around the world, meanwhile, Typhoon Mangkhut barreled into southern China on Sunday after lashing the Philippines with strong winds and heavy rain that left dozens dead. More than 2.4 million people were evacuated from China's southern Guangdong province ahead of the massive typhoon, the strongest to hit the region in nearly two decades.

In North Carolina, fears of what could be the worst flooding in the state's history led officials to order tens of thousands to evacuate, though it wasn't clear how many had fled or even could. The head of the Federal Emergency Management Agency, Brock Long, said officials were focused on finding people and rescuing them.

"We'll get through this. It'll be ugly, but we'll get through it," Long told NBC's "Meet The Press."

President Donald Trump said federal emergency workers, first responders and law enforcement officials were "working really hard." As the storm "begins to finally recede, they will kick into an even higher gear. Very Professional!" he declared in a tweet.

The storm's death toll climbed to at least 17 when a 3-month-old child was killed when a tree fell across a mobile home in North Carolina. Earlier, officials said three people died in separate, weather-related traffic accidents in South Carolina.

Victor Merlos was overjoyed to find a store open for business in Wilmington since he had about 20 relatives staying at his apartment, which still had power. He spent more than $500 on cereal, eggs, soft drinks and other necessities, plus beer.

"I have everything I need for my whole family," said Merlos. Nearby, a Waffle House restaurant limited breakfast customers to one biscuit and one drink, all take-out, with the price of $2 per item.

Kenneth Campbell had donned waterproof waders intending to check out his home in Lumberton , but he didn't bother when he saw the Coast Guard and murky waters in his neighborhood.

"I'm not going to waste my time. I already know," he said.

As rivers swelled, state regulators and environmental groups were monitoring the threat from gigantic hog and poultry farms located in low-lying, flood-prone areas.

The industrial-scale farms contain vast pits of animal feces and urine that can pose a significant pollution threat if they are breached or inundated by floodwaters. In past hurricanes, flooding at dozens of farms also left hundreds of thousands of dead hogs, chickens and other decomposing livestock bobbing in floodwaters.

Stream gauges across the region showed water levels rising steadily, with forecasts calling for rivers to crest Sunday and Monday at or near record levels. The Defense Department said about 13,500 military personnel had been assigned to help relief efforts.

Authorities ordered the immediate evacuation of up to 7,500 people living within a mile of a stretch of the Cape Fear River and the Little River, about 100 miles (160 kilometers) from the North Carolina coast. The evacuation zone included part of the city of Fayetteville, population 200,000.

John Rose owns a furniture business with stores less than a mile from the river. Rain-soaked furniture workers helped him quickly empty more than 1,000 mattresses from a warehouse in a low-lying strip mall.

"It's the first time we've ever had to move anything like this," Rose said. "If the river rises to the level they say it's going to, then this warehouse is going to be under water."

Fayetteville city officials, meanwhile, got help from the Nebraska Task Force One search and rescue team to evacuate 140 residents of an assisted-living facility to a safer location at a church.

Rainfall totals were stunning.

In Swansboro, North Carolina, nearly 34 inches (85 centimeters) of rain had fallen by Sunday afternoon and 20 other places in North Carolina had at least 20 inches, according to the National Weather Service. Another 30 sites in North and Carolina had at least 10 inches (25 centimeters).

Water on the Cape Fear River near Chinquapin got so high that electronic instruments used to monitor flooding quit working after it became submerged, the U.S. Geological Survey said. The same thing happened on the Trent River.

Still, there was some good news: Power outages in the Carolinas and Virginia were down to about 580,000 homes and businesses after reaching a high of about 910,000 as the hurricane plowed into the coast. Utilities said some outages could last for weeks.

In Goldsboro, North Carolina, home of Seymour Johnson Air Force Base, roads that frequently flood were already closed Saturday by rushing water. Dozens of electric repair trucks massed to respond to damage expected to hit central North Carolina as rainwater collected into rivers headed to the coast.

Duke Energy said heavy rain caused a slope to collapse at a coal ash landfill at a closed power station outside Wilmington late Saturday, but there was no indication contamination had drained into the nearby Cape Fear River. The company initially estimated that about 2,000 cubic yards (1,530 cubic meters) of ash were displaced at the landfill, enough to fill about 180 dump trucks. Sheehan said that estimate could be revised.

Near the flooded-out town of New Bern, where about 455 people had to be rescued from the swirling flood waters, water completely surrounded churches, businesses and homes. In the neighboring town of Trenton, downtown streets were turned to creeks full of brown water.

The rain was unrelenting in Cheraw, a town of about 6,000 people in northeastern South Carolina. Streets flooded and Police Chief Keith Thomas warned people not to drive, but the local food and gas store had customers.

"As you can tell, they're not listening to me," he said.

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Democrats: 'Storm of a lifetime' shows cost of Trump's climate rollbacks Back

By Anthony Adragna | 09/14/2018 06:36 PM EDT

Democrats pounded the Trump administration on Friday for ignoring climate change, warning that failing to take action would leave the U.S. at the mercy of more extreme weather events like Hurricane Florence.

Nancy Pelosi, John Kerry and Al Gore all ripped the Trump administration for gutting the efforts to curb the burning of fossil fuels and reneging on U.S. promises to work with other nations to combat climate change, even as the price tag for powerful storms grew into the hundreds of billions of dollars.

"Every night on the television news is like a nature hike through the Book of Revelation, and we've got to connect the dots between the cause and the effect," Gore told a climate conference in San Francisco. "Some people evidently can still deny the reality [of climate science]— it's a little bit harder to deny the 3,000 deaths in Puerto Rico from Hurricane Maria last year."

The former vice president's comment referred to the controversy that Trump sparked on Thursday when he asserted without evidence that Democrats fabricated the conclusion that nearly 3,000 people had died because of the storm that decimated the U.S. territory last year.

The Democrats' criticism came as Hurricane Florence pummeled the Carolinas, swamping coastal areas with its powerful storm surge and dumping heavy rain across the region. So far at least four people have died since the storm came ashore as a Category 1 hurricane early Friday morning.

Pelosi accused the administration of listening to "naysayers" who don't want to transition the electric grid to clean energy sources. She asserted that fossil fuels are "contributing" to the ferocity of severe weather events.

"This is something that we have to look at in a big way and it's not served by denial of the facts," the House minority leader told reporters in Washington.

Meanwhile, Kerry called Trump's decision last year to withdraw from the Paris climate agreement "one of the single greatest acts of irresponsibility" by an American president in history. He accused Trump of lying to the country about the costs of the Paris pact, and warned that the $265 billion combined costs from hurricanes Harvey, Irma and Maria last year showed the country was already paying a heavy price

"That [$265 billion] is one third of the Defense Department budget. It's more money than we put into the Energy Department, the Commerce Department, the Education Department and three or four other departments put together. That's a burden," former Secretary of State Kerry told the Global Climate Action Summit in San Francisco.

"For the president to stand up in front of the American people and say it's too much burden, we have to get out of Paris, and withdraw American leadership from an issue that is life and death is one of the single greatest acts of irresponsibility by a president of the United States anywhere, at any time," he added.

Rep. Don Beyer (D-Va.) tweeted headlines describing four recent dire headlines about hurricanes, including one describing Hurricane Florence as "the storm of a lifetime."

"We are running out of words to convey a truth that is staring us in the face: climate change is real," he wrote.

Democratic former Michigan Gov. Jennifer Granholm said Florence and Super Typhoon Mangkhut near the Philippines are sending a message: "Right now, we are seeing the costs of inaction play out in real time," she said.

Florence made landfall near Wilmington, N.C., just days after a new study from scientists at Stony Brook University and Lawrence Berkeley National Laboratory concluded the storm will bring 50 percent more rainfall thanks to climate change fueled by human activity. Earlier studies have examined the impacts of climate change following storms, but the researchers say that forecasting has now evolved to the point that scientists believe they predict the impacts beforehand.

The study also concluded the storm was about 50 miles larger in diameter at landfall because of human-driven climate change.

Pelosi and other Democratic lawmakers held their press conference to highlight the ongoing struggles of Puerto Rico and Virgin Islands a year after their hurricanes. It came a day after Trump claimed that an independent study finding nearly 3,000 U.S. citizens died in Hurricane Maria was a conspiracy by Democrats to damage his presidency.

Lawmakers from both parties have said they expect Congress will have to tackle a disaster relief package following Florence, but it was too early to estimate how much money will be required and when it will be taken up.

"I think we're going to need more money," Pelosi said. "But we'll have to see what the needs are."

Although September is a peak month for the Atlantic hurricane season, other Democrats seized on the extreme weather as a sign that climate change had arrived.

"Climate change is already happening and caused by human activity," Sen. Brian Schatz (D-Hawaii) tweeted earlier this week. "As the ocean gets warmer storms will gain more energy and get larger. No individual storm is caused by climate change, but the likelihood of more and bigger storms is absolutely caused by climate change."

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FEMA chief dodges Puerto Rico hurricane death toll Back

By Caitlin Oprysko | 09/16/2018 10:28 AM EDT

FEMA Administrator Brock Long on Sunday would not say whether he agrees with the Puerto Rican government-backed assessment that credited hurricanes Irma and Maria with nearly 3,000 deaths on the island last year.

"It's hard to tell what's accurate and what's not," Long said on "Fox News Sunday."

He noted that counting storm deaths is not a part of the purview of the Federal Emergency Management Agency, except for when calculating funeral benefits put forward by the agency. Disagreements over the official death toll in Puerto Rico, he said, may stem from differences in opinion over what constitutes a storm-related death.

"There are several different studies out there that are all over the place when it comes to death. There is a difference between direct deaths and indirect deaths," he said. "One study could have studied the entire year that's gone by, about the number of indirect deaths over time or whatever, you know, versus a six-month study in George Washington [University]. There's a lot of issues with numbers being all over the place."

The government response to the pair of hurricanes has been widely panned in the year following the storms, and for months the official death toll accepted by the government was 64. An independent analysis from researchers at George Washington University released in August put that number at 2,975 over the six months following the storm. The Puerto Rican government has since accepted that number as the official death toll.

Long was asked to respond to a series of tweets from President Donald Trump on Thursday in which he dismissed the revised death toll as a partisan ploy manufactured by Democrats to make him look bad and criticized officials in Puerto Rico for their inability to accurately tally the casualties.

The controversy heated up just as Hurricane Florence took aim at the Carolinas last week. The death toll from that storm stands at 14, but Long warned that the region is not out of the woods yet. Flooding has increasingly become a concern.

He said government's response to Florence was as good as it could be and praised Trump's involvement in storm preparation.

"I don't see any holes," Long said. "I think we were as prepositioned from the government standpoint as we could be."

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Trump gets pass from Congress on Puerto Rico deaths Back

By Danny Vinik | 09/16/2018 05:00 PM EDT

After Hurricane Katrina crashed into the Gulf Coast in 2005, Congress sprang into action.

Seventeen days after the storm made landfall, the Republican-led House created a bipartisan select committee to investigate the Bush administration's response to the storm. In the Senate, the committee with oversight over the Federal Emergency Management Agency held 22 hearings in six months. Within eight months, both committees had released 500-plus-page investigations into the Bush administration's handling of the crisis with dozens of recommendations for reform.

In the year since Hurricane Maria slammed into Puerto Rico, killing nearly 70 percent more people than Katrina, the GOP-led House has yet to create a select committee to oversee the Trump administration's recovery efforts. The Senate Homeland Security and Governmental Affairs Committee, which oversees FEMA, has held just two hearings related to the storm. Neither the House nor the Senate have issued any major reports, and none appear to be in the works.

The lack of congressional oversight is especially striking since serious questions remain unanswered about a hurricane that killed an estimated 2,975 people, according to researchers at George Washington University. President Donald Trump falsely claimed last week that the death count was inflated as part of a partisan Democratic attack. But with only limited oversight from Congress, disaster experts contend, it is difficult to hold officials accountable for delayed responses last year, to help FEMA learn from its mistakes or to provide a documented accounting of what happened in order to refute claims like the one in Trump's tweet.

"Puerto Rico is getting far less attention, in spite of it being one of the worst disasters in modern American history, than Katrina and far less attention than we got for Superstorm Sandy," said Irwin Redlener, director of the National Center for Disaster Preparedness at Columbia University. "From the beginning, the handling of Maria's consequences both from the White House and Congress has been abysmally inadequate."

After being slow to demand further oversight from congressional leaders, Democrats are now sharply criticizing Republicans for failing to act, calling for an independent commission to investigate the storm and promising to open a new investigation if they win back the House in November. They say that Republicans are providing political cover for Trump, whose response to the Puerto Rican disaster was slower than his efforts to clean up damage from Hurricane Harvey in Texas just a month earlier.

Republicans reject the criticism that they have not fully investigated the storm. They point to hearings across different committees, congressional trips to Puerto Rico and thousands of documents reviewed by congressional staff. The House has also twice passed bills aimed at helping FEMA to better prepare for future disasters.

"[The committees] have conducted rigorous oversight of the U.S. government's response following the storms including holding full committee and subcommittee hearings, a field hearing, and bipartisan briefings," said AshLee Strong, press secretary for House Speaker Paul Ryan (R-Wis.) "This work is not over as we continue to conduct oversight including Congressional requests of the Government Accountability Office and forthcoming review of the Inspector General's audit."

Nonetheless, a two-month POLITICO review of Congress' actions after Katrina and Maria found that the House and Senate acted far more aggressively in the year after Katrina than in the past year after Maria.

Soon after Katrina devastated the Gulf Coast, House GOP leaders called for an investigation and created a select committee to investigate the storm. Democrats, in fact, voted almost unanimously against the creation of the committee, arguing that Republicans, who would lead the committee, would use it to whitewash the Bush administration's response to the storm. House Minority Leader Nancy Pelosi (D-Calif.) told Democrats to boycott the committee altogether, but representatives from the Gulf states participated anyway, believing that the committee, despite its makeup, was the best chance to get information out of the administration.

Former Rep. Charlie Melancon of Louisiana, the ranking Democrat on the committee, recalled that he didn't remember the committee accomplishing much. "In my mind, it was to make it look like Congress or GOP leadership was doing something," he said.

Still, the committee held nine public hearings and reviewed more than 500,000 pages of documents, according to the 582-page report, titled "A Failure of Initiative," that was released less than six months after Katrina. It provided an avenue for Democrats to keep pressure on the administration to hand over documents related to the storm and make officials available for interviews.

"The mere fact that there was a bipartisan select committee appointed by the speaker is pretty profound in light of what we're seeing with Puerto Rico now," said Casey O'Shea, a former chief of staff to Melancon who is now serving as a senior adviser to the Democratic Congressional Campaign Committee. "In Katrina, we always said that an unprecedented catastrophe deserves an unprecedented response. That was our mantra. With Maria, what we're seeing with Puerto Rico is anything but that."

Former Rep. Tom Davis (R-Va.), who chaired the committee, defended its work, arguing that it was ultimately critical of the administration. "We were very serious about it," he said.

Across the Capitol, the Senate conducted its own investigation into the Bush administration's response to Katrina through the Senate government affairs committee. Over six months, the committee held 22 hearings with 85 witnesses, reviewed over 838,000 pages of documents and interviewed 325 people involved in the response. Many of the hearings focused on narrow issues, such as search-and-rescue efforts after the storm, and the committee produced its own 737-page report, titled "A Nation Still Unprepared."

"We really did devote a lot of time to it," said former Sen. Joe Lieberman of Connecticut, who was the top Democrat on the committee. "We went down to the Gulf Coast a couple times. As a result, the media followed us, certainly to the Gulf Coast area but more broadly. That meant it was harder for the executive branch to ignore us."

Unlike in 2005 and 2006, oversight after Maria has been split among a number of different committees, which critics say dilutes the impact of any individual probe.

The House Oversight and Government Reform Committee has held two hearings—both subcommittee, not full committee hearings—related to the 2017 hurricane season, reviewed more than 17,000 documents and held multiple briefings for committee members. The Transportation committee has held four hearings on the 2017 hurricanes, as well as a roundtable discussion, and it has had briefings for staff and meetings with agency officials. The Energy and Commerce Committee and Committee on Natural Resources have each held four hearings, while the Homeland Security Committee has held two hearings.

Democrats remain critical of the oversight. On Sept. 6, Rep. Elijah Cummings of Maryland, the top Democrat on the Oversight committee, released a report complaining about a lack of hearings and criticizing the committee chairman, Trey Gowdy of South Carolina, for refusing to request documents from the administration, including communications between FEMA and Department of Homeland Security leaders.

"It's not that Democrats aren't doing anything," said a senior Democratic aide. "It's just that Democrats don't control the gavels. We can't call up administration witnesses each week."

The same day that Democrats released their report, Gowdy sent a letter to FEMA requesting all communications from 13 FEMA officials related to 10 different aspects of the agency's response to the storm, including the lack of qualified personnel, wiring issues with the electrical system and problems with existing disaster plans. It was just the second letter requesting information about FEMA sent by the committee and the first since Oct. 11, 2017.

Amanda Gonzalez, communications director for the Oversight committee, defended its work, noting that the committee has been in touch with FEMA on a "near-weekly" basis. The committee also intends to reschedule a hearing, originally scheduled for Sept. 7, with FEMA Administrator Brock Long, which was postponed as a result of Hurricane Florence.

In the Senate, oversight has come largely from the Government Affairs Committee and Energy and Natural Resources Committee, each of which has held two hearings into the storm. Sen. Lisa Murkowski (R-Alaska), the chairman of the Energy and Natural Resources Committee, visited Puerto Rico in November, while Sen. Ron Johnson (R-Wis.), the chairman of the Oversight Committee, visited the island last October.

Republicans also point to the Disaster Recovery Reform Act as a major reform effort resulting from the 2017 hurricane season. The legislation, which includes many changes designed to help communities better prepare for a major disaster, was introduced in the House last November and has passed the lower chamber twice. Johnson, along with Sen. Claire McCaskill (D-Mo.), the ranking member of the committee, introduced similar legislation in June. The full Senate has yet to take it up.

While many disaster recovery experts are optimistic about those reforms, they remain critical of the lack of oversight after Maria and said it's a missed opportunity to learn lessons from the storm. In the House, the disparate nature of the oversight meant no single committee has been looking comprehensively at the response. The piecemeal approach, they said, reduces attention toward the government's response, lessening the pressure on the Trump administration and resulting in important issues falling through the cracks.

It's also resulted in the administration turning over far fewer documents to Congress. The Oversight Committee has reviewed roughly 17,000 documents related to the storms, compared with more than 500,000 documents reviewed by the Katrina select committee. Other committees did not respond to questions about how many documents they have reviewed related to the 2017 hurricane season.

Meanwhile, the Senate has barely investigated the storms at all. Johnson, for instance, hasn't sent a single letter to FEMA requesting documents or further information about the administration's response to the storm, according to the committee's website.

Ben Voelkel, communications director for the committee, defended its response: "The chairman and his staff continue to conduct oversight and push forward legislation to enhance our nation's response to and recovery from disasters."

A spokesperson for Senate Majority Leader Mitch McConnell did not respond to multiple requests for comment.

Disaster-recovery specialists portrayed the Senate's response as lackluster and its failure to hold hearings a missed opportunity.

"A lot of times, there's a lot of lessons learned that can come out of those hearings," said Michael Coen, who was chief of staff at FEMA during the Obama administration. "They aren't going to find anything if they didn't look."

Davis, the former chairman of the Katrina select committee, said that increased partisanship has made it harder for Congress to conduct oversight as any findings become political fodder for the other side. He declined to comment on whether Congress should create a select committee to investigate the administration's response to Hurricane Maria, saying it was "leadership's choice" but said select committees can work well if you get "serious members and take partisanship out of it."

He added, "But it's hard to get there these days. Everyone gets caught up in elections. We need to get back to that and get some good answers and let the chips fall where they may."

Democrats have introduced legislation in the House and Senate to set up an independent commission to investigate the response to the storms. Lieberman, who co-authored legislation with the late Sen. John McCain (R-Ariz.) that created a similar commission after 9/11, said such commissions can work well and worried that it becomes harder to conduct such oversight as time goes by.

"People in Puerto Rico really suffered, and there is a need for a full-fledged investigation soon or else all the evidence will get stale," Lieberman said.

For Puerto Rico and the U.S. Virgin Islands, one big problem, experts said, is a lack of representation in Congress. As territories, they each have one nonvoting representative in the House and no senators. That makes it even harder to pressure congressional leaders to investigate the storms.

"It feels like Maria is kind of a peripheral issue," said the senior Democratic aide. "It's an island in the Caribbean in that most people don't think about regularly and that's just the disaster of having a disaster in Puerto Rico."

The aide added that Puerto Rico Gov. Ricardo Rosselló did not help his own cause when he refused to criticize the Trump administration's response in the first few weeks after the storm. "He tried to play both sides in this. He tried to cozy up to the Trump administration, play to Trump's ego, say everything is good. But when he talked to congressional Democrats, he said we really are getting screwed here."

"I do think he has a point in playing it that way," the aide added, "[but] it took the wind out of the sails for oversight."

Redlener, the disaster management expert at Columbia, agreed that a select committee would be helpful to conduct oversight into the storm. But he said that Congress needs to go further a create a permanent select committee charged with investigating the government's response to natural disasters, from hurricanes to wildfires.

"It goes beyond getting information and headlines but what is the enduring agenda that helps make sure the lessons are absorbed properly, learned and applied," he said. "There's the experience of the disaster and those experiences should be learned as lessons. But if we don't apply those lessons from the last disasters, we'll be left with repeating the same mistakes over and over again."

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Power sector awaits verdict as Texas faces summer grid test Back

By Eric Wolff | 07/16/2018 02:38 PM EDT

The Texas power grid is facing one its biggest tests in years as summer heat bears down — and whether it can keep the lights on and air conditioners running could have a big influence on electricity policies far beyond the state's borders.

The shift in the fuel mix is taking place faster in the Lone Star State than in other parts of the country, as natural gas and renewables provide an ever-larger share of the power managed by the Electric Reliability Council of Texas. But many of the biggest markets in the U.S., including the PJM Interconnection, are heading in the same direction, with cleaner sources of electricity eroding coal's dominance, a trend that's prompted Energy Secretary Rick Perry, at the urging of the coal industry, to push for the federal government to step in and prop up the struggling plants.

Coal-fired power generators contributed nearly 40 percent of the Texas' power mix a decade ago, but that share has shrunk to 17 percent this year as a spate of money-losing plants retired, squeezed out by cheap, abundant natural gas and one of the nation's fastest growing green energy sectors.

The retirement of 5,000 MW of power plants in the past year has left the ERCOT power market with a razor-thin reserve margin — less than 11 percent above the expected peak demand — and experts are watching to see if the state that led the nation in power market deregulation can handle the strain of a Texas summer.

"If something goes wrong, there will be lessons, if something goes right there may be lessons in that. Texas is pushing the envelope on the value of the wind, we're learning a lot," FERC Commissioner Cheryl LaFleur said.

Unlike other markets around the country, ERCOT offers no long-term capacity market to pay power plants to remain on standby, and NERC warned earlier this year that the power plant retirements there could lead to rolling brownouts when the peak August demand hits the state.

For the state's power companies, this summer will be a test case of whether the ERCOT market structure is sufficient to ensure a stable and reliable grid. ERCOT is firmly committed to its "energy only" market, which primarily pays generators for only the electricity they can put on the grid at the ever-changing market price.

"If I am one of the merchant generators down there, I am gearing up for this. This is my Super Bowl to prove that my plants are going to run. I'm ready to go," said FERC Commissioner Robert Powelson, who is resigning later this summer.

So far the market is holding up. During three days of record demand in June and another in July, ERCOT did not have to invoke even the first of its three-level emergency alert system.

"The PUC let market participants know, 'We're not going to take out of market action to do anything,' They said you better be ready," said a Texas utility source, who was not authorized to speak publicly. "Everyone did extra preventative maintenance, got extra chemicals on hand. We didn't want someone to write the story that the market collapsed and fell apart. This is a shining moment for the market and Texas."

Texas has one of the few power markets in the country where power demand is growing, and it currently gets 50 percent of its power from natural gas plants, with another 25 percent supplied by wind and solar power resources, and 5 percent from nuclear power, according to ERCOT.

If ERCOT emerges from the summer unscathed it could undercut Perry's argument that reliance on gas power poses a risk to national security and grid resilience. Perry has been advocating that DOE or FERC use authorities under the Federal Power Act or the Defense Production Act to make extra payments to coal and nuclear plants that are unable to compete with gas and renewable sources.

"Texas is showing they can meet people's needs without those power plants," said Mark Kresowik, who tracks FERC for the Sierra Club.

To be sure, the summer isn't over. Texas typically experiences high demand well into September, and the whole thing could still come apart if a period of high heat were combined with still air that stranded Texas wind turbines.

The state has a three-level emergency alert system that calls on heavy users to reduce their load when necessary to ease strain on the grid, and the state has implemented additional reforms after it experienced rolling brownouts in 2011 and narrowly avoided them in 2014 and 2015.

The maximum price utilities could charge for electricity rose in 2015 from $5,000 a megawatt-hour to $9,000 MWh in an effort to shore up the grid. That has created an incentive for utilities to keep enough power plants online, even if some lose money for most of the year.

"That is your time to make your money ... by letting the market work without any artificial intervention, we think we're going to be in good shape," the Texas utility source said.

Texas is also posing a challenge to other operators who are used to far higher power margins. FERC's summer reliability report shows PJM with a 28 percent reserve margin, well above its 16 percent requirement. Sierra Club and other critics have long argued that PJM doesn't need that much excess power, and that consumers are paying extra to keep all the extra plants on line.

PJM argues that its capacity market ensures a more reliable grid at a lower cost by balancing the need for enough generators to ensure low-cost power while not keeping unnecessary plants around. Stu Bresler, PJM's senior vice president for operations and markets, was also dubious that much could be drawn from the Texas example.

"There's obviously some very significant differences between Texas and PJM," Bresler told POLITICO. "We all need to be cautious about one season telling a story about the long term."

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Texas grid powers through summer Back

By Eric Wolff | 09/17/2018 05:00 AM EDT

The Texas power grid emerged from a summer of tight power supplies with barely a hitch, shrugging off fears that the closures of several coal plants would cause outages as temperatures soared across the state.

The resilience of the grid in Texas could offer lessons to other grid operators struggling to confront the retirements of coal or nuclear power plants. And it appeared to undermine arguments by Energy Secretary Rick Perry that coal power plant shutdowns would put the nation's electrical networks at risk.

For power market advocates, Texas' success this summer showed that market forces would send the right signals to power plant owners to keep the lights on — or to retire.

"Power plants that are uneconomic should shut down," said Pat Wood, former chairman of both Texas' grid operator and FERC, who has long advocated for rules where "100 percent of the risk is borne by the market."

Texas' power market was helped by generators taking advantage of high wholesale prices to run rarely used plants, customers who cut demand during peak times and a windy summer that kept its wind turbines spinning.

The Electric Reliability Council of Texas, the state's grid operator, said it would wait to render its judgment until summer was officially over, but observers expect ERCOT to declare victory when it issues its October report. And the state is likely to largely keep intact its unique market that pays power plants only for the electricity they sell in the wholesale market and not for power generators to keep plants ready to handle demand spikes.

While it may not have that type of capacity market, it does offer generators another way to cash in on high demand: a price cap that can stretch up to $9,000 per megawatt hour.

"Having the possibility of the price to rise to very high levels creates a natural incentive to be there," Beth Garza, director of ERCOT's independent monitoring arm, told a conference sponsored by renewable energy and utility trade associations last week.

ERCOT set multiple demand peaks in July, with prices at some locations hitting $4,000 per megawatt hour, and system-wide prices reaching $2,160. Day-ahead supplies averaged $50 MWh in July and stayed under $40 MWh in August, according to Garza.

Texas entered the summer having lost 4,000 MW of coal-fired power generating capacity to retirements last year, even as new gas-fired plants were delayed coming online. On top of its shrinking generating base, Texas is one of the few parts of the country where power demand is growing, thanks to consumption from the oil development in the Eagle Ford shale, a rising population, and hotter summers.

ERCOT's reserve margin — its spare power generating capacity — narrowed to 9.8 percent in the early spring. That figure was well under its target of 13.75 percent, and less than the 15 percent margin it had in 2017, which even then FERC considered tight. But power producers, betting on high summer prices, opted to bring some plants out of mothballs or to sell electricity to ERCOT's market instead of the neighboring Southwest Power Pool, according to the Energy Information Administration. That helped lift the reserve margin to 11 percent by May.

A heatwave in May hit before some generators were ready, sending prices higher and driving the only casualty of the summer: an electricity retailer called Breeze, which closed after it was unable to meet the state's cash

reserve requirements, according to the Houston Chronicle. Its customers were pushed onto other retailers and some faced unexpectedly higher bills.

Texas' ability to run on such narrow reserve margins raises questions about the market structure of other grid operators that keep much higher reserve margins. PJM Interconnection's reserve margin was 28 percent this summer, well above its 16 percent target. PJM, along with New England's grid operator ISO-NE also rely on long-term contracts in capacity markets that stretch out as far as three years.

Environmentalists and consumer advocates have criticized PJM and other grid operators for keeping such high reserves, suggesting that many of those older coal power plants are not needed.

Worse still, they say, is Perry's call to prop up struggling coal and nuclear plants — proposals the PJM and ISO-NE are studying. That would slow the growth of renewables like wind and solar, which have taken off in recent years as federal incentives have helped drive their costs sharply lower.

"Operators like PJM and ISO-NE should stop proposing expensive limits to the clean energy that consumers and their states want, or bailouts for dirty power plants they don't, and instead learn from Texas' simple success," said Mark Kresowik, who tracks grid issues for the Sierra Club.

Texas also benefits from a demand response program that rewards consumers who cut their own power use when consumption surges and prices spike.

"As demand response plays a bigger and bigger role ... that's gonna really discipline the markets in a way we haven't had before," said Wood. "The ability to have that tool - all of a sudden we have 2,000 MW less of demand, because people responded. That's the silver bullet."

Texas will likely lose at least one more coal plant this year, though the state is adding substantial new wind capacity as interconnection requests soar, Garza said.

And with the summer of 2018 nearly on the books, few observers expect either ERCOT of the Public Utilities Commission of Texas, the state's regulator, to make major changes.

"We got through 2018," Garza said. "The question is, what does 2019 look like."

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Governor Moonbeam: California to launch its 'own damn satellite' Back

By Jeremy B. White | 09/14/2018 06:13 PM EDT

SAN FRANCISCO — He's mostly shed the "Governor Moonbeam" nickname, but Gov. Jerry Brown pointed California toward the stars as he closed out a global climate change summit here Friday.

"We're going to launch our own satellite — our own damn satellite to figure out where the pollution is and how we're going to end it," Brown told an international audience on the final day of the San Francisco gathering.

California will work with San Francisco-based Planet Labs to launch a satellite capable of tracking climate-altering emissions, Brown said. The effort will lean on the expertise of the state's Air Resources Board, which has taken the forefront in pursuing climate-related innovations.

The governor's choice of words in making the announcement deliberately echoed his late 2016 challenge to Donald Trump, amid rumors that the incoming administration would undercut NASA's climate research role.

"If Trump turns off the satellites, California will launch its own damn satellite," Brown said at the time, after musing on his celestial history: "I remember back in 1978 I proposed a Landsat satellite for California. They called me 'Governor Moonbeam' because of that," he said.

In the nearly two years since making that prediction, Brown and his deputies have clashed with the Trump administration in court, in an increasingly acrimonious rhetorical back-and-forth, and by championing environmental and immigration laws that diverge sharply from Washington's approach.

"In California, with science under attack — in fact we're under attack from a lot of people, including Donald Trump, but the climate threat still keeps growing. So, we want to know what the hell is going on all over the world, all the time."

In addition to showcasing California's ambitious efforts to blunt climate change, the Global Climate Action Summit shone an international spotlight on the state's continued defiance of the Trump administration. That dual theme of California's leadership and Washington's failure recurred throughout the week.

The day after signing a bill compelling California to eventually derive 100 percent of its electricity from clean sources, Brown lashed out at the Trump administration's proposed weakening of methane regulations as an "insane" act that "borders on criminality." Asked on Thursday about Trump's climate legacy, Brown offered some choice words.

"On the path he is now? I don't know: liar, criminal, fool. Pick your choice," he told reporters. Later in the day, he signed bills seeking to augment the number of clean cars on the road.

Officials across California's government also used the proceedings to trumpet their work — and to contrast it with Trump administration policy.

"We will not take responsibility for all the unwanted hot air blowing out of Washington, D.C., when it comes to this particular issue," California Attorney General Xavier Becerra, who has sued the administration more than 40 times, told an audience earlier in the day.

"In California, it's not just about fighting," Becerra added. "It's about winning, and that has to be our motto."

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Top Zinke aide's wife has worked for controversial fundraiser Back

By Ben Lefebvre and Nick Juliano | 10/27/2017 11:10 AM EDT

A Washington political operative who has benefited from Interior Secretary Ryan Zinke's political activity used the wife of Zinke's chief of staff to do interior design work on two of her homes, according to interviews and social media interactions reviewed by POLITICO.

The chief of staff, longtime Zinke aide Scott Hommel, did not list any compensation for the work on his government ethics forms — as federal law would require if his wife had been paid for the work.

The previously undisclosed relationship raises new questions about possible conflicts of interest stemming from Zinke's relationship with direct mail consultant Kimberly Bellissimo, who has been accused by some prominent conservatives of working with "scam PACs" that raise money by allegedly misleading conservative donors. Zinke has worked with Bellissimo's ForthRight Strategy and related firms since at least 2013 through his super PAC, congressional campaign and leadership political action committee, steering at least $4.8 million to them, and as Interior secretary he helped raise money for a Virgin Islands-based PAC that was another top client of Bellissimo's firms.

If Lucretia Hommel made money last year with her company, Snobz Interior Design, Scott Hommel would have to have disclosed it to the Office of Government Ethics before joining the Interior Department as Zinke's top adviser. His personal financial disclosure lists his wife as a self-employed interior designer but does not indicate that the business generated any profits.

"The threshold for reporting a spouse's business income is very low — $1,000," said Brett Kappel, a campaign finance and ethics lawyer for Akerman LLP. "Failing to disclose required information on the [ethics] form is serious business — it could be a criminal violation of both the Ethics in Government Act and the False Statements Act."

Interior spokeswoman Heather Swift told POLITICO that Scott Hommel didn't have any discrepancies on his ethics report, but she declined to make him available for an interview. Swift declined to discuss whether Lucretia Hommel earned income from her interior design business.

Federal ethics guidelines require political appointees to disclose their spouse's income to evaluate whether they can avoid conflicts of interest, said Rob Walker, of counsel at law firm Wiley Rein LLP and a former chief counsel and staff director of the Senate and House Ethics committees.

"It's getting to the impartiality of officials in their official decision-making and if they could be affected by their own or closer relatives financial interest," Walker said.

In addition to its work with political campaigns, ForthRight Strategy, where Bellissimo is CEO, also appears to work with nonprofits that would have interest in decisions by the Interior Department, raising additional red flags over potential conflicts of interests. In a post on its Facebook page Tuesday, ForthRight says it "is proud to be part of the E&E Legal team."

The Energy & Environment Legal Institute, which the post referenced, is a nonprofit that specializes is filing public records requests and lawsuits against agencies including Interior, the Energy Department and EPA to advance conservative policy goals. E&E Legal President Craig Richardson told POLITICO the group has hired ForthRight as a fundraising vendor.

Bellissimo gushed about Lucretia Hommel's work in a review posted on Snobz Interior Design's Facebook page in October 2016.

"Currently working with Lucretia on not one but two projects!" Bellissimo wrote. "First she started on our 1905 Beachhouse on the Jersey Shore...I call it 'Jersey Shore meets St. Tropaz chic!' Now we are tackling our 1885 brownstone in downtown Washington D.C."

Bellissimo did not respond to requests for comment on her relationship with Lucretia Hommel.

Scott Hommel was the treasurer for Zinke's super PAC, Special Operations for America, when it first hired Bellissimo's direct-mail fundraising firms in 2013. Zinke's congressional campaign and a leadership PAC he founded when he was elected to the House also spent heavily on Bellissimo's firms. And Bellissimo has remained close to Zinke since he joined Interior. Bellissimo and her husband posed for a photo with the newly inaugurated secretary and Vice President Mike Pence when Zinke was sworn in last March.

Lucretia Hommel acknowledged working for Bellissimo but ended an interview before providing details on how much she was paid for the work.

"I was her interior designer for many years," Lucretia Hommel told POLITICO. "She hired me to do her house at the beach. I'm working on a project with her at her house in D.C. currently. We're finishing up. She's become a friend. She's a great person. She's just my client."

Bellissimo also uses Snobz Interior Design's website to sell furniture, Hommel added. Bellissimo's phone number and email address were listed on the site as of Friday.

Lucretia Hommel tagged Bellissimo in a June 17 Facebook post offering a "sneak peek at our favorite makeover so far," with before-and-after photos of a townhouse in Washington. An Aug. 6 update in which Bellissimo also was tagged included a photo of Bellissimo and a man who appears to be her husband painting an interior wall.

Estimating how much an interior designer may make working on a New Jersey beach home and Washington townhome would be difficult without knowing more details, several interior designers told POLITICO. But they agreed that it would undoubtedly be worth more than $1,000. "Decorators can charge $250 an hour, $400 an hour, I know people that charge $500 an hour. A thousand dollars — couldn't do even a week at that," said Mathilda Cox, an interior designer in the district and member of the American Society of Interior Designers.

Bellissimo began working with Zinke's super PAC in May of 2013, when it began paying her firms for direct mail and postage services, according to campaign finance disclosures. ForthRight Strategy was then operating as Base Connect — as it had until an executive was convicted on child pornography charges in 2014 — and a handful of other firms Bellissimo operates out of the same office in downtown Washington also were hired by the super PAC.

Zinke stepped away from Special Operations for America that September to launch his congressional campaign, though he continued to benefit from the super PAC's independent expenditures on his behalf. Zinke's campaign also hired Bellissimo's firms for direct mail work, according to FEC filings. SEAL PAC, the leadership PAC Zinke used to raise about $3 million in his first term, also relied heavily on direct mail fundraising provided by Bellissimo's companies.

In addition to developing a friendship with Lucretia Hommel, Bellissimo also appears to be friends with Zinke and his wife, Lolita, judging by their interactions on social media.

In February 2016, Bellissimo posted a photo to Facebook of her and her husband with Ryan Zinke and Rob O'Neill, a former Navy SEAL who claims to have shot Osama Bin Laden. Lolita Zinke commented "beautiful lady," to which Bellissimo replied, "Back at 'ya Lady Z!"

On May 12, 2016, Bellissimo posted a photo of her with Lolita Zinke and Lucretia Hommel at the annual First Lady's Lunch hosted by the Congressional Club at the Washington Hilton.

"At the First Lady's lunch with the ladies of Team Zinke! Thank you Lolita Zinke for inviting me," Bellissimo wrote in a Facebook post accompanying the photos that tagged Hommel and Zinke.

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Interior staff disclosures shed new light on finances Back

By Ben Lefebvre | 09/14/2018 06:14 PM EDT

Interior Department chief of staff Scott Hommel's latest financial disclosure form provides new information about his wife's interior design firm that had done work for a controversial GOP fundraiser.

The disclosure, submitted in July, shows that Lucretia Hommel owns Snobz Design and that the business was worth up to $50,000. The disclosure came after POLITICO reported last year that Lucretia Hommel did design work for Kimberly Bellissimo, a political consultant who has worked for Interior Secretary Ryan Zinke.

Bellissimo's firm ForthRight Strategy and several related groups have been accused by conservative critics of soliciting money for candidates and keeping most of the proceeds. Several political action committees formerly headed Zinke had employed Bellissimo's businesses. Zinke has also appeared publicly with Bellissimo, a board member of the group organizing the annual CPAC conference.

Hommel also listed his wife as owning DMConsulting, a business he reported as being worth up to $15,000. Hommel did not list the income his wife made from either business. Interior ethics counselor Deborah Charette wrote on the form that "reporting of actual income of spouse not required."

Separately, Interior's Assistant Secretary for Insular and International Affairs Doug Domenech listed in his latest financial disclosure form income of $7,306 received from the conservative think tank Texas Public Policy Foundation, where he worked as a director until January 2017.

Domenech also reported shares in several energy companies. He reported receiving up to $1,000 in dividends each from pipeline companies Enbridge Inc. and Spectra Energy Partners, refiners Valero Energy and HollyFrontier Inc., Chesapeake Utilities, and up to $2,500 in dividends from pipeline company Energy Transfer Partners.

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Architect of controversial EPA science policies to leave Back

By Annie Snider | 09/14/2018 03:07 PM EDT

The architect of the Trump EPA's most controversial science policies is leaving the agency.

Richard Yamada, who headed the Office of Research and Development and crafted the Trump administration's controversial policy to limit the agency's use of health studies, will leave his post, the agency's press office confirmed.

"Richard has been a valuable member of the EPA team. I'm sorry to see him leave, but he has an exciting new opportunity, and we all wish him the best in his next endeavor," Acting Administrator Andrew Wheeler said in a statement.

Yamada came from House Science Committee Chairman Lamar Smith's office and has led efforts to administratively implement one of Smith's major legislative priorities, a policy requiring all studies the agency relies on in regulatory decisions to have publicly available raw data. The Trump administration argues it is a matter of transparency, but critics contend that it is a thinly veiled effort to limit the use of studies showing the effects of pollution on human health.

POLITICO reported this spring on internal emails in which Yamada replied to concerns raised by Nancy Beck, the top political official in the agency's chemical safety office, about the policy's effect on EPA's ability to use confidential business information, in which Yamada replied "We will need to thread this one real tight!"

Yamada also was involved in the agency's efforts to keep a CDC study on the health effects of nonstick chemicals under wraps, POLITICO previously reported, as well as an EPA study linking formaldehyde with leukemia.

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EPA emails show industry worries slowed new science policy Back

By Annie Snider | 04/19/2018 05:01 PM EDT

EPA's rollout of a controversial new transparency policy that would severely restrict the scientific research the agency can rely on when drafting new regulations has been slowed down by political officials' fears that it could have major unintended consequences for chemical makers, according to newly released EPA documents.

The issue of scientific transparency has been high on the agenda of House Science Chairman Lamar Smith (R-Texas), who has found strong support from EPA Administrator Scott Pruitt — much to the consternation of public health advocates and green groups, who view the effort as backdoor attack on the agency's ability to enact environmental regulations.

Since Pruitt announced plans for the new policy last month, researchers and public health proponents have raised alarms that it could restrict the agency's ability to consider a broad swath of data about the effects of pollution on human health. But documents released under the Freedom of Information Act show that top EPA officials are more worried the new restrictions would prevent the agency from considering industry studies that frequently support their efforts to justify less stringent regulations.

Emails between EPA officials obtained by the Union of Concerned Scientists show that Nancy Beck, the top political official in the agency's chemicals office who came to the agency after serving as a key expert for the chemical industry's lead lobbying group, voiced major concerns after she received a draft of the not-yet-released policy on Jan. 31.

The new scientific transparency directive is expected to require that the raw data for all studies EPA relies on be publicly available, and that the studies be peer-reviewed. But Beck said these requirements would exclude a

great deal of industry data about pesticides and toxic chemicals that her office considers when determining whether a substance is safe or must be restricted.

It costs companies "millions of dollars to do these studies," Beck wrote in an email to Richard Yamada, the political official in EPA's office of research and development who is spearheading work on the new scientific policy and is also a former staffer for the House Science Committee chairman.

"These data will be extremely valuable, extremely high quality, and NOT published," Beck wrote. "The directive needs to be revised."

Moreover, much of this data, Beck noted, is considered proprietary by companies. It is dubbed confidential business information, and even though EPA can consider it as part of its regulatory review, the data cannot legally be made public.

Yamada replied to thank Beck for the heads up. "Yes, thanks this is helpful - didn't know about the intricacies of CBI," he wrote. "We will need to thread this one real tight!"

The term "confidential business information" primarily applies to industry information. That data is separate from the personal medical information that public health researchers worry could block consideration of their work.

Yogin Kothari, a lobbyist for the Union of Concerned Scientists, said the emails show the Trump administration's EPA has been "trying to stack the deck in favor of the industries they're supposed to be regulating."

"They want to potentially create exemptions for industry, but if you look at this entire set of documents ... you will see that there's not a single consideration for the impacts on public health data, on long-term health studies, on studies that EPA does after public health disasters like the BP oil spill," he said.

EPA spokeswoman Liz Bowman emphasized the policy is not yet finalized.

"These discussions are part of the deliberative process; the policy is still being developed. It's important to understand; however, that any standards for protecting [confidential business information] would be the same for all stakeholders," she said in a statement.

The emails indicate Pruitt wanted the new science policy rolled out at the end of February, and teased his plans in an interview with conservative outlet The Daily Caller in mid-March. But the agency has yet to finalize the policy.

The transparency directive has its origins in legislation introduced by Smith during the Obama administration, that had the backing of a number of industry groups, including the American Chemistry Council. The House Science Committee chairman frequently charged that the Obama EPA used "secret science" to justify "costly new regulations."

Although versions of the measure were approved by the House multiple times, the Senate never took it up. CBO estimated that one version of Smith's legislation would cost EPA $250 million a year, at least in the initial years, and a leaked staff response to questions from the budget office said a later version would be even more costly, would endanger confidential medical and business information, and "would prevent EPA from using the best available science."

But Smith found an ally in Pruitt. The emails indicate that Smith met with Pruitt in early January and show that Pruitt's staff quickly began working on a directive to "internally implement" the legislation.

Industry's backing for the new scientific approach began to waiver under the Trump administration, though. When a top American Chemistry Council scientist testified before Smith's committee in February 2017, she emphasized the need to protect industry information if the transparency initiative moved forward.

"One of the things that we do need to take into consideration as making that data publicly available is that there are adequate protections for confidential business information to ensure that we keep innovation and competitiveness available for the marketplace," Kimberly White told the committee.

Industry has historically claimed that a wide range of information about chemicals, ranging from the processes by which they are produced, to the locations of manufacturing plants, to their very identities, must be kept confidential in order to keep competitors from learning trade secrets. Environmental and public health advocates argue that industry claims this exemption in many cases where it's not necessary and that it often keeps important health and safety information from public view.

The issue was a key point of debate when Congress considered a major overhaul of the nation's primary chemical safety law passed 2016 and has reemerged as Pruitt's EPA sets about implementing the law.

Asked for comment on EPA's new effort to implement the scientific transparency approach internally, American Chemistry Council spokesman Scott Openshaw said the group looks forward to reviewing the directive once it's finalized.

"It is critical that any final directive properly protect confidential business information and competitive intelligence," he said in a statement.

The internal emails show that EPA political staff were particularly attuned to this concern. In a Feb. 23 email to colleagues, Beck forwarded language from a 2005 White House document that laid out narrow exemptions from its requirement that all "important scientific information" disseminated by the federal government go through peer review.

"[Y]ou may need to tweak but hopefully there is something helpful here that can be borrowed/adopted," she wrote.

Richard Denison, lead senior scientist for the Environmental Defense Fund, said that EPA's access to industry data is indeed important to its ability to review the safety of new chemicals and pesticides, but said the internal EPA communications show that Pruitt's EPA wants to "have their cake and eat it too" with the new directive.

"They're trying to force peer review studies done by academic scientists to disclose every last detail, while at the same time allowing industry studies to be kept private or aspects of those to still be kept private," he said.

He pointed out that the concerns Beck raised about the burden the new policy would place on industry are the very same ones that the CBO report said the policy would place on EPA.

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EPA wants more time in CPP lawsuit Back

By Alex Guillén | 09/14/2018 04:51 PM EDT

The Trump administration and its supporters today urged a federal court to give EPA the time it needs to repeal the Clean Power Plan and install its recently proposed replacement rule.

The filings were in response to a request earlier this month from Democratic attorneys general and environmentalists that the eight-judge panel issue its ruling on the Clean Power Plan now.

The D.C. Circuit Court of Appeals has kept the case on ice for a year and a half, and there is "no sound reason" to change course now, EPA argued in its brief.

The upcoming replacement rule "could moot this case and render any further proceedings unnecessary," EPA wrote. Reactivating the lawsuit now would present other headaches, including pending motions related to the Obama administration's rejection of administrative petitions to reconsider the rule and the certain tangle of appeals that would ensue, the agency argued.

"The finish line of EPA's further regulatory efforts is now in sight," the agency added. "EPA intends and expects to conclude all rulemaking concerning section 111(d) emission guidelines for existing power plants in the first part of 2019."

A coalition of Republican attorneys general, utilities, trade groups, coal companies and other CPP opponents filed a similar brief.

WHAT'S NEXT: The court has no set deadline to act on the CPP supporters' motion or to declare the lawsuit will remain on hold. Three of the eight judges indicated in June that they would not vote a sixth time to keep the case on hold any further, instead preferring to remand the Clean Power Plan back to EPA, something the agency opposes.

To view online click here.

Back

Enviros, blue states urge court to rule on Obama carbon rule Back

By Alex Guillén | 09/04/2018 02:12 PM EDT

A coalition of environmental groups and Democratic attorneys general today urged a federal court to issue its ruling in a lawsuit challenging the Obama administration's Clean Power Plan, even as EPA takes comment on a replacement carbon rule for power plants.

"There is no law, rule, or practice that precludes this Court from deciding a live case before it — especially one fully briefed and argued — because an agency may or may not elect to revise the subject rule," they wrote in a court filing.

The Trump administration's proposed replacement, known as the Affordable Clean Energy rule, "does not require any particular degree of emission reduction by any particular deadline," and could even lead to an increase in overall emissions, the CPP supporters said.

In June, three members of the eight-judge panel said they believed EPA was using the Supreme Court's judicial stay to avoid acting on carbon dioxide pollution. However, the judges indicated they would remand the CPP back to EPA rather than issue a ruling on the issue, a move that would open EPA to lawsuits potentially forcing it to act more quickly on CO2 pollution.

But the CPP supporters today argued that remanding the rule would hurt them because future litigation over EPA's replacement rule would present many of the same legal questions the court has already considered. "In the context of this dangerous pollution, those lost years are highly consequential," they wrote.

EPA last month asked the court to keep the suit on hold until it finalizes the ACE rule.

WHAT'S NEXT: The D.C. Circuit has no set deadline to act, but is likely to do so within the next few weeks or months. It could decide to keep the lawsuit on ice while EPA works on its replacement rule.

To view online click here.

Back

Studies: Ethanol demand unharmed by small refiner exemptions Back

By Eric Wolff | 09/14/2018 05:17 PM EDT

Low costs have kept ethanol in the fuel system, despite EPA's expansion of exemptions from the Renewable Fuel Standard, two studies said this week.

University of Illinois economist Scott Irwin found that ethanol blend rates hadn't budged when accounting for seasonal changes in consumption, despite the increase in refinery waivers that ethanol producers have said is undermining the biofuel mandate.

"Analysis of data on ethanol and gasoline consumption in the U.S. shows there is little if any evidence that the blend rate for ethanol has been reduced by" small refinery exemptions, Irwin wrote Thursday in a post on FarmDoc Daily, a farming and economics blog maintained by the university and staffed by academics. "The reason for this counter-intuitive result is that all but a tiny sliver of ethanol in the U.S. is consumed in the form of E10 and the price of ethanol in recent months has been very low relative to gasoline. The price competitiveness of ethanol in E10 means that the conventional ethanol mandate is non-binding up to the E10 blend wall."

Separately, refining giant Valero today released a study prepared by Charles River Associates that came to a similar conclusion, arguing that as long the price of a particular compliance credit, called a Renewable Identification Number, stayed above a certain level, fuel would be blended at the usual rates.

Meanwhile, Pennsylvania Sen. Pat Toomey today invited acting EPA Administrator Andrew Wheeler to come visit Philadelphia-area refineries that say they are hurt by the program. And Iowa Sen. Joni Ernst, an ethanol supporter, met with President Donald Trump on Thursday, though her office did not say if the RFS was a topic.

To view online click here.

Back

House committee advances bill to address parks maintenance backlog Back

By Anthony Adragna | 09/13/2018 11:22 AM EDT

The House Natural Resources Committee advanced bipartisan legislation, H.R. 6510 (115), today that would create a dedicated funding source to address billions in the maintenance backlog on the nation's public lands

The fund would provide 50 percent of unallocated revenue from energy production on federal lands, including renewable energy, to address the backlog on National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management and Bureau of Indian Education lands. It would be capped at $1.3 billion annually.

"This simply says that if that excess revenue is there, it's not going to grow government, it's going to pay for what we already have a responsibility to do," Chairman Rob Bishop (R-Utah) said.

The committee adopted a substitute amendment changing how the fund would be divvied up and other technical corrections. It shot down three amendments from Rep. James Michael Johnson (R-La.) and half a dozen late amendments from Rep. Garret Graves (R-La.).

The legislation has 150 co-sponsors, including 63 Republicans.

WHAT'S NEXT: Bishop said the legislation could hit the House floor as standalone legislation.

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Message

From: POLITICO Pro Energy Whiteboard [politicoemail@politicopro.com]
Sent: 9/14/2018 7:09:21 PM
To: Brazauskas, Joseph [brazauskas.joseph@epa.gov]
Subject: Architect of controversial EPA science policies to leave

By Annie Snider

09/14/2018 03:07 PM EDT

The architect of the Trump EPA's most controversial science policies is leaving the agency.

Richard Yamada, who headed the Office of Research and Development and crafted the Trump administration's controversial policy to limit the agency's use of health studies, will leave his post, the agency's press office confirmed.

"Richard has been a valuable member of the EPA team. I'm sorry to see him leave, but he has an exciting new opportunity, and we all wish him the best in his next endeavor," Acting Administrator Andrew Wheeler said in a statement.

Yamada came from House Science Committee Chairman Lamar Smith's office and has led efforts to administratively implement one of Smith's major legislative priorities, a policy requiring all studies the agency relies on in regulatory decisions to have publicly available raw data. The Trump administration argues it is a matter of transparency, but critics contend that it is a thinly veiled effort to limit the use of studies showing the effects of pollution on human health.

POLITICO reported this spring on internal emails in which Yamada replied to concerns raised by Nancy Beck, the top political official in the agency's chemical safety office, about the policy's effect on EPA's ability to use confidential business information, in which Yamada replied "We will need to thread this one real tight!"

Yamada also was involved in the agency's efforts to keep a CDC study on the health effects of nonstick chemicals under wraps, POLITICO previously reported, as well as an EPA study linking formaldehyde with leukemia.

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Sent: 9/14/2018 6:08:16 PM
To: Brazauskas, Joseph [brazauskas.joseph@epa.gov]
CC: Albores, Richard [Albores.Richard@epa.gov]
Subject: FW: OCIR CrossCutting Weekly Report and Newsletter
Attachments: Weekly 9.14.18.pdf

Joe, do you want to receive these reports? If so, we can ask Christina to add you to the list.

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

From: Moody, Christina
Sent: Friday, September 14, 2018 11:50 AM
To: Aarons, Kyle <Aarons.Kyle@epa.gov>; Anderson, Neal <anderson.neal@epa.gov>; Banks, Portia <Banks.Portia@epa.gov>; Barbery, Andrea <Barbery.Andrea@epa.gov>; Borum, Denis <Borum.Denis@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; Chapman, Simone <chapman.simone@epa.gov>; Cheatham-Strickland, Latonia <Cheatham-Strickland.Latonia@epa.gov>; Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>; Cory, Preston (Katherine) <Cory.Preston@epa.gov>; Davis, Matthew <Davis.Matthew@epa.gov>; Dexter, Michael <Dexter-Luffberry.Michael@epa.gov>; Eades, Cassaundra <Eades.Cassaundra@epa.gov>; Eargle, Frances <Eargle.Frances@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Gao, Meloddy <gao.meloddy@epa.gov>; Gardner, Monee <gardner.monee@epa.gov>; Gutshall, Renee <Gutshall.Renee@epa.gov>; Haman, Patricia <Haman.Patricia@epa.gov>; Hannon, Arnita <Hannon.Arnita@epa.gov>; Hanson, Andrew <Hanson.Andrew@epa.gov>; Janifer, Pamela <Janifer.Pamela@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Kent, Alison <kent.alison@epa.gov>; Klasen, Matthew <Klasen.Matthew@epa.gov>; Knapp, Kristien <Knapp.Kristien@epa.gov>; Labbe, Ken <Labbe.Ken@epa.gov>; Levine, Carolyn <Levine.Carolyn@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Mims, Kathy <Mims.Kathy@epa.gov>; Morgan, Ashley <morgan.ashley@epa.gov>; Murphy, Dan <Murphy.Dan@epa.gov>; Nitsch, Chad <Nitsch.Chad@epa.gov>; Palich, Christian <palich.christian@epa.gov>; Park, Boebin <park.boebin@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Rodrick, Christian <rodrick.christian@epa.gov>; Saddler, Melissa <Saddler.Melissa@epa.gov>; Scales, Wuanisha <Scales.Wuanisha@epa.gov>; Scott, Sonya <scott.sonya@epa.gov>; Shimmin, Kaitlyn <shimmin.kaitlyn@epa.gov>; Skane, Elizabeth <Skane.Elizabeth@epa.gov>; Snyder, Raquel <Snyder.Raquel@epa.gov>; Street, Renee <Street.Renee@epa.gov>; Thundiyil, Karen <Thundiyil.Karen@epa.gov>; Tillery, Loreto <Tillery.Loreto@epa.gov>; Wagner, Kenneth <wagner.kenneth@epa.gov>; Wilkes, Quianna <Wilkes.Quianna@epa.gov>; Williams, Thea <Williams.Thea@epa.gov>; Yaeger, Ryan <Yaeger.Ryan@epa.gov>; Zawlocki, Chris <Zawlocki.Chris@epa.gov>; Assunto, Carmen <assunto.carmen@epa.gov>; Beckmann, Ronna Erin <beckmann.ronna@epa.gov>; Bokun, Lisa <Bokun.Lisa@epa.gov>; Brown, Kinshasa <Brown.Kinshasa@epa.gov>; Deamer, Eileen <deamer.eileen@epa.gov>; Dimas, Melissa <Dimas.Melissa@epa.gov>; Dumville, Kelsey <Dumville.Kelsey@epa.gov>; Ferrell, Mark <Ferrell.Mark@epa.gov>; Fortin, Denise <Fortin.Denise@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Hamilton, Brian <Hamilton.Brian@epa.gov>; Higuchi, Dean <Higuchi.Dean@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Jenkins, Laura Flynn <Jenkins.Laura@epa.gov>; Jones-Johnson, Shea <Jones-Johnson.Shea@epa.gov>; Kandil, Shereen <Kandil.Shereen@epa.gov>; Maier, Brent <Maier.Brent@epa.gov>; Marraccini, Davina <Marraccini.Davina@epa.gov>; Martin, John <Martin.JohnJ@epa.gov>; Martindale, Cary <martindale.cary@epa.gov>; Mata, Carsen <Mata.Carsen@epa.gov>; Melanson, Kate <Melanson.Kate@epa.gov>; Myers, Bryan <Myers.Bryan@epa.gov>; Ostendorf, Jody <ostendorf.jody@epa.gov>; Philip, Jeffrey <Philip.Jeff@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Bender, Emily <Bender.Emily@epa.gov>; Brees, Angela <Brees.Angela@epa.gov>; Carey, Curtis <Carey.Curtis@epa.gov>; Deegan, Dave <Deegan.Dave@epa.gov>; Faulk,

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Subject: OCIR CrossCutting Weekly Report and Newsletter

Please see the attached and let us know if you have questions.

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APPROPRIATIONS & CROSSCUTTING WEEKLY NEWS

Office of Congressional and Intergovernmental Relations Week Ending September 14, 2018

Congress Sends First Spending Package to Trump in Push to Avert Shutdown

Excerpts taken from The Hill.com

Washington, DC (September 13, 2018) – The legislation, which makes up approximately 12 percent of overall 2019 spending, was passed by a bipartisan vote of 377-20. The Senate overwhelmingly passed an identical bill Wednesday evening, and the White House has indicated that Trump will sign the measure.

The package passed Thursday includes bills for military construction and veterans' affairs, the legislative branch and energy and water. The vote followed a deal between the House and Senate to effectively sidestep an Oct. 1 shutdown threat from Trump over border wall funding. The two chambers decided to pair a short-term continuing resolution (CR) extending all government funding until Dec. 7 with the must pass package of Defense, Labor, Health and Human Services, and Education funding measures. In order to force a shutdown over border wall funding, Trump would have to veto the entire package, including the increased funding in the Defense bill.

This would mark the first time in more than a decade that Congress has managed to pass more than one major appropriations bill as part of the regular approprations process, and is aiming to pass 9 of the 12 annual bills before the fiscal year ends on September 30, 2018.

The two chambers have continued to negotiate a third spending package—comprised of four bills including agriculture, interior, transportation, and financial services, but the deadline for completing them would be pushed to December, assuming the second package with the CR passes.

The three bill package that passed the House on Thursday included $98B for military construction and veterans affairs—a $5.3B increase from the previous year. The bill also funds a backlog of maintenance costs for Department of Veterans Affairs (VA) hospitals and clinics, as well as mental health care and suicide prevention, but did not specifically fund the VA Choice medical program, which will move from the automatic part of the budget to the discretionary side starting in May.

The $44.6 billion energy and water bill, a $1.4 billion increase over last year, includes funding for modernizing nuclear weapons complexes, revitalizing waterways and researching renewable energy. The measure did not fund a project to store nuclear waste in Nevada's Yucca Mountains, a controversial rider that had been included in the House version of the bill.

In a first, the $4.8 billion legislative branch bill provides funds to pay Capitol Hill interns and also reinstates a requirement for the House and Senate to conduct studies on gender and racial pay equity among their staffs. The White House indicated that the legislation had President Trump's support.

Appropriations & Crosscutting Team
Christina J. Moody Team Leader 202.564.0260 ~ Thea Williams Congressional Liaison 202.564.2064

Policy Riders Hold Up Deal on Four Spending Bills

Excerpts taken from CQ.com

Washington, DC (September 13, 2018) – Conference talks broke up Thursday without a deal on a roughly $154 billion, four-bill appropriations package covering five Cabinet departments, the EPA, IRS and other agencies, amid lingering funding and policy disputes. That's in sharp contrast with agreement lawmakers have been able to square on two other massive spending measures they hope to enact before the end of September: a three-bill Military Construction-VA, Energy-Water, and Legislative Branch package (HR 5895), and a double-barreled fiscal 2019 Defense and Labor-HHS-Education bill (HR 6157).

The four-title fiscal 2019 package (HR 6147) under debate would fund the Agriculture, Transportation-HUD, Financial Services, and Interior-Environment measures. Continuing disagreement means that the four bills covered under the measure could potentially be funded under a stopgap bill running through Dec. 7 that lawmakers are readying to ride along with the Defense and Labor-HHS conference report.

Rep. Nita M. Lowey of New York, the top Democrat on the House Appropriations Committee, quickly laid bare numerous unsolved problems within the conference negotiations, blasting House Republicans for inserting controversial policy provisions. She also verbally skewered the GOP for refusing to increase funding for election security grants.

"We can do so much better. Democrats are ready to stand with Republicans and fund these agencies on time. But we have to leave the policy riders for the authorizing committees to do their jobs," Lowey said. Democrats mostly avoided specifics but drew broad outlines of other issues keeping consensus at bay. For example, House Interior-Environment Appropriations Subcommittee ranking member Betty McCollum, D-Minn., said "more than 20 riders were added to the House bill and they continue to flood these conference negotiations," which were coming "down to the wire" as the calendar inches closer to the end of the fiscal year on Sept. 30.

Democrats also criticized a House provision in the Financial Services title which would establish a new Fund for America's Kids and Grandkids, seeding it with $585 million, none of which could be spent until Congress balances the budget.

House Agriculture Appropriations Subcommittee ranking member Sanford D. Bishop Jr., D-Ga., also expressed disappointment over the lack of agreement on how and whether to display retailer data related to the Supplemental Nutritional Assistance Program.

But leaders urged conferees to continue their work so the titles could be enacted before the start of the 2019 fiscal year on Oct. 1.

"While we haven't seen eye to eye on everything, I know our final package will reflect common American values and support the programs that benefit all Americans," House Appropriations Chairman Rodney Frelinghuysen, R-N.J.

Conference Meeting to Consider H.R. 6147, Interior, Environment, Financial Services and General Government, Agriculture, Rural Development, Food and Drug Administration, and Transportation, Housing and Urban Development Appropriations Act, 2019

Washington, DC — Committee on Appropriations, September 13, 2018. *Time:* 01:00 PM, *Location:* Capitol Visitor Center HC-5. *Presiding:* House Appropriations Committee Chairman Rodney Frelinghuysen.

Agenda

Conference committee meeting on H.R. 6147, the minibus appropriations package which includes the Fiscal Year 2019 Interior, Environment, and Related Agencies; Financial Services and General Government; Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, and Transportation, Housing and Urban Development, and Related Agencies Appropriations Acts.

Note: ***Webcast is available on appropriations.senate.gov and appropriations.house.gov.***

Member Statements

1. Chairman Richard Shelby (Republican - Alabama)
2. Senator Susan Collins (Republican - Maine)
3. Senator Lisa Murkowski (Republican - Alaska)
4. Senator John Hoeven (Republican - North Dakota)
5. Senator James Lankford (Republican - Oklahoma)
6. Cindy Hyde-Smith (Republican - Mississippi)
7. Vice Chairman Patrick Leahy (Democrat - Vermont)
8. Senator Jack Reed (Democrat - Rhode Island)
9. Senator Tom Udall (Democrat - New Mexico)
10. Senator Jeff Merkley (Democrat - Oregon)
11. Senator Christopher Coons (Democrat - Delaware)

ORD's Particulate Matter (PM) Assessment Advances

Excerpts taken from InsideEPA

EPA's Office of Research and Development (ORD) is completing work on the scientific document that will form the basis of the agency's review of its air quality standards for particulate matter (PM), after navigating questions from OAR political appointee who sought to raise doubts about the science, a departure from the usual process, EPA and other sources say. During a briefing on the Integrated Science Assessment (ISA), the official questioned whether ORD authors had sufficiently elucidated scientific uncertainties in some of the studies discussed in the ISA.

The official "didn't understand the ISA is an ORD document, not something that" air office appointees review, an agency source says. By that point, ORD is "not looking for technical comments from policy people," a fact that was clarified, the source adds. The dust up telegraphs the looming fight over EPA's pending review of its PM standards -- which are currently responsible for the bulk of federal regulatory benefits and which Trump administration officials and its supporters have long sought to scale back. For example, many environmentalists are concerned that EPA's proposed science transparency rule, which bars the use of scientific research where the underlying data is not publicly available, would be used to target the science underlying PM standards. They fear that mandating the use of such science would bar EPA from using studies like the Harvard Six Cities study, that have long been used to justify strict PM standards but would now be barred from use because the study participants' data is private medical data and not available for public review.

An EPA spokeswoman did not deny the claims but is quoted as saying that the agency, including OAR and ORD, "is working to develop and assess the latest scientific and air quality information to facilitate meaningful feedback" by science advisors. She said this process "is being conducted in a manner consistent with the Clean Air Act and the Agency's back-to-basics process" for reviewing air quality standards, and noted that the draft ISA and other documents related to the next review of the PM standard "have not been finalized or provided to EPA's advisors."

The Clean Air Act requires EPA to review its national ambient air quality standards (NAAQS) for criteria pollutants every five years and, based on a review of new science, ensure they are protective of human health and the environment with an "adequate margin of safety." In a sign that the agency is anticipating a heated debate over its PM review, Clint Woods, the deputy air office chief, told a conference last month to expect a "robust" debate over the future of the fine PM (PM2.5) standard, which the agency last tightened in 2012 down to 12 micrograms per cubic meter (ug/m3) from the 2006 standard of 15 ug/m3.

U.S. ENVIRONMENTAL PROTECTION AGENCY
NEWS RELEASE
WWW.EPA.GOV/NEWSROOM

EPA Hurricane Florence Update

WASHINGTON (September 13, 2018) — The U.S. Environmental Protection Agency (EPA) is coordinating closely with local, state, and federal partners as the Agency continues to prepare for and plans to respond to the impact of Hurricane Florence. EPA On-Scene Coordinators (OSCs) are deployed to the State Emergency Operation Centers (SEOCs) in North Carolina and South Carolina and to the Federal Emergency Management Agency (FEMA) Regional Response Coordination Center in Atlanta to assist with Emergency Support Function (ESF) 10 for Oil and Hazardous Substances response efforts.

As of September 13, 2018, the following information is available:

UPDATE: SEPTEMBER 13, 2018

This morning EPA Office of Emergency Management Director Reggie Cheatham participated in a press briefing at FEMA headquarters.

EPA Region 3 has approximately 15 personnel currently involved in emergency response efforts.

EPA Region 4 has approximately 25 personnel currently involved in emergency response efforts.

An EPA ESF-3 liaison is expected to deploy today to the North Carolina SEOC.

On September 12, 2018, EPA Acting Administrator Wheeler signed a fuel waiver for Virginia. EPA has waived the federal Reid vapor pressure requirements for fuel sold in designated areas in Virginia to minimize problems with the supply of gasoline. This waiver will continue through September 15, 2018, which is the end of the summer fuel season. EPA has also waived the requirement to use reformulated gasoline in the southern part of Virginia and the prohibition on the blending of reformulated gasoline blendstock for oxygenated blending with other gasoline, blendstock or oxygenate in Virginia. These waivers are effective through September 30, 2018.

On September 12, 2018, EPA Acting Administrator Wheeler signed a fuel waiver for Georgia. EPA has waived the federal Reid vapor pressure requirements for fuel sold in designated areas in Georgia to minimize problems with the supply of gasoline. This waiver will continue through September 15, 2018, which is the end of the summer fuel season. EPA has also waived the prohibition on the blending of reformulated gasoline blendstock for oxygenated blending with other gasoline, blendstock or oxygenate in Georgia. These waivers are effective through September 30, 2018.

On September 13, 2018, EPA granted a request from the State of Georgia to revise its September 12th emergency fuel waiver to allow the sale and distribution of gasoline with a Reid vapor pressure of up to 11.5 pounds per square inch before the addition of any ethanol. EPA has granted this revised temporary waiver to help ensure that an adequate supply of gasoline is available in the State of Georgia until normal supply to the region can be restored. This revised waiver will continue through September 15, 2018, which is the end of the high ozone season. All other provisions of the September 12 waiver remain unchanged.

The EPA Oil Program contacted 25 coastal North Carolina and South Carolina Facility Response Plan facilities to assess readiness and verify contacts for post-storm assessments.

EPA Region 4 is compiling a list of Superfund sites in Georgia, as well as a total number of Risk Management Plan facilities, Federal Response Plan facilities, drinking water systems, and wastewater treatment systems to help them as they prepare their response plans.

For more information please visit: https://response.epa.gov/florence

Visit The EPA's Newsroom

Public Teleconference Meeting, Chartered Science Advisory Board (SAB) Meeting

Washington, DC (September 26, 2018). The SAB Staff Office seeking approval for a public teleconference meeting for the Chartered SAB tentatively in Fall 2018. A decision briefing with senior management has been requested for August 8, 2018. Agenda items include review to finalize reports on the IRIS ETBE and tBA assessments and Biogenic Carbon Dioxide Emission from Stationary Sources. The Staff Office is exploring opportunities for a face-to-face public meeting for the Chartered SAB tentatively in the late Fall 2018. Possible agenda items are status updates on the planned actions the SAB identified in the Spring and Fall 2017 screening reviews of the Regulatory and Deregulatory Agenda.

The Government Accountability Office (GAO)

Washington, DC. GAO is reviewing open recommendations and have requested an update regarding the finding from a 2015 report. *GAO-15-500 EPA Procedures for Reviewing Congressional Committee Requests for Advice from the Science Advisory Board.* The Agency has updated procedures for evaluating Congressional requests for the SAB. Changes in GAO personnel will require a more detailed briefing than a status update on the agency response to recommendations. SAB staff are in the process of developing a response to the GAO request.

Work Flow

Legislative Referral Memos:

DJM-115-204, Questions for the Record on Examining the Administration's Government-wide Reorganization Plan. (Deadline: 9/18/2018)

GEM-115-5, Questions for the Record on The Challenges and Opportunities of the Proposed Government Reorganization on OPM and GSA. (Deadline: 9/20/2018)

Briefing(s) to be scheduled:

Congressman Shimkus' staff requested a bipartisan briefing on the tire crumb report.
Senator Murkowski's staff requested a conference call on the closure of NCER.

Report to Congress: As per the Social Security Number Fraud Prevention Act of 2017, the agency prepared its implementation plan and the list of documents used with that contains an individual's full social security numbers.

Message

From: MassMailer [massmailer@epa.gov]
Sent: 9/14/2018 3:51:04 PM
To: MassMailer [massmailer@epa.gov]
Subject: UPDATE: Link added - Interim Records Management Policy

EPA NEWS

This email message is being sent to EPA employees.

From: Vaughn Noga, Principal Deputy Assistant Administrator and Deputy Chief Information Officer, Office of Environmental Information

I am pleased to announce the issuance of the Interim Records Management Policy for the Environmental Protection Agency (EPA), which was signed on August 22, 2018. The Interim Records Management Policy updates two primary aspects of EPA's Records Management Policy. Specifically, the Interim Policy:

- Highlights the obligation to document substantive decisions and commitments reached orally; and
- Clarifies the ongoing need to maintain certain working files as records if needed to document the rationale underlying final Agency decisions.

Updating the Records Management Policy on an interim basis allows the Agency to stay in step with current requirements from the National Archives and Records Administration (NARA) and EPA's National Records Management Program. This Interim Records Management Policy controls and supersedes any prior policy to the extent such policy is inconsistent with this Interim Records Management Policy.

This notice reaffirms that EPA's policy is, and has been, that all substantive decisions and commitments reached orally must be documented as records. The National Records Management Program has provided an FAQ document explaining this requirement since 2013. This FAQ document is based on NARA regulations. The need to document substantive decisions and commitments reached orally is also addressed in the FY18 Mandatory Records Management Training. Further, EPA has expressly included this requirement in the Interim Records Management Policy to ensure that all employees remain aware of the requirement.

In FY19, the National Records Management Program will be initiating a comprehensive review of EPA's Records Management Policy with opportunities for Agency-wide input.

Proper records management supports key principles here at EPA, including the Acting Administrator's recent statement on the importance of transparency. Thank you for your critical role in creating and maintaining the records of EPA's important mission.

Message

From: MassMailer [massmailer@epa.gov]
Sent: 9/14/2018 2:04:39 PM
To: MassMailer [massmailer@epa.gov]
Subject: Interim Records Management Policy

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Message

From: POLITICO Pro Budget and Appropriations [politicoemail@politicopro.com]
Sent: 9/13/2018 9:56:37 PM
To: Brazauskas, Joseph [brazauskas.joseph@epa.gov]
Subject: Budget & Appropriations: First minibus is out the door — Conservatives issue ultimatum for policy riders — Four-bill package remains in 'holding pattern'

By Sarah Ferris and Jennifer Scholtes | 09/13/2018 05:54 PM EDT

THE REAL TEST: Congress' first bipartisan "minibus" in years has coasted through two chambers and off to President Donald Trump. And the next package — pairing funding for the Pentagon along with some of the biggest domestic agencies — isn't far behind.

As Sarah explains, Capitol Hill leaders struck a momentous deal today to bring that huge package to the floor, H.R. 6157 (115), along with a tide-me-over funding bill to keep the rest of the government open through Dec. 7. "This is a milestone," a beaming Sen. Richard Shelby (R-Ala.) told us after the conference committee meeting on the package that pairs Defense and Labor-HHS-Education. That funding bundle won't be nearly as easy for House Republican leaders to bring to the floor, though.

Victory laps: Democrats were jubilant today as spending leaders put the finishing touches on what could be the first Labor-HHS-Education bill to be signed into law on time in 22 years. They did lose some political battles, including failed attempts to add strict new language related to arming teachers, as Caitlin Emma explains. Another bid to boost transparency on drug prices also fell short, per Alice Miranda Ollstein. Still, when we asked her today, Rep. Rosa DeLauro (D-Conn.) couldn't think of a single thing House Republicans got in the bill that she didn't otherwise want. DeLauro noted that the legislation now includes a boost for Pell Grants and said she was "very pleased" that "anti-busing" language, which has been part of appropriations legislation since at least 1974, was left out, Caitlin reports.

Not-so-veiled threat: That won't sit well with House conservatives, who already complain they were rolled in the first minibus, H.R. 5895 (115). Rep. Mark Walker (R-S.C.), who leads the influential Republican Study Committee, warned today that conservatives may oppose the final Defense and Labor-HHS-Education package if they can't bring home policy wins. "Unless this is done, many of our members will find it difficult to support this funding," Walker wrote in a statement just before leaders announced the deal. What exactly does RSC want? Here's your handy cheat sheet. (Walker's not alone: Rep. Robert Aderholt (R-Ala.), who sat on the Defense and Labor-HHS-Education conference committee, told us today: "Certainly, there's a lot of disappointments in this bill.")

Boxing them in: So far, GOP leaders aren't worried that House Republicans would reject the bill en masse if it means it hamstringing the Pentagon. "If they want to vote against Defense, that's up to them," Rep. Tom Cole (R-Okla.) said today. The same goes for Trump, who hasn't yet said whether he'll sign the massive funding deal. In fact, party leaders strategically crafted the package to avoid Trump's veto, by attaching a short-term funding bill through early December. If he refuses to sign that, "You effectively shut down the whole government," Cole explained.

GOOD THURSDAY EVENING! Reach out: jscholtes@politico.com (@jascholtes) and sferris@politico.com (@sarahnferris).

Doc of the day — A report from Democrats on the House Budget Committee breaks down the proposed $5 trillion in cuts from the House GOP's budget resolution.

#DailyBudgetFact — In a recent face-to-face poll in Puerto Rico, 55 percent of respondents say they believe rebuilding the island is not a priority for the U.S. government.

APPROPRIATIONS

'HOLDING PATTERN': So the three-bill package is off to Trump. And odds look good for enactment of that defense-domestic duo. But what about the four-bill bundle, H.R. 6147 (115)? Spending leaders say it's stalled out right now, as Jen reports for Pros.

Make it happen: Shelby goaded his underlings during the conference committee meeting today. "We're this close on these bills. Let's wrap it up, if there's any way to do it," Shelby told negotiators about coming to agreement on the package that includes Interior-Environment, Financial Services, Transportation-HUD and Agriculture. Then after the meeting, the chairman laid it plain for reporters. "There are a bunch of riders that we're not planning to take," he said, referring to House Republicans' insistence on including partisan language that stands little chance of surviving the Senate.

What's the holdup: Even though disputes over the Interior-Environment title are often blamed for slowing progress on the package, issues remain in several of the bills. As Ryan McCrimmon reports, the spat over cell-grown meat is hanging over the Agriculture title. And Democrats are still fighting off Rep. Tom Graves' (R-Ga.) beloved "grandkids" fund in the Financial Services portion.

WHERE THINGS STAND: Congress is closer than it's been since 2009 to actually complying with its decades-old spending structure. But with 12 bills, three packages and three conference committees, it can be tough to track the status of individual bills. Here's where things stand:

— **Headed to the White House:** Energy-Water, Military Construction-VA and Legislative Branch.

— **Headed to final passage on House and Senate floor:** Labor-HHS-Education and Defense.

— **Still in negotiations:** Transportation-HUD, Agriculture, Interior-Environment and Financial Services.

— **Still waiting for House and Senate vote:** Homeland Security, H.R. 6776 (115), S. 3109 (115), State-Foreign Operations, H.R. 6385 (115), S. 3108 (115), and Commerce-Justice-Science, S. 3072 (115).

HOMELAND SECURITY

A LONG COMMUTE: Tensions are high in meetings with FEMA Administrator Brock Long right now. And not just because one of the most spectacular hurricanes in U.S. history is about to make landfall. Daniel Lippman and Eliana Johnson report today that the DHS inspector general has opened an investigation into whether taxpayers have footed the bill for inappropriate use of government vehicles for Long's commutes back to his home in Hickory, N.C., according to current and former administration officials.

Internal drama: According to one of those people, Long has been clashing with Homeland Security Secretary Kirstjen Nielsen, who allegedly asked the administrator to resign over the issue.

TAX

PRICE OF PERMANENCE: We know taking the "temporary" out of tax cuts is not cheap. If Congress follows through on making a slew of recent tax cuts permanent, we're talking $3.15 trillion from fiscal 2029 to 2038, according to a new Urban-Brookings Tax Policy Center estimate out this week. As Toby Eckert explains, the report goes a decade beyond the JCT's cost estimate.

A 'dynamic' defense: Supporters of making the cuts permanent say the move would give taxpayers more certainty, in turn boosting the economy. To that, the Tax Policy Center says the new plan for permanency, H.R. 6760 (115) , would probably boost GDP by about 0.5 percent in 2026, 0.4 percent in 2028 and 0.1 percent in 2038. And that means billions, not trillions. The economic revving is estimated to provide a total of $71 billion from fiscal 2019 to 2028, and $157 billion from fiscal 2029 to 2038, "offsetting a modest portion of the revenue loss as projected under conventional scoring," the group says.

POLITICAL STRATEGY

JUST TOUT THOSE ECONOMIC GAINS: Speaker Paul Ryan rallied House Republicans this morning for a private pep talk on holding the House in the midterms. The gist: Laser focus on talking up economic gains, guys. "Selling what we've done to voters over the next eight weeks is my top priority," Ryan told the conference, citing the unemployment rate, jobless claims, wages and GDP growth, according to his prepared remarks. "I know everyone in this room will help amplify that message and carry us to victory." However, as Rachael Bade explains, that strategy is harder executed with Trump's approval rating on the decline.

Stick to the script: Besides his waning popularity, Trump's tendency to veer off message on economic issues is also problematic for Republican lawmakers reliant on a unified campaign strategy to give them an edge over the droves of Democrats expected to flip GOP-held districts throughout the country. Ben White and Nancy Cook report that White House aides and Republicans close to the administration think it's a losing endeavor to try to push the president to stick to his economic talking points. And Trump's trade battles aren't helping much either.

Related: In an opinion piece for POLITICO Magazine, National Review editor Rich Lowry writes about how an economic boom is a terrible thing to waste.

EARMARKS

— Democrats weighing earmarks revival if they take back the House. Roll Call.

— Rettig takes over IRS amid budget challenges, regulatory crunch. POLITICO Pro.

— GOP teachers launch statehouse bids to demand more school funding. POLITICO Pro.

— U.S. recovery eludes many living below poverty level, Census suggests. The New York Times.

— Congress moving ahead on spending to avert shutdown. The Associated Press.

WE'RE COUNTING: Federal funding runs out in 17 days (Sept. 30) and the National Flood Insurance Program expires in 78 days (Nov. 30).

To view online:
https://subscriber.politicopro.com/newsletters/budget-appropriations/2018/09/first-minibus-is-out-the-door-340324

Stories from POLITICO Pro

Congress sends first minibus to Trump in race to avoid catch-all spending bill Back

By Sarah Ferris | 09/12/2018 07:18 PM EDT

The House on Thursday overwhelmingly cleared a spending package that marks Congress' first concrete step toward avoiding the kind of catch-all omnibus that President Donald Trump has said he won't sign this fall.

The House voted 377-20 to send the president a fiscal 2019 bipartisan funding deal that House and Senate leaders reached earlier this week to fund the Department of Veterans Affairs, as well as nuclear programs, energy projects, congressional operations and military construction.

Senators voted 92-5 on Wednesday to adopt the package.

In that chamber, just two Republicans opposed the bill: Jeff Flake (R-Ariz.) and Rand Paul (R-Ky.). Three Democrats were also opposed: Kirsten Gillibrand (D-N.Y.), Elizabeth Warren (D-Mass.) and Ed Markey (D-Mass.).

The three-bill package, H.R. 5895 (115), contains a $5 billion funding increase for veterans services — making for the VA's largest-ever budget — to help pay for major infrastructure upgrades at health care facilities nationally, as well as the rollout of a new e-health records system.

Nuclear weapons programs also got a nearly half-billion dollar boost, bringing the total nuclear weapons program to $11.1 billion.

The Army Corps of Engineers, the Capitol Police and the Department of Energy's Office of Research would also see substantial increases. The legislation also includes millions of new dollars for a new paid internship program across Capitol Hill.

Trump is expected to sign the bill, about two weeks ahead of the looming Sept. 30 deadline.

The White House in a statement on Wednesday night congratulated the House and Senate on reaching a conference agreement and said the minibus "aligns with many of the Administration's priorities, providing the necessary funding to implement President Donald J. Trump's historic reforms at the Department of Veterans Affairs, including those enacted in the VA MISSION Act, and to modernize and strengthen our nuclear deterrent. "

The statement added that Trump "looks forward to signing this legislation and continuing to work with Congress to enact Fiscal Year 2019 funding for the Department of Defense, Department of Homeland Security, and other agencies, while continuing to show fiscal restraint."

If enacted, it will be the first time since 2009 that the Department of Energy receives its budget on time.

Senate Appropriations Chairman Richard Shelby (R-Ala.) said Wednesday night that he had spoken to Vice President Mike Pence about the importance of Trump signing the spending package into law, rather than holding out to use the measure as leverage in his attempt to secure more money for a wall along the U.S.-Mexico border.

"I believe he will sign this bill," Shelby said. "This is progress. This is our goal. We're not there yet, but this is something that hasn't happened in years and years."

Those three bills, however, make up just one-tenth of annual spending. Even if the minibus is signed on time, dozens of other agencies could face budgetary uncertainty on Oct. 1.

Democrats have cheered the finished bill, which bucks some of the Trump administration's most severe proposed cuts to renewable energy programs, science research and the embattled Advanced Research Projects Agency-Energy. It also blocks funding for a Yucca Mountain nuclear waste site.

"House Democrats stood firm for our values and rejected both insufficient funding levels and partisan riders," Rep. Nita Lowey (D-N.Y.), the top Democrat on the House Appropriations panel, wrote in a statement this week.

But GOP leaders won out in a budget battle related to a veterans health care program — an issue that stalled negotiations for weeks this summer.

Democrats wanted billions of new dollars to fund veterans health, which is newly under Congress' purview. The program was previously funded automatically, outside of the budget caps.

House Republicans, backed by the White House, refused to boost the spending caps only months after this year's gigantic budget deal, H.R. 1892 (115).

The bill includes $500 million to fund the VA Community Care program through next year, though Democrats say that total cost will be more like $1.6 billion.

The program will also require an additional $8 billion in fiscal 2020 and $9 billion in fiscal 2021, according to Sen. Patrick Leahy (D-Vt.), the top Democrat on the Senate Appropriations Committee.

Leahy said his own proposal, which would have lifted the spending caps, was "met with strong opposition from House Republican leadership and the administration," and was left out.

To view online click here.

Back

Congress dares Trump to shut down the government in new spending deal Back

By Sarah Ferris | 09/13/2018 01:20 PM EDT

GOP leaders believe they've found a way to thwart President Donald Trump's latest shutdown threats: Send him a funding bill that's impossible to resist.

Capitol Hill leaders on Thursday announced a mammoth fiscal 2019 spending deal that achieves one of the Trump administration's top priorities — the Pentagon's first on-time spending bill since 2008. But there's a catch.

The same package also funds some of the government's most sprawling agencies at levels that are billions of dollars more than Trump requested. And if Trump refuses to sign it, much of the government, including parts of the Pentagon, would shutter.

"You effectively shut down the whole government," Rep. Tom Cole (R-Okla.), a senior appropriator, said of the funding deal he helped shape.

Spending leaders from both parties detailed the strategy for the first time Thursday, just 17 days before government spending runs out. The Senate is expected to easily approve the package next week.

Under the tactic, lawmakers will vote on a two-bill spending package that funds the Pentagon as well as health, labor and education programs. There's also a new third component: Spending leaders said that the package will include temporary funding for every other agency facing a funding lapse on Sept. 30.

If approved, the bill would keep those government operations open until Dec. 7, about a month past the looming midterm elections.

Longtime appropriators of both parties said that strategy effectively ties the administration's hands — forcing Trump to decide between signing a spending bill with domestic funding levels he detests, or forcing a potential funding crisis at the Pentagon.

"The president will have to sign this bill or shut down the government, because it contains the continuing resolution," said Rep. Rosa DeLauro (D-Conn.), one of the top Democratic negotiators on the package.

Trump himself has cheered Congress' progress on the Pentagon spending bill, which would break the military's nearly decadelong stop-and-go funding cycle. On domestic funding, however, Trump's deputies have chided Congress for overspending.

It's not just Trump with complaints about the massive domestic bill. House conservatives, too, are livid about funding increases, as well as a lack of conservative policy wins at a time when the GOP controls all levels of government.

"Most of the Democrats will vote for this and smile very big," Rep. Mark Meadows, chairman of the House Freedom Caucus, told reporters Thursday. "It's a Democrat 'Labor-HHS' bill."

The Republican Study Committee, an influential group of about 170 GOP lawmakers, also released a statement Thursday that suggested its members would be willing to oppose the upcoming package — even if it means voting against the Pentagon cash.

House GOP leaders aren't worried about the Republican whip count, according to lawmakers and aides, in part because of the politically toxic prospect of voting against the military's budget just weeks ahead of election day.

"If they want to vote against Defense, that's up to them," said Cole, the lead negotiator on the domestic package. He quoted his Democratic colleague, Sen. Patty Murray (D-Wash.) about how both parties' negotiators decided to work together: "We can have a deal, or we can have a fight, but we can't have both."

Precise details on funding and language remain under wraps until the final text is rolled out. But negotiators said that the final package would largely strip out partisan language favored by House Republicans.

That means lawmakers rejected attempts to defund Planned Parenthood or destabilize Obamacare, as well as a slew of other perennial conservative riders.

"Certainly, there's a lot of disappointments in the bill," said Rep. Robert Aderholt (R-Ala.), who was one of the GOP negotiators on the package.

Lawmakers have planned for weeks to pair the broadly popular Defense bill with the typically contentious Labor-HHS-Education bill. That unprecedented combination allowed the package to soar through the Senate for

the first time in 22 years, while kick-starting formal conference negotiations on both for the first time since 2007.

Senate Appropriations chief Richard Shelby (R-Ala.), one of those to originally pitch the strategy, called it the "linchpin" of Congress' spending bill successes so far this year. "One, the top priority for Republicans; the other, the top priority for Democrats. Both important to all Americans," Shelby said.

At the White House, asked by the press pool about the spending deal, deputy press secretary Lindsay Walters responded:

"We look forward to reviewing the bill when it's released."

To view online click here.

Back

DeLauro: No ban on federal funds for guns in education spending deal Back

By Caitlin Emma | 09/13/2018 12:35 PM EDT

Rep. Rosa DeLauro (D-Conn.) today said she's "disappointed" that a fiscal 2019 appropriations package doesn't include language specifying that federal education funds can't be used to buy guns for schools.

"We missed an opportunity, in my view," she said.

DeLauro and Sen. Patty Murray (D-Wash.) had been pushing for such language. A House and Senate conference committee met today to discuss the Labor-HHS-Education and Defense minibus, H.R. 6157 (115).

At issue is whether school districts can tap into funds under the Every Student Succeeds Act — known as Student Support and Academic Enrichment Grants — to purchase guns and firearms training.

Education Secretary Betsy DeVos has said she won't take a position because Congress didn't authorize her to make such decisions. Democrats argue that it's her responsibility to reject such proposals and they fought for appropriations language to make it clear the ESSA grant can't be used for guns.

A number of education groups also urged conferees today to include language specifying that federal education funds can't be used to buy guns for schools.

"There is no conclusive research or evidence to indicate that arming teachers will make schools safer," the groups wrote in a letter. "On the contrary, research does indicate that the over-hardening of schools diminishes school safety and has a negative impact on school climate."

The groups signing on include the National PTA, AASA: The School Superintendents Association and the National Association of Elementary School Principals.

The ESSA grant program was created with the intention of promoting access to a well-rounded education, ensuring safe and healthy students and supporting the effective use of technology.

To view online click here.

Back

Negotiators drop drug price transparency from minibus Back

By Alice Miranda Ollstein | 09/13/2018 01:27 PM EDT

House and Senate negotiators on a massive minibus spending package, H.R. 6157 (115), today rejected bipartisan language that would have required drug companies to disclose product prices in advertisements.

The transparency requirement, which earlier won unanimous support in the Senate, would have marked Congress' strongest effort to address rising pharmaceutical costs since the Trump administration unveiled its plan to curb the cost of prescription drugs. The administration is preparing its own rule that would require drugmakers to display prices on ads.

Appropriators assembling the giant spending bill to fund the Pentagon, HHS and other agencies said Thursday the requirement pushed by Senate Minority Whip Dick Durbin could disrupt progress on the underlying bill and possibly improve odds for a government shutdown.

"I would hope we would not blow this thing up when we've come so close," said Senate Appropriations Chairman Richard Shelby. "This might come about someday, but not on today's bill."

Durbin said the language, also promoted by Republican Chuck Grassley, amounted to "the very least Congress can do" on rising drug costs and would "put patients before pharma." Grassley, in a tweet, called the decision to punt on the measure "embarrassing."

Experts have questioned how pharmaceutical companies could place a single price on drugs they promote when consumers pay wildly different amounts depending on their insurance coverage and manufacturers extend discounts to different payers.

Even Democrats who supported the language urged Durbin to drop it and save the fight for another day.

"In a normal authorization bill I would eagerly and strongly support it," Vermont Sen. Patrick Leahy said. "But I have to join with Senator Shelby and keep to our agreement. Senator Shelby has had to give up some of the things he wanted just as I have had to give up some of the things I wanted."

To view online click here.

Back

Government funding deal will include Pell increase, DeLauro says Back

By Michael Stratford | 09/13/2018 04:08 PM EDT

The deal between House and Senate negotiators over a government spending measure that includes education funding will have a boost for Pell Grants, according to a top Democratic appropriator.

Rep. Rosa DeLauro (D-Conn.), the ranking member on the House Appropriations subcommittee overseeing education, said today that an increase in the maximum Pell Grant will be part of the final deal, the details of which are still being hammered out.

It's not clear yet how much the measure, H.R. 6157 (115), would increase the Pell Grant. But the Senate last month passed a bill that calls for a $100 boost, bringing the maximum Pell Grant to $6,195.

The House Appropriations Committee, meanwhile, voted earlier this year to advance an education funding bill that would keep the maximum Pell Grant at its current level of $6,095.

Legislative text for the funding deal, which combines funding for the Departments of Defense, Labor, Health and Human Services, and Education, is expected by the end of the week.

Congressional spending leaders also said today that they plan to tie the measure to a stopgap funding bill to keep the rest of the government open through Dec. 7.

To view online click here.

Back

Longtime 'anti-busing' rider dropped from education spending deal Back

By Caitlin Emma | 09/13/2018 03:56 PM EDT

A fiscal 2019 appropriations package has dropped a decades-old rider that would prohibit the use of federal funds for transportation costs for school desegregation.

Rep. Rosa DeLauro (D-Conn.) said she was "very pleased" that the "anti-busing" language, which has been part of appropriations legislation since at least 1974, was left out.

A House and Senate conference committee met today to discuss the Labor-HHS-Education and Defense minibus, H.R. 6157 (115).

The appropriations language emerged amid widespread backlash to the 1971 Supreme Court ruling in *Swann v. Charlotte-Mecklenburg County*, which deemed busing an appropriate tool to aid in desegregation.

Some elected officials — like former Vice President Joe Biden, who was then a senator — sought to appease white constituents who bristled at the thought of their children being bused into African-American neighborhoods. Lawmakers said they supported desegregation but opposed busing as a means to that end.

Civil rights groups and Rep. Bobby Scott (D-Va.), the top Democrat on the House education committee, have fought to remove the language.

In 2017, Scott called the language "a relic of an ugly history when states and school districts across the nation resisted meaningful integration of public education for decades after the Supreme Court's ruling in *Brown v. Board of Education*."

To view online click here.

Back

Spending bill for IRS, agriculture, transportation held up by policy disputes Back

By Jennifer Scholtes | 09/13/2018 04:59 PM EDT

Spending leaders might not work out differences in a four-bill package that funds agriculture, transportation, the EPA, the IRS and more before federal funding runs out on Sept. 30.

If conferees are unable to reach a compromise by the end of the month, Congress is expected to clear a continuing resolution to drag out current funding levels for those measures until early December.

During a conference committee meeting Thursday, negotiators from both parties said several policy issues are holding up the fiscal 2019 legislation, H.R. 6147 (115), that would fund the departments of Agriculture, Interior, Transportation, and Housing and Urban Development, as well as the IRS and environmental programs.

"There are a bunch of riders that we're not planning to take," Senate Appropriations Chairman Richard Shelby (R-Ala.) told reporters after the meeting, referring to the position of Senate negotiators, who have vowed to keep the bills clean of policy disputes despite attempts by House Republicans to include partisan language.

Earlier in the day, appropriators signed off on a backup plan for any funding bills that aren't signed into law by the Sept. 30 deadline. Crafting a legislative package President Donald Trump would be hard-pressed to reject, spending leaders have coupled a Band-Aid stopgap with the two-bill bundle, H.R. 6157 (115), that includes funding for the departments of Defense, Labor, Health and Human Services, and Education.

But Shelby said there is still hope negotiators will zero in on a deal on the four-bill package by month's end, at least avoiding a continuing resolution for those measures.

"Don't give up on these yet. I don't think anybody wants a CR," the chairman told reporters.

House conservatives are increasingly adamant GOP leaders include Republican-backed policy language in any spending bills on the move this month, after Congress cleared a conference report, H.R. 5895 (115), for Trump's signature Thursday that was seen as largely bipartisan.

"Coming off the conference report of the last minibus, House Republican priorities were shut out across the board," Republican Study Committee Chairman Mark Walker (R-N.C.) said in a statement Thursday. "In the next round of appropriations, conservatives are looking for the conferenced legislation to reflect conservative policy riders such as the ones in the House bill. Unless this is done, many of our members will find it difficult to support this funding."

While negotiators say the vast majority of the sticking points are related to the Interior-Environment portion, an Appropriations aide confirmed that issues remain on other measures in the package as well.

"I am truly disappointed that even as we have made so much progress on Defense and Labor-HHS-Education, we have been unable to do the same with this set of four bills," said Rep. Nita Lowey (D-N.Y.), ranking Democrat on the House Appropriations Committee, during the meeting. "If we are to have any hope of avoiding a continuing resolution on these bills, House Republicans must drop their insistence on poison pill riders. ... Until that happens, we will be forced to keep the important domestic priorities in these bills in a holding pattern."

Rep. Mike Quigley (D-Ill.), ranking member on the House Appropriations Financial Services Subcommittee, took aim during the meeting at language subcommittee Chairman Tom Graves (R-Ga.) included in the House's version to set aside $585 million that can't be spent until the federal deficit reaches zero or there is a budget surplus.

"For us to try to address this issue through a subcommittee will do one thing, which is just squash any meaningful effort to fund its elements of government," Quigley said. "So it's not that we don't need to address it. Trying to do it now is far less meaningful and completely destructive to the issues we're concerned about."

Several disputes remain over language in the Agriculture bill as well, including a provision regarding the federal dispute over cell-based meat and another that would effectively block public disclosure of certain data from retailers on food stamps transactions.

To view online click here.

Back

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During a conference committee meeting Thursday, negotiators from both parties said several policy issues are holding up the fiscal 2019 legislation, H.R. 6147 (115), that would fund the departments of Agriculture, Interior, Transportation, and Housing and Urban Development, as well as the IRS and environmental programs.

"There are a bunch of riders that we're not planning to take," Senate Appropriations Chairman Richard Shelby (R-Ala.) told reporters after the meeting, referring to the position of Senate negotiators, who have vowed to keep the bills clean of policy disputes despite attempts by House Republicans to include partisan language.

Earlier in the day, appropriators signed off on a backup plan for any funding bills that aren't signed into law by the Sept. 30 deadline. Crafting a legislative package President Donald Trump would be hard-pressed to reject, spending leaders have coupled a Band-Aid stopgap with the two-bill bundle, H.R. 6157 (115), that includes funding for the departments of Defense, Labor, Health and Human Services, and Education.

But Shelby said there is still hope negotiators will zero in on a deal on the four-bill package by month's end, at least avoiding a continuing resolution for those measures.

"Don't give up on these yet. I don't think anybody wants a CR," the chairman told reporters.

House conservatives are increasingly adamant GOP leaders include Republican-backed policy language in any spending bills on the move this month, after Congress cleared a conference report, H.R. 5895 (115), for Trump's signature Thursday that was seen as largely bipartisan.

"Coming off the conference report of the last minibus, House Republican priorities were shut out across the board," Republican Study Committee Chairman Mark Walker (R-N.C.) said in a statement Thursday. "In the next round of appropriations, conservatives are looking for the conferenced legislation to reflect conservative policy riders such as the ones in the House bill. Unless this is done, many of our members will find it difficult to support this funding."

While negotiators say the vast majority of the sticking points are related to the Interior-Environment portion, an Appropriations aide confirmed that issues remain on other measures in the package as well.

"I am truly disappointed that even as we have made so much progress on Defense and Labor-HHS-Education, we have been unable to do the same with this set of four bills," said Rep. Nita Lowey (D-N.Y.), ranking Democrat on the House Appropriations Committee, during the meeting. "If we are to have any hope of avoiding a continuing resolution on these bills, House Republicans must drop their insistence on poison pill riders. ... Until that happens, we will be forced to keep the important domestic priorities in these bills in a holding pattern."

Rep. Mike Quigley (D-Ill.), ranking member on the House Appropriations Financial Services Subcommittee, took aim during the meeting at language subcommittee Chairman Tom Graves (R-Ga.) included in the House's version to set aside $585 million that can't be spent until the federal deficit reaches zero or there is a budget surplus.

"For us to try to address this issue through a subcommittee will do one thing, which is just squash any meaningful effort to fund its elements of government," Quigley said. "So it's not that we don't need to address it. Trying to do it now is far less meaningful and completely destructive to the issues we're concerned about."

Several disputes remain over language in the Agriculture bill as well, including a provision regarding the federal dispute over cell-based meat and another that would effectively block public disclosure of certain data from retailers on food stamps transactions.

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Trump's FEMA chief under investigation over use of official cars Back

By Daniel Lippman and Eliana Johnson | 09/13/2018 05:11 AM EDT

Federal Emergency Management Agency Administrator Brock Long is the target of an ongoing Department of Homeland Security inspector general investigation into whether he misused government vehicles during his commutes to North Carolina from Washington, according to three people familiar with the matter, including current and former administration officials.

The actions by Long, the U.S. government's lead disaster official as the country braces for Hurricane Florence, have been called into question by the inspector general over whether taxpayers have inappropriately footed the bill for his travel, an issue that has tripped up a number of current and former top Trump administration officials.

Long's travel habits triggered a clash between him and his boss, Homeland Security Secretary Kirstjen Nielsen, in recent weeks, clouding their relationship just as senior aides close to President Donald Trump prepared for

hurricane season — a task that's attracted extra scrutiny in the wake of the disaster that befell Puerto Rico in the aftermath of last year's Hurricane Maria.

The IG is investigating whether Long misused government resources and personnel on trips back home to Hickory, North Carolina, on the weekends, said two of the officials. The IG's interest was drawn after one of the vehicles — a black Suburban — was involved in an accident, according to one of the officials.

Long's routine absences from the office due to frequent six-hour drives between North Carolina and Washington also drew Nielsen's attention, this person said. Nielsen had raised the issue of Long's in-office schedule with him in recent months, this person added.

At a meeting in late August, Nielsen confronted Long about his travel, though people familiar with the meeting gave conflicting accounts about whether she took the step of asking him to step down over the issue.

One of the officials said Nielsen asked Long to consider resigning, though he declined to do so and remains in his role. The program to support the FEMA administrator "was never intended for this purpose," said the official.

Long did not respond to requests for comment from POLITICO but addressed the IG investigation at a FEMA briefing on Thursday morning, saying his office was working closely with the inspector general's office "to make improvements to make sure we are running programs and policies according to regulation."

"Bottom line is, we'll continue to fully cooperate with any investigation that goes on and own up to any mistakes and push forward and keep going," Long said.

"I would never intentionally run a program incorrectly," he added. "Doing something unethical is not part of my DNA, and it is not part of my track record in my whole entire career. We will work with the OIG."

Jessica Nalepa, FEMA's director of external affairs, said questions about specific IG investigations should be directed to DHS' IG office and that FEMA fully cooperates with all investigations conducted by the IG. The DHS IG's office and the White House did not respond to requests for comment.

"All questions about any potential investigation by the Office of the Inspector General should be directed to the IG. At this time, we are fully focused on preparing for, responding to, and recovering from Hurricane Florence and the storms in the Pacific," said DHS press secretary Tyler Houlton. "The secretary is confident in the leadership at FEMA and their proven disaster management ability."

Long started using a staff driver to get him home to North Carolina at the beginning of his tenure at FEMA last year. On the weekends Long spent in North Carolina, aides were put up in a hotel at taxpayer expense, according to one of the current officials.

DHS employees must be authorized to access government vehicles for personal use, including travel to a residence outside Washington, according to one of the officials. But a former DHS official said Long, as administrator, is entitled to have a contingency aide accompany him so he can have secure communications in case of a national emergency.

The former official added that Long "never asked for it and believed access to secure communications to be part of a presidential directive." FEMA recently scaled back the use of the contingency team for cost-saving purposes, and Long now drives himself or flies to North Carolina.

Former FEMA Administrator Craig Fugate, who served under President Barack Obama, said he could remember using government cars for commuting purposes only in seven instances during the eight years he held the job. In those emergency or extreme cases, Fugate said, it was deemed appropriate for a FEMA aide to brief him face-to-face as a driver took him from his home in Gainesville, Florida, to the Jacksonville airport for outbound flights to Washington, where his presence was required.

Long previously worked at an emergency management consulting firm and also served as director of Alabama's Emergency Management Agency.

The Trump administration has come under intense criticism for its response to the damage Hurricane Maria did to Puerto Rico. Almost 3,000 people died in the natural disaster, many more than the earlier official tally of 64 people. Trump said this week that his government's response to the disaster in Puerto Rico "was an incredible, unsung success."

Marc Caputo and Rebecca Morin contributed to this report.

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Tax Policy Center: $3.15T long-term cost to make tax cuts permanent Back

By Toby Eckert | 09/12/2018 04:28 PM EDT

Making recent tax cuts for individuals and non-corporate businesses permanent would cost $3.15 trillion from fiscal years 2029 to 2038 and modestly boost GDP, according to an estimate released today.

The long-term static projection by the Urban-Brookings Tax Policy Center goes beyond a cost estimate by Congress' Joint Committee on Taxation. Using its official 2019-2028 budget window, which would only capture three years' worth of costs, JCT put the plan's price tag at $631 billion.

The legislation, H.R. 6760 (115), is part of a package of tax and personal savings bills the House Ways and Means Committee is scheduled to vote on Thursday.

The individual and business tax cuts, part last year's GOP tax overhaul, H.R. 1 (115), were scheduled to expire at the end of 2025 to keep the overhaul's cost down.

Supporters say making the cuts permanent will mean certainty for taxpayers and keep the economy hot.

"This will create over 1.5 million new jobs, continue to raise wages, and boost long-run GDP," Ways and Means Chairman Kevin Brady (R-Texas) said when the legislation was introduced Monday.

Taking account of the macroeconomic effects of extending the tax cuts, the TPC said it "projects the bill would have little effect on the economy through 2025, but would increase GDP by about 0.5 percent in 2026, 0.4 percent in 2028, and 0.1 percent in 2038."

"The resulting macroeconomic feedback would boost revenues by a cumulative total of $71 billion over 2019-28, and by $157 billion over 2029-38, offsetting a modest portion of the revenue loss as projected under conventional scoring," the group added.

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GOP's second round of tax cuts would cost $657B, official estimates show Back

By Brian Faler | 09/11/2018 12:06 PM EDT

House Republicans' plans for a second round of tax cuts would cost $657 billion, new estimates show.

The projections by the Joint Committee on Taxation are sure to fuel complaints over the proposal's cost, which would come on the heels of last year's $1.5 trillion tax cut, and in the face of warnings the government's budget deficit will soon top $1 trillion.

The costliest provisions would extend temporary breaks for individuals due to expire at the end of 2025, with plans to make permanent lower rates running $522 billion and a beefed up child credit costing $179 billion.

Those costs would be partially offset by plans to extend various restrictions on itemized deductions, most notably a controversial new $10,000 cap on state and local tax write-offs. That would save $318 billion, the estimates show.

The JCT projections actually understate the plan's long-term price tag because most of the cost would fall outside of the agency's budget window.

The nonpartisan office estimates costs over the next 10 years. But the legislation would not even begin to extend temporary provisions until 2026, so only three years' worth of costs show up in the official 2019-2028 window.

House Republicans unveiled plans yesterday for their so-called Tax Cuts 2.0, a trio of measures designed to highlight for voters ahead of the November elections the GOP's commitment to lower taxes.

The bills are H.R. 6760, H.R. 6757 and H.R. 6756.

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Ryan urges Republicans to tout economic gains Back

By Rachael Bade | 09/13/2018 09:02 AM EDT

With the Republican majority hanging in the balance, and a Democratic wave building before their eyes, Speaker Paul Ryan encouraged House Republicans on Thursday to hyper-focus on selling the party's one major bright spot: a booming economy.

In a closed-door meeting Thursday morning — House Republicans' last political conference before Election Day — the retiring speaker told members to spend the final sprint of the midterm elections tuning out the drama of Washington and preaching economic gains.

"The unemployment rate is under 4 percent; jobless claims are lowest in 50 years; wages are up 3 percent; GDP is growing," Ryan told the conference, according to his prepared remarks. "Selling what we've done to voters over the next eight weeks is my top priority. I know everyone in this room will help amplify that message and carry us to victory," he added later.

Ryan vowed to help them, promising that "I am going to spend the next 54 days ... spend[ing] time in almost every battleground district until the last vote is counted."

Still, that's easier said than done when President Donald Trump's poll numbers are tanking, dragging Republicans down with him. Republican strategists have long said that if Trump's approval ratings stayed above 40 percent, the party had a serious shot at keeping the House.

But after a bruising August — including the conviction of Trump's former campaign chairman and his personal lawyer's campaign-law-violation guilty plea — Trump's numbers have sunk to the mid-to-upper 30s. At the same time, Democrats have grown their lead on the congressional ballot, with more than 14 percent of voters saying in a recent Quinnipiac University poll that they prefer a Democrat-controlled Congress over a GOP reign.

For months now, Republican leaders have been hammering rank-and-file members to weather the storm by shouting their legislative victories — tax reform, repeal of the individual mandate, rebuilding the military, opioid relief — at the top of their lungs. And on Thursday, National Republican Congressional Committee Chairman Steve Stivers reiterated those same points in a "what you should be doing" presentation at the political huddle.

Stivers ticked off "common mistakes" candidates make and warned them to be on guard. Run a hyperlocal campaign, he told them. Keep raising money like you're behind. Don't wait to engage with constituents.

Ryan told colleagues to "be focused in on the issues that matter to voters and the success of the economy" — and, of course, paint Democrats as too extreme. Whether that can stifle the allure of Democrats promising to be a check on Trump's White House is another thing entirely, however.

"Democrats want to bring dysfunction to Washington, and have gone far left with out-of-touch ideas like single payer health care and abolishing ICE," he said.

Ryan has done just about as much as a speaker could possibly do to help his colleagues. During the 35 months he's been speaker, he's visited 40 states and more than 150 cities, donated about $100 million to the NRCC this cycle and raised $200 million. Despite initial concerns that his demand to be home in Wisconsin with his kids on the weekends would cramp his fundraising prowess, Ryan has shattered records, surpassing even ex-Speaker John Boehner.

Earlier this week, Ryan helped raise $100,000 for vulnerable Rep. John Culberson (R-Texas), who faces a formidable Democratic opponent. He also helped rally the base at campaign-style north Dallas event for House Rules Chairman Pete Sessions, who's found himself in a competitive race. The event, not surprisingly, centered on tax reform.

Next week, during the one-week recess, Ryan will head to the West Coast to help incumbents and candidates in California, Arizona and Colorado. And he plans to be on the road all of October.

But the question remains: is it enough?

History is against the House Republicans — and, at times, so it seems is the White House. Midterm elections for the president's party are typically bloodbaths, averaging a loss of about 30 seats. Add Trump's penchant for drama and the scandal constantly surrounding the White House, and the picture looks grim.

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The one thing Trump can't sell: A booming economy Back

By Ben White and Nancy Cook | 09/12/2018 01:00 PM EDT

In an alternate universe, President Donald Trump would be heading into the midterms relentlessly touting his stewardship of a strong economy with results that include historically low unemployment, strong economic growth, sky-high enthusiasm among small businesses and shattered records for job openings.

Instead, the president is repeatedly muddling that message with easily debunked falsehoods or hyperbole about the state of the economy while pressing on with unpopular trade wars that frustrate establishment Republicans and business groups worried about price increases. His undisciplined approach — coupled with his obsessing about the Russia investigation, Hillary Clinton and the 2016 election — is damaging what many Republicans say should have been a political slam dunk for the GOP heading into the fall.

The result is that one of the White House's most critical projects for the midterm elections — getting Americans to credit Trump and the party with a hot economy — is in danger of failing. White House aides and Republicans close to the administration think it's a losing endeavor, at this point, to try to push the president to stay on that message when he's proven time and time again that he prefers his own method of communicating.

"The economy is the admission ticket for Republicans," said Josh Holmes, former chief of staff to Mitch McConnell, the Senate's majority leader. "But it is clearly not the only thing that matters, and in a news cycle increasingly driven by the president, an awful lot of new things are entering the lexicon of everyday Americans."

Polls show voters rate the economy highly, but approval ratings for both Trump and the GOP remain mired in deeply negative territory. Surveys also show sharp skepticism over Trump's trade battles with Canada, Mexico, China and Europe. That means a booming economy could be turning into a political bust for the party.

"It's just harder to drive a sustained message of economic enthusiasm with the shadow of a trade war looming over those efforts," said Kevin Madden, a partner at Hamilton Place Strategies and spokesman for Mitt Romney's 2012 campaign. "Too much political capital was left on the field. Small business enthusiasm, coupled with tax reform and regulatory relief, could have yielded broader political benefits heading into a tough mid-term cycle if there was a more focused message."

Just this week, as the White House rolled out a fresh push to tout the strong economy, Trump tweeted that economic growth was higher than the jobless rate for the first time in 100 years. It was actually the first time in 12 years. And he suggested that if Hillary Clinton had won the White House, the economy would be sharply contracting right now, an assertion not supported by any available facts or mainstream economists.

The claims follow months in which Trump claimed the GOP tax cut was the biggest in history. It wasn't. And he repeatedly suggested the U.S. economy is now stronger than at any time in history. It isn't.

White House Council of Economic Advisers Chairman Kevin Hassett, who took to the briefing room on Monday to argue that Trump's economy is much more than just a continuation of trends that began a decade ago under President Barack Obama, wound up having to explain why Trump tweeted his false claim about GDP and unemployment.

And he came away from the appearance frustrated that the press doesn't cover Trump's successes on the economy more positively.

"This is a historically good economy, one of those special moments that we see every now and then. If you don't agree that there is enough economic data to support this then you are a science denier as much as a denier in any other area," Hassett said in an interview while traveling in Ireland this week. "The treatment of the president is very hostile. I suppose that if we all became saintly, perfect beings that maybe there is a chance that someone might cover things positively. But it doesn't look like it to me."

Inside the White House, part of the problem stems from a long-standing lack of cohesive strategy on messaging and communications — a quandary that Trump tried to solve by bringing on a former Fox News executive, Bill Shine, as the deputy chief of staff for communications.

One senior administration official also said that Trump, as a former businessman and not politician, does not always bask in or relish his administration's successes, or boast about them enough since he's often so eager to move onto the next thing and does not always realize how hard-fought victories can be in government.

A former administration official said that Trump usually zeroes in on touting the economy on days when new economic data comes out, such as jobs or GDP numbers.

His Twitter stream this week, with less than two months until the midterms, has focused on the impending hurricane, a tell-all book by Bob Woodward, the NFL anthem controversy, North Korea, trade with China, Hillary Clinton — and the economy.

Republican congressional leaders continue to believe the economic message is the most potent one heading into the midterms and plan to keep up the drumbeat of that message — especially in swing suburban districts where House seats are in play. Leaders including McConnell and Speaker Paul Ryan gently brought that up at a meeting at the White House last week, where much of the discussion centered on the economy, said a person briefed on it.

"Would it be terrific if the only thing people cared about was the economy?" Holmes asked. "Yeah. But things like immigration, while not important to everyone, are very important to driving base turnout and focusing on things like that are an important part of the mix."

Polling also suggests that when the economy is bad, it is by far the top issue on people's minds. When it's good, it takes a back seat to other concerns such as health care.

Outside the White House, Trump's seeming inability to just stick to strong economic facts to make his case without resorting to inaccurate superlatives or contrasts to Obama is also frustrating economic conservatives who want the president to stay laser-focused on what he's done on taxes and regulation rather than fight with a former president, or the Canadians or anyone else.

"As is often the case, the president is his own worst enemy here," said David Bahnsen, chief investment officer of The Bahnsen Group, a wealth-management firm. "The deregulatory efforts are indeed laudable and pro-

growth for us free-enterprise advocates. But how many times has the president talked about 10 percent business investment growth, or capital expenditures. Instead his messaging is that Canada is ripping off Americans. It's exasperating."

Polling data show just how challenged Trump is in getting wider credit for the strong economy. A Quinnipiac poll out this week showed 70 percent of Americans rate the economy as "excellent" or "good," matching an all-time high. But that's not translating into any higher support for the president.

The same poll shows him with just a 38 percent approval rating. And 60 percent of respondents in the poll said they believe Trump is dishonest, underscoring the potential damage he does when he says untrue things about the economy. Both figures are similar to a recent CNN survey that pegged Trump's approval rating at 36 percent with just 32 percent describing the president as honest.

Democrats now enjoy a near-double-digit lead in generic ballot surveys asking which party people plan to vote for in the fall, suggesting a run of very strong economic data on growth, job openings and confidence are not boosting the GOP's prospects this fall.

Part of the problem, according to pollsters, is that for many Americans, even a strong economy won't change their opinions about the president.

"Americans made up their mind pretty quickly about Trump's presidency and many aspects of the verdict have been negative and strong," said Karlyn Bowman, who studies polling data for the American Enterprise Institute.

Bowman also noted that while the economy is strong, negative feelings about the U.S. financial system lingering from the 2008 financial crisis and Great Recession persist, further frustrating efforts by the White House to have some of the glow of the economy rub off on the president.

"Given the depths public opinion sank to after the crash and the public's conviction that our financial system isn't more secure than it was then, perhaps it shouldn't surprise us that he's not getting a lot of credit."

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An Economic Boom Is a Terrible Thing to Waste Back

By Rich Lowry | 09/12/2018 08:39 PM EDT

President Donald Trump is showing it's possible to preside over a period of peace and prosperity, and still be notably unpopular.

Over the past several months, Trump has opened even more of a wedge between the largely benign material conditions in the country and his own political standing, which is precarious and appears to be sliding backward. This isn't how it's supposed to work.

Republican politicos believed, reasonably enough, that last year's tax cuts would stoke growth and create a good-news backdrop for Republicans in the midterms. The substantive part of this theory has worked swimmingly, with headlines just over the past week about middle-class incomes increasing over $61,000 for the

first time, blue-collar jobs growing at their fastest clip in 30 years, and small-business confidence reaching an all-time high.

The only flaw in their theory is that the drumbeat of good news has coincided, lately, with a drop in Trump's numbers. In much of the recent polling, he's dipped back under 40 percent after a steady, monthslong run of being at about 43 percent in the RealClearPolitics polling average.

He hasn't done this with any spectacular misstep. There has been no great national crisis. Trump hasn't launched a major war that's gone badly, or presided over a financial crisis, or signed a law remaking a swath of American health care and botched its rollout.

What Trump has done, predictably, week after week, is mess up the easy stuff.

Getting, say, Kim Jong Un to disarm is extremely difficult, and no one has managed to do it yet, which is why Trump's approach of high-level personal diplomacy—while almost certainly misbegotten—should be evaluated with a touch of modesty.

It's all the other things that could be handled without a hiccup by a 25-year-old junior communications staffer that are hurting.

It's not hard—through gritted teeth and insincerely, if necessary—to say the appropriate things about an American hero upon his passing.

It's not hard to limit your tweets on the morning of September 11, for just a few hours, to the topic of the anniversary of the attacks and leave commentary on a recorded cable TV show for some other time.

It's not hard to avoid attacking your own attorney general in public, repeatedly and in an escalating fashion meant to inflict the greatest possible humiliation.

It's not hard to avoid throwing around the word "TREASON" loosely or to muse about changing the libel laws to exact legislation retribution on your critics.

Granted, it's harder to build a cohesive White House team, given a certain level of palace intrigue that surrounds any president, but it ought to be easy to exclude volatile C-list stars from the your old reality show and generate enough coherence to stem nonstop self-serving, backbiting leaks (let alone attacks on you in anonymous op-eds).

Any president grapples with the fact that he can't control events; Trump grapples with the fact that he can't control himself. He has dispensed with, to paraphrase Burke, the decent drapery of the American presidency, the norms devoted to investing the holder of the office — whether he deserves it or not—with a certain majesty.

Trump just let's it all hang out. This is gratifying to his core supporters, even as it creates a wearisome cycle of ceaseless controversies.

It not as though any one thing—the Stormy Daniels affair, the Cohen plea deal and the Manafort conviction, the security-clearance controversy, the Omarosa book, the anonymous op-ed, the Woodward book—is as consequential as it's portrayed in any given news cycle, but one damn thing after another adds up.

Trump has an amazing ability, through the force of his personality and his instinct for the mediagenic provocations, to blot out the sun. He wouldn't be president without this quality. It's just that, given the positive state of the country, less blotting and more sun are called for.

Some caveats: Presidential popularity means something different in the age of Trump. He won election in 2016 with an approval rating of 38 percent, so a return to that level may be less debilitating for him than prior presidents.

It's not as though he's creating controversies on his own in an otherwise placid political environment. He is confronted with an inflamed opposition, an extremely hostile press corps and a wide-ranging, aggressive special counsel investigation.

While the economy is a positive, the tax-cut package is in the rearview mirror and not a highly emotive issue, so it makes sense for Trump to inject other topics—immigration, anthem protests, etc.—into the campaign.

Finally, although it seems that Democratic voters will be highly motivated to vote against any Republican this year, it is still possible that garden-variety Republicans will manage to distinguish themselves from Trump.

All that said, we might be the peak of the business cycle, and yet the president who is presiding over the good times—and pushed for and signed the tax package that has boosted the recovery further—isn't enjoying their full political benefit.

An economic boom is a terrible thing to waste.

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Rettig takes over IRS amid budget challenges, regulatory crunch Back

By Aaron Lorenzo | 09/12/2018 09:59 PM EDT

Veteran tax lawyer Chuck Rettig has an overflowing plate awaiting him as IRS commissioner after the Senate confirmed him Wednesday for the agency's top job.

While assessing budget needs and reviewing its information technology and security weaknesses, Rettig will also need to immediately make sure the IRS is ready for the upcoming filing season and continue the guidance assembly line that's producing rules and regulations for the new tax cuts law which took effect this year.

Rettig could also find himself in an uncomfortable position if Democrats take control of the House and try to force the release of President Donald Trump's tax returns to lawmakers, as some have threatened to do.

"People used to sometimes ask, 'How complicated is tax administration? People file or they don't file,'" said former IRS commissioner John Koskinen, Rettig's immediate predecessor. "I'd tell them to just sit in my office for a day, any day of the week, and look at the range of issues."

The Senate voted 64-33 to approve Rettig's nomination, which Trump announced in February, giving the IRS a full-time leader for the first time since November, when Koskinen exited the post at the end of his five-year term. David Kautter has been serving as acting IRS commissioner in addition to his duties as the Treasury Department's top tax policy official.

Preparing for next year's tax filing is likely to consume much of Rettig's early attention, according to Koskinen.

The upcoming filing season is particularly fraught considering the lower personal and business tax rates and myriad other changes under the Tax Cuts and Jobs Act, which Trump signed at the end of last year. No one wants a filing mess-up on their watch, especially with all the moving parts in play this season, said a former IRS official who spoke on condition of anonymity because of current job sensitivities.

The agency, along with Treasury and the OMB, is still in the midst of preparing many crucial regulations, notably for some complex international provisions of the new law. Some commissioners have been more hands on than others when it comes to rulemaking, and while it's not clear where Rettig may fall on that spectrum, he's at least expected to take stock of how the process is progressing and who's involved in the effort for the IRS as taxpayers seek clarity as soon as possible.

Improving data security and combating tax-related identity theft are also part of Rettig's portfolio, and he is certain to keep close tabs on those issues. As Kautter and others have noted, the IRS is subjected to more than 2 million attempted cyberattacks a day.

Outdated information technology systems at the IRS will also garner Rettig's attention. Part of the system crashed on the last day of this year's tax filing season. Though it was traced to a newer piece of equipment, parts of the overall setup at the IRS infamously date to the 1960s.

As an initiative is under way to install a more modern, agency-wide case management system for taxpayers, Koskinen said it's important that IT staffers continue coordinating with the agency's business staff to optimize the end product.

To support all of this, the IRS will need sufficient resources from Congress, which has starved the agency of funding, cutting it by some 20 percent since 2010. Increases this year and next year are tied to implementing the new tax law, and largely fail to address chronic underfunding for the agency.

Rettig, at his confirmation hearing in June, said he wouldn't be shy about pushing to boost spending for the IRS, which stands to get between $11.3 billion and $11.6 billion for the 2019 federal fiscal year.

Koskinen, who clashed frequently with Republicans in Congress, mostly over the aftermath of a political targeting controversy during the Obama administration, expects his successor to have an easier time securing better spending levels for the agency.

"A new commissioner with a clean slate will be able to have meaningful discussions with members of Congress, particularly the appropriators, about the challenge of underfunding the IRS," Koskinen said.

Rettig, a tax controversy specialist who's been with the same California law firm for more than 35 years, is the first tax lawyer to helm the IRS since the late 1990s, when a series of business management executives began leading the agency following a 1998 law that restructured IRS operations.

Congress is again contemplating a raft of changes to how the IRS operates, and Rettig has a chance to weigh in now that he's confirmed. Among provisions he signaled support for at his Finance Committee confirmation hearing is funding for employee training, language to regulate paid tax preparers, and authority for a more competitive and accelerated hiring process known as streamlined critical pay, which the agency has previously used to bring on new IT employees.

Rettig will also get the chance to surround himself with new deputies, should he choose to make changes, and select a handful of tax technicians from within and outside the IRS to help guide decisions, the former IRS official said. (Tax attorney Michael Desmond is still awaiting confirmation as IRS chief counsel, the only other political appointee at the agency.)

The new commissioner is also expected to take the measure of the agency's legislative and public affairs staff to ensure their effectiveness in advocating his vision for the agency, the former IRS official said.

While Rettig's confirmation wasn't in doubt, it was long coming, most recently due to some Senate Democratic opposition not connected to Rettig's professional credentials. Oregon Sen. Ron Wyden, the top Democrat on the Finance Committee, and some of his colleagues protested a recent Treasury decision to stop most donor disclosure requirements for nonprofit groups, as well as a legal limit on the federal deduction for state and local taxes imposed this year. Both policy changes were made without Rettig's involvement.

Wyden and 30 other Democrats, along with the chamber's two independents, voted against Rettig's confirmation. Another 15 Democrats voted for him, as did every Republican voting.

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GOP teachers launch statehouse bids to demand more school funding Back

By Kimberly Hefling | 09/13/2018 05:00 AM EDT

This year's unrest among red-state teachers unhappy with cuts to school funding and low pay has produced a mini-wave of GOP legislative candidates on the November ballot who insist they're ready to stand up to their fellow Republicans on education issues.

About 40 Republicans have joined the mostly Democratic "educator spring" — the hundreds of current and retired teachers, professors and school administrators running for office, following walkouts and protests last spring that halted school in red states like Oklahoma, West Virginia, Kentucky and Arizona.

GOP candidates cite many of the same concerns as their Democratic peers: reduced state spending on education, dismal teacher salaries and unease about the future of America's schools. And they say they'll rebuke Republican governors and lawmakers to obtain the education support they want. Many of the contenders new to politics are even teachers union members, the traditional province of the Democratic Party.

One is Becki Maldonado, an English teacher and Oklahoma legislative candidate who proudly wears her American Federation of Teachers pin when she knocks on doors. She's gotten used to the surprised looks when she tells voters she's a Republican.

Don't "judge a book by its cover," says Maldonado. "As a Republican, I kind of think outside the box."

The National Education Association, the nation's largest teachers union, estimates that the roughly 40 Republicans are among the approximately 550 current or retired educators from both parties running for state legislative seats this fall.

Teachers unions are longtime donors and political power brokers within the Democratic Party, and the party often claims education as a defining issue. But these GOP candidates have gone so far as to take advantage of teachers union campaign training, which is open to members of both parties.

Maldonado said she decided to run for a state Senate seat on the first day of Oklahoma's teacher walkout, after she met with legislators and didn't think they could relate to what she described. She said she's taught in a

school where her classroom had 36 students — and not enough desks. A priority if elected, she said, would be to help the state come up with alternative sources of revenue beyond oil and gas taxes.

"I really realized that they were not aware of what the common people of Oklahoma were going through and their needs," Maldonado said of state legislators.

Similarly, Scott Lewis, the superintendent of schools in Ohio County, Kentucky, said his motivation to run as a Republican in a state House seat in his western Kentucky district was the passage of legislation signed by Gov. Matt Bevin, a Republican, that watered down retirement benefits for starting teachers. The move help stir teacher walkouts across the state, with educators chanting, "We'll remember in November" on the Capitol grounds in Frankfort.

With starting teaching salaries in his district around $36,000, Lewis said it's already tough to recruit quality applicants. He's also fed up that his district is getting nothing from the state for textbooks and professional development — not to mention his frustration with the negative rhetoric he says is too often directed at teachers.

Lewis said on education issues, he differs some from the mainstream views of the Republican Party. He also opposes charter schools, for example. But Lewis said he opposes abortion rights, and otherwise has views in line with much of the Republican Party.

"We need to treat teachers like professionals and not just like they're not important, which is what I think they feel like," Lewis said. "I think it's time we stood up for public education."

Chris Ackerley is a Republican math teacher and state legislative candidate in Arizona who previously served a term in the state legislature before losing his seat in 2016. He said the "RedforEd" movement in his home state brought about positive changes in school funding. But he's dismayed that the result seems to be partisan bickering.

Ackerley said a big challenge ahead is ensuring that the state keeps its promise to increase teacher salaries and fund career and technical education programs.

But Ackerley, a member of the Arizona Education Association teachers union, acknowledged that beyond education, he doesn't really agree with a lot of the union's positions.

"Once you start going off going into other areas we don't see eye to eye," he said. Tax policy is one, he said.

Vera Miller, a Republican music teacher running for a House seat in West Virginia, said her experience as a teacher makes her "absolutely different" than most Republicans, in part, because she considers herself a moderate with "middle-of-the-road" views that have been shaped by working with children.

"I don't live in a bubble. I see the real world around me. I see hungry children," Miller said. "Really, the only ticket a lot of our children have in West Virginia is a good education, so I'm a supporter of public education."

The Democrats seeking office have had a higher profile. That includes Jahana Hayes of Connecticut, a first-time candidate for Congress who was named National Teacher of the Year in 2016.

Rep. Tim Walz, a Democrat running for governor in Minnesota, also worked as a teacher, as did Tony Evers, the Wisconsin superintendent of public instruction taking on Wisconsin Gov. Scott Walker, a Republican. Sen. Elizabeth Warren, (D-Mass.) who is running for a second term, worked as an elementary school teacher and law professor.

Seizing on the trend, the Democratic Legislative Campaign Committee sent out an August memo showcasing its candidates, titled "Teachers and state Democrats are taking Republicans back to school."

But there are Republican teachers in office, too. State Rep. Steve Harshman, the Republican speaker of the House in Wyoming, is a teacher and coach — and NEA member. Rep. Virginia Foxx, (R-N.C.), the chairwoman of the House education committee, was a community college administrator and school board member.

Travis Brenda, a Republican math teacher in Kentucky, already succeeded in pulling off a big political upset this campaign season. In the state's May primary, he unseated Jonathan Shell, the state's GOP House majority leader.

Recognizing the momentum for educators in general, the NEA organized training sessions in four cities that were attended by current and potential teacher candidates from both parties.

Carrie Pugh, the NEA's political director, said Republican and Democratic candidates had similar questions during the training, which was open to all members, and it shouldn't be a surprise that Republicans attended. Many of the offices the educators seek are local and nonpartisan, she said.

"Our members reflect where they reside," Pugh said.

A big concern for the candidates is finding the time to manage a campaign in between school demands, she said. Another is whether they'll be able to manage or even keep their jobs, given the time demands if they are elected. The sessions help the teachers with public speaking, making campaign plans and setting policy priorities.

"How to structure your campaign works the same way, whether you are Republican, Democrat or Independent," said Alicia Priest, president of the Oklahoma Education Association.

Priest said the union's membership in Oklahoma is about half Republican and half Democratic and the union welcomes Republican educators — especially given that Republicans hold a supermajority in both state legislative chambers.

Chris Jankowski, a political consultant who is the former president of the Republican State Leadership Committee, which works to elect Republicans to state offices, said while there's no shortage of teachers who are Republican, typically those who run are liberal Democrats.

Jankowski said the GOP suffers from an image of not being quite as strong on education as Democrats, but Republican teachers carry credibility that can help them compete for support from Democratic and independent voters.

"It's a really positive trend and our party should be on the lookout for candidates," Jankowski said.

As Toni Hasenbeck, a Republican middle school teacher from rural Elgin, Okla., campaigns after school in the evenings, she says voters often tell her when it comes to education spending, they want more transparency and more assurances that legislators will be good stewards of the money.

"That's exactly how I feel. It's a big responsibility," Hasenbeck said. "I've always been for paying teachers more and spending more on education. I wish in Oklahoma, we would spend our money like those things were a priority."

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To: Brazauskas, Joseph [brazauskas.joseph@epa.gov]
Subject: Afternoon Energy: House moves on WRDA, LWCF — From Russia with grid security — FEMA head under investigation

By Garrett Ross and David Beavers | 09/13/2018 04:24 PM EDT

With help from Kelsey Tamborrino

HOUSE MOVES ON WRDA, LWCF: The House easily passed a major water infrastructure bill today and unveiled a bipartisan deal to make a key conservation program permanent. The latest iteration of the Water Resources Development Act and the reauthorization of the Land and Water Conservation Fund are moving along separate tracks, but the political fight over both pieces of legislation have been linked in the Senate, where Sen. Richard Burr (R-N.C.) has held up action on WRDA until he can secure a win on the LWCF. Burr has not yet endorsed the LWCF deal reached in the House today but says he is tracking developments closely.

— **Where's WRDA:** The America's Water Infrastructure Act, S. 3021 (115), combines a traditional Water Resources Development Act authorizing new Army Corps of Engineers levee, port and ecosystem projects with the first reauthorization of the Safe Drinking Water Act in two decades, Pro's Annie Snider reports. Lawmakers scrambled the measure to the floor swiftly after reaching a deal on the bill late Monday in an effort to get it signed into law before this fall's midterm elections. Senate Environment and Public Works Committee Chairman John Barrasso (R-Wyo.) said today that he expects the chamber to take up the bill swiftly, "certainly before the election and possibly next week." Read more here.

— **Where's LWCF:** The House Natural Resources Committee advanced a compromise agreement that would permanently reauthorize the LWCF, Pro's Anthony Adragna reports. The bill, H.R. 502 (115), which the committee approved by voice vote, would ensure 40 percent of funds go state grants and 40 percent go to federal programs, while the other percentage could go to a "wide variety" of potential purposes as deemed appropriate, according to Natural Resources Committee Chairman Rob Bishop (R-Utah). More on Bishop and ranking member Raúl Grijalva (R-Ariz.)'s compromise agreement here.

Welcome to Afternoon Energy! We're your hosts Garrett Ross and David Beavers. Send suggestions, news and tips to gross@politico.com, dbeavers@politico.com, mdaily@politico.com and njuliano@politico.com, and keep up with us on Twitter at @garrett_ross, @davidabeavers, @dailym1, @nickjuliano, @Morning_Energy and @POLITICOPro.

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FROM RUSSIA WITH GRID SECURITY: Energy Secretary Rick Perry, in a meeting today with his Russian counterpart in Moscow today, expressed "disappointment and concern about Russia's continued attempts to infiltrate the American electric grid," according to DOE spokesperson Shaylyn Hynes. Hynes also said Perry made it clear to Russian Energy Minister Alexander Novak that "Moscow can no longer use energy as an economic weapon." Though relations between Russian and the U.S. have been tense over issues like the Nordstream 2 gas pipeline and grid cyberattacks, Perry and Novak pledged to continue to "search for ways to

work together, within the guidelines and limitations of our current bilateral relationship." Read more from Darius Dixon here.

FEMA HEAD UNDER INVESTIGATION: As his agency gears up to respond to Hurricane Florence hitting the East Coast, FEMA Administrator Brock Long is under an ongoing investigation by the Department of Homeland Security inspector general into whether he misused government vehicles during his commutes to North Carolina. The IG's interest was drawn after one of the vehicles was involved in an accident. Long's routine absences from the office due to six-hour drives between North Carolina and D.C. have caused friction between him and his boss, DHS Secretary Kirstjen Nielsen — so much so that Nielsen considered asking Long to resign, an official familiar with the matter told POLITICO's Daniel Lippman and Eliana Johnson. Read more here.

Meanwhile, FEMA's handling of Hurricane Maria nearly a year ago was top of mind again today, as President Donald Trump peddled a conspiracy theory that Democrats are falsely inflating the death toll from the storm.

TWO BILLS GO TO TRUMP: The House passed two bills aimed at spurring advanced nuclear energy technology and improving coordination among the Energy Department's scientific arms, Pro's Darius Dixon reports. Both bills have already cleared the Senate by voice votes and now await Trump's signature to put them into law. Lawmakers approved on a voice vote the Nuclear Energy Innovation Capabilities Act, S. 97 (115) , a bipartisan measure that's been creeping through Congress since 2015 and directs DOE to craft plans for a new civilian nuclear research user facility and dedicate more computational resources to assessing advanced reactor designs. They also approved outgoing Rep. Lamar Smith (R-Texas)'s Department of Energy Research and Innovation Act, H.R. 589 (115) , on a voice vote. The measure combines several previously passed bills from Smith's House Science Committee that aim to promote more "crosscutting" between DOE programs and push national lab research into the private sector. Read more here.

FUN WITH FUNDING: Stop us if you've heard this one before. Congressional leaders are preparing for another stopgap spending bill to fund the government and avoid a shutdown, should it be needed. Spending leaders announced plans today for such a bill that would last through Dec. 7 if needed to stave off a partial government shutdown at the end of this month, Pro's Sarah Ferris reports. The continuing resolution will be attached to a minibus fiscal 2019 spending package, H.R. 6157 (115) . The continuing resolution would apply to all agencies that have not otherwise received full-year funding by Sept. 30. Read more here.

PARKS BACKLOG: The House Natural Resources Committee this morning advanced a bill, H.R. 6510 (115), that would create a dedicated funding source aimed at addressed the billions of dollars in maintenance backlog facing public lands, Anthony reports. The bill would direct 50 percent of unallocated revenue from energy production on federal lands to the backlog, up to $1.3 billion annually. Bishop says he is optimistic the measure could hit the House floor as a standalone bill. Read more here.

BROWN: IT'S CRIMINAL: California Gov. Jerry Brown lambasted Trump once again over this week's proposed rollback of the Obama-era methane emissions rule during remarks at today's Global Climate Action Summit. Asked how the president will be remembered on the environment, the Democratic governor rolled off a litany of Trump administration moves, including the methane rule, the Affordable Clean Energy plan and the undoing of California's vehicle emissions standards. "It borders not only on insanity, but criminality," Brown said.

MOVERS, SHAKERS: The Independent Petroleum Association of America today announced it has hired Jennifer Pett as manager of public affairs and communications. She previously served as communications director and press secretary for Rep. Lamar Smith.

— **David Mears is now** executive director of Audubon Vermont and vice president of the National Audubon Society, the nonprofit said Wednesday. Mears previously was associate dean for Environmental Programs at the Vermont Law School.

— **The National Geographic Society** board of trustees named Tracy Wolstencroft as president and CEO, effective Oct. 1. Wolstencroft recently served as chairman of Heidrick & Struggles.

SWAMP WATCH: Former Perry adviser Jeff Miller has expanded his lobby shop, Miller Strategies, by hiring three new staffers over the past several months, POLITICO Influence's Theodoric Meyer and Marianne LeVine report. The new hires are Jonathan Hiler, a former legislative director for Vice President Mike Pence, who will be a principal of the firm; Ashley Gunn, another principal, who previously was senior director of Cabinet affairs in the White House; and George Caram, a former White House international economic affairs aide, who has joined as director of legislative affairs.

— Manufacturing giant Ingersoll Rand hired a trio at Alpine Group to lobby on energy efficiency, appliance standards, climate change and tariffs, per a disclosure filing.

QUICK HITS:

— "Push to change wildlife act sparks lobbying blitz," The Hill.

— "After Shelving Biggest-Ever IPO, Can Saudis Pull Off a Mega-Bond?" Bloomberg.

— "Duke starts to shut North Carolina Brunswick nuclear plant ahead of Florence," Reuters.

— "Oil Falls on Rising OPEC Production," The Wall Street Journal.

— "Puerto Rico eyes building the energy grid of the future," Quartz.

WIDE WORLD OF POLITICS:

— Separated parents would get another chance at asylum under settlement proposal

— The one thing Trump can't sell: A booming economy

— Obama jumps into Democrats' fight to reclaim Ohio

To view online:
https://subscriber.politicopro.com/newsletters/afternoon-energy/2018/09/house-moves-on-wrda-lwcf-339947

Stories from POLITICO Pro

House approves water resources bill Back

By Annie Snider | 09/13/2018 01:56 PM EDT

The House has approved major water resources legislation on a voice vote, sending it to the Senate for consideration.

The measure, S. 3021 (115), combines a traditional Water Resources Development Act authorizing new Army Corps of Engineers levee, port and ecosystem projects with the first reauthorization of the Safe Drinking Water Act in two decades.

Lawmakers scrambled the measure to the floor swiftly after reaching a deal on the bill late Monday in an effort to get it signed into law before this fall's midterm elections. The bill contains a number of wins lawmakers are eager to campaign on, including approving a California flood control project, harbor expansions at major ports in Texas and Georgia, and a reservoir in south Florida aimed at cleaning up pollution that has fed toxic algae blooms on its coasts. It also boosts funding for drinking water utilities and offers other assistance to water utilities at a time when communities across the country are grappling with contamination problems like those from nonstick chemicals.

Senate Environment and Public Works Committee Chairman John Barrasso (R-Wyo.) said today that he expects the chamber to take up the bill swiftly, "certainly before the election and possibly next week."

Sen. Richard Burr (R-N.C.) has previously vowed to block the water bill until the Land and Water Conservation Fund receives permanent reauthorization. The House Natural Resources Committee separately approved a deal between the panel's top Republican and Democrat today, although Burr in a statement he has not taken a position on the measure.

WHAT'S NEXT: The water resources bill heads to the Senate for consideration.

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Bishop, Grijalva reach deal to permanently reauthorize LWCF Back

By Anthony Adragna | 09/13/2018 10:21 AM EDT

The top Republican and Democrat on the House Natural Resources Committee have struck a deal to permanently reauthorize the Land and Water Conservation Fund, according to a senior aide.

Reps. Rob Bishop (R-Utah) and Raúl Grijalva's (D-Ariz.) agreement, struck with support from Sen. Richard Burr (R-N.C.), would extend the life of the popular conservation program that expires Sept. 30 and could also pave the way for the Senate to more quickly pass a broad water infrastructure package, S. 3021 (115) . Burr has been holding that bill up in hopes of reaching a solution on LWCF.

"My reservations about the program have never been about the goals of LWCF, rather, I've been frustrated that the implementation of the program fell short of the law's intended purpose," Bishop said in a statement. "This bill, along with additional action we took today, ensures that Congress adequately funds the lands it already owns and realigns the fund back to its original goal."

Among other provisions, the deal ensures that at least 40 percent of the fund goes toward state programs and another 40 percent at least goes toward federal ones.

The committee plans to mark up the agreement at a markup at 10:45 a.m.

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DOE: Perry pressed Russian energy official on grid cyberattacks Back

By Darius Dixon | 09/13/2018 12:01 PM EDT

Energy Secretary Rick Perry signaled his "disappointment" in Russian attempts to undermine the U.S. electric grid in a meeting today with his Kremlin counterpart in Moscow, according to DOE.

Perry and Russian Energy Minister Alexander Novak also discussed how to use their prowess in oil and natural gas production to "ensure world energy market stability, transparency, and sustainability," DOE spokesperson Shaylyn Hynes said in a readout of the meeting.

Hynes said Perry expressed his "disappointment and concern about Russia's continued attempts to infiltrate the American electric grid." A Wall Street Journal report this summer that some cybersecurity experts have criticized said that officials at the Department of Homeland Security have been warning utility executives since 2014 about a long-running campaign by Russian-affiliated hackers to infiltrate U.S. critical infrastructure.

Perry made it clear that "Moscow can no longer use energy as an economic weapon," Hynes said. DOE has sought to leverage recent data showing that the U.S. recently overtook Russia as the world's largest crude oil producer for the first time in nearly two decades.

Despite the tensions over issues like the Nordstream 2 gas pipeline and attempted cyberattacks, the two men pledged to continue having an open line of communication.

Perry and Novak, Hynes said, agreed to continue this "previously dormant energy dialogue and to search for ways to work together, within the guidelines and limitations of our current bilateral relationship. The future of our energy relations is predicated on successfully addressing our broader disagreements."

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Trump's FEMA chief under investigation over use of official cars Back

By Daniel Lippman and Eliana Johnson | 09/13/2018 05:11 AM EDT

Federal Emergency Management Agency Administrator Brock Long is the target of an ongoing Department of Homeland Security inspector general investigation into whether he misused government vehicles during his commutes to North Carolina from Washington, according to three people familiar with the matter, including current and former administration officials.

The actions by Long, the U.S. government's lead disaster official as the country braces for Hurricane Florence, have been called into question by the inspector general over whether taxpayers have inappropriately footed the bill for his travel, an issue that has tripped up a number of current and former top Trump administration officials.

Long's travel habits triggered a clash between him and his boss, Homeland Security Secretary Kirstjen Nielsen, in recent weeks, clouding their relationship just as senior aides close to President Donald Trump prepared for hurricane season — a task that's attracted extra scrutiny in the wake of the disaster that befell Puerto Rico in the aftermath of last year's Hurricane Maria.

The IG is investigating whether Long misused government resources and personnel on trips back home to Hickory, North Carolina, on the weekends, said two of the officials. The IG's interest was drawn after one of the vehicles — a black Suburban — was involved in an accident, according to one of the officials.

Long's routine absences from the office due to frequent six-hour drives between North Carolina and Washington also drew Nielsen's attention, this person said. Nielsen had raised the issue of Long's in-office schedule with him in recent months, this person added.

At a meeting in late August, Nielsen confronted Long about his travel, though people familiar with the meeting gave conflicting accounts about whether she took the step of asking him to step down over the issue.

One of the officials said Nielsen asked Long to consider resigning, though he declined to do so and remains in his role. The program to support the FEMA administrator "was never intended for this purpose," said the official.

Long did not respond to requests for comment from POLITICO but addressed the IG investigation at a FEMA briefing on Thursday morning, saying his office was working closely with the inspector general's office "to make improvements to make sure we are running programs and policies according to regulation."

"Bottom line is, we'll continue to fully cooperate with any investigation that goes on and own up to any mistakes and push forward and keep going," Long said.

"I would never intentionally run a program incorrectly," he added. "Doing something unethical is not part of my DNA, and it is not part of my track record in my whole entire career. We will work with the OIG."

Jessica Nalepa, FEMA's director of external affairs, said questions about specific IG investigations should be directed to DHS' IG office and that FEMA fully cooperates with all investigations conducted by the IG. The DHS IG's office and the White House did not respond to requests for comment.

"All questions about any potential investigation by the Office of the Inspector General should be directed to the IG. At this time, we are fully focused on preparing for, responding to, and recovering from Hurricane Florence and the storms in the Pacific," said DHS press secretary Tyler Houlton. "The secretary is confident in the leadership at FEMA and their proven disaster management ability."

Long started using a staff driver to get him home to North Carolina at the beginning of his tenure at FEMA last year. On the weekends Long spent in North Carolina, aides were put up in a hotel at taxpayer expense, according to one of the current officials.

DHS employees must be authorized to access government vehicles for personal use, including travel to a residence outside Washington, according to one of the officials. But a former DHS official said Long, as administrator, is entitled to have a contingency aide accompany him so he can have secure communications in case of a national emergency.

The former official added that Long "never asked for it and believed access to secure communications to be part of a presidential directive." FEMA recently scaled back the use of the contingency team for cost-saving purposes, and Long now drives himself or flies to North Carolina.

Former FEMA Administrator Craig Fugate, who served under President Barack Obama, said he could remember using government cars for commuting purposes only in seven instances during the eight years he held the job. In those emergency or extreme cases, Fugate said, it was deemed appropriate for a FEMA aide to brief him face-to-face as a driver took him from his home in Gainesville, Florida, to the Jacksonville airport for outbound flights to Washington, where his presence was required.

Long previously worked at an emergency management consulting firm and also served as director of Alabama's Emergency Management Agency.

The Trump administration has come under intense criticism for its response to the damage Hurricane Maria did to Puerto Rico. Almost 3,000 people died in the natural disaster, many more than the earlier official tally of 64 people. Trump said this week that his government's response to the disaster in Puerto Rico "was an incredible, unsung success."

Marc Caputo and Rebecca Morin contributed to this report.

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Trump pushes conspiracy theory about Puerto Rico death toll Back

By Andrew Restuccia and Matthew Choi | 09/13/2018 09:09 AM EDT

President Donald Trump on Thursday peddled a conspiracy theory about the official death toll from Hurricane Maria, falsely accusing unnamed Democrats of inflating the number to almost 3,000 in order to smear his image.

The tweet comes after Trump praised his administration this week for its response to the devastating 2017 storm, calling it an "incredible, unsung success" — comments that garnered fierce backlash from Puerto Rican officials and mainland Democrats as insensitive. Though initial estimates for the death toll from the storm and its aftermath hovered at 64, a comprehensive study released this summer raised the number to nearly 3,000.

"3000 people did not die in the two hurricanes that hit Puerto Rico. When I left the Island, AFTER the storm had hit, they had anywhere from 6 to 18 deaths. As time went by it did not go up by much. Then, a long time later, they started to report really large numbers, like 3000..." Trump tweeted Thursday morning. ".....This was done by the Democrats in order to make me look as bad as possible when I was successfully raising Billions of Dollars to help rebuild Puerto Rico. If a person died for any reason, like old age, just add them onto the list. Bad politics. I love Puerto Rico!"

The study was conducted by researchers at George Washington University and was requested by the Puerto Rican government. The study found nearly 1,300 people died in September and October — the months of the storm — alone, and put the total figure toll at 2,975 excess deaths.

Even for a president who has made a career off politically incorrect pronouncements, Thursday's tweets were eye-popping — and they rattled even the president's most ardent defenders. Asked about the president's comments, one former administration official said simply, "Surreal."

The White House did not respond to a request for comment about Trump's tweets.

The tweets served to draw even more attention to the federal government's flawed response to Maria as the White House and agencies are grappling with Hurricane Florence, which is barreling toward the Southeastern coastline.

Trump has a long history of pushing conspiracy theories, from linking vaccines to autism to asserting that former President Barack Obama wasn't born in the United States. And perhaps more than any president in modern history, Trump has consistently and publicly questioned the government that he now oversees. He has falsely insisted that "millions" of people voted illegally in the 2016 election. During the presidential campaign, he called the Labor Department's employment numbers "one of the biggest hoaxes in American modern politics." And he has repeatedly questioned federal intelligence agencies' assessment that Russia meddled in the 2016 election to boost his candidacy.

It was unclear which Democrats the president was referring to, though he has openly feuded with San Juan Mayor Carmen Yulín Cruz, a member of Puerto Rico's Popular Democratic Party, over the federal government's hurricane response.

People close to the president said Trump remains furious at Cruz, who he blames for magnifying the narrative that the federal government failed to adequately respond to the disaster. For Trump, who sees everything through the lens of politics, Cruz's criticism is emblematic of what he sees as a broader campaign by Democrats to undermine his presidency.

Trump is also fixated on what he was told when he visited Puerto Rico in October 2017, after the hurricane hit. "What is your death count as of this moment, 17?" he asked Puerto Rico Gov. Ricardo Rosselló, who responded that there were 16 certified deaths at the time. Trump was pleased with the number. "You can be very proud of

all of your people, all of our people working together. Sixteen versus literally thousands of people," he said comparing the response to Hurricane Katrina.

Trump, in his Thursday tweet, seemed unable to understand how the figure increased so dramatically from last October, which appeared to spark his conspiracy theory.

But Puerto Ricans and others who experienced the fallout from the hurricane firsthand say they've seen the deadly consequences of a lack of electricity, clean water and infrastructure, which lingered in many parts of the country for months.

"[T]he lack of timely outside resources (personnel, generators, electric repair crews) created or extended the conditions that provoked indirect deaths, such as kidney failure due to lack of power for dialysis equipment for example," said Kenneth McClintock, a former secretary of state of Puerto Rico who was deeply involved in recovery efforts, in a text message.

"The lesson that those who admit to their mistakes (POTUS excluded) learned? Time kills."

One year later, Puerto Rico is still grappling with the fallout from the hurricane. Rosselló, a member of the island's New Progressive Party who worked closely with Trump in the aftermath of the storm, released a statement late Tuesday, saying much of the recovery work on the island remains unfinished.

Rosselló, in a video posted on Facebook in Spanish on Thursday, criticized Trump's remarks.

"The victims of Puerto Rico and the people of Puerto Rico in general, don't deserve to have their pain questioned," he said, adding, "I ask the president of the United States that all the agencies invest the necessary resources to keep working in favor of the people of Puerto Rico."

Rosselló also stood by his decision to use the figures from the study as Puerto Rico's official death toll. "I am confident the process was carried out adequately," he said.

Some Florida Republicans unloaded on Trump over his tweets. "Everything is so personal for him and he just wants to always spin a good story, but using the deaths of Puerto Rican hurricane victims might be a new low, and boy, that's saying something," Rep. Ileana Ros-Lehtinen, who is not seeking reelection, told reporters. Thousands of Puerto Ricans flocked to Florida after Hurricane Maria.

Florida Gov. Rick Scott, who has been distancing himself from Trump during his Senate campaign, publicly rebuked the president on Thursday. "I disagree with @POTUS- an independent study said thousands were lost and Gov. Rosselló agreed. I've been to Puerto Rico 7 times & saw devastation firsthand. The loss of any life is tragic; the extent of lives lost as a result of Maria is heart wrenching. I'll continue to help PR," he tweeted.

Trump's incendiary tweets came as House Republicans were meeting Thursday morning to discuss midterm strategy, which includes a laser-like focus on the economy. Some in the GOP worry that Trump's fixation on Puerto Rico could distract from that message.

Asked about the tweets, House Speaker Paul Ryan (R-Wis.) said, "I have no reason to dispute those numbers. Those are just the facts of what happens when a horrible hurricane hits an isolated place like an island."

Mainland Democrats quickly criticized the president's comments on Twitter. House Minority Leader Nancy Pelosi accused Republicans of "shielding" the president's "insulting behavior from accountability."

Rep. Luis Gutierrez (D-Ill.) called Trump's comments "simply delusional."

"Only in the President's mind could he give himself an A-plus," Gutierrez said. "Only in the President's mind could we go a year without an apology to the American people for his incompetence in managing a crisis where 3,000 people died. And now he denies that they are dead."

The San Juan mayor, meanwhile, was quick to fire off a string of condemnations on Twitter. "Damn it: this is NOT about politics this was always about SAVING LIVES," Cruz tweeted Thursday morning.

Trump's comments on Maria come as he asserts his administration's proactive preparation for Hurricane Florence. The president tweeted a video of himself on Wednesday in the Rose Garden assuring residents in Florence's path that the government is fully prepared for the storm and urging people to evacuate the area. His campaign also canceled two rallies in Missouri and Mississippi to concentrate on storm preparation.

Trump has also sought to shift the blame for his administration's sluggish response to last year's massive storm onto Puerto Rico's leadership and poor infrastructure.

"We got A Pluses for our recent hurricane work in Texas and Florida (and did an unappreciated great job in Puerto Rico, even though an inaccessible island with very poor electricity and a totally incompetent Mayor of San Juan). We are ready for the big one that is coming!" Trump tweeted Wednesday morning.

Hurricane Maria caused widespread devastation and long-term damage to the island of 3 million residents. Many Puerto Ricans lacked access to power, water and healthcare after the storm, leading to thousands of deaths, and local officials complained that the federal government did not appropriately respond to residents' urgent needs.

The Trump administration was also criticized for responding at times considerably more quickly to relief needs on the mainland than in Puerto Rico. Trump himself was at the center of several controversial moments in the aftermath of the storm, including him chucking paper towels at a relief shelter and telling Puerto Ricans they didn't experience a "real catastrophe" like Hurricane Katrina.

Tanya Snyder, Kyle Cheney, Colin Wilhelm and Jesus Rodriguez contributed to this report.

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Back

Science, nuclear research bills clear the House on their way to Trump Back

By Darius Dixon | 09/13/2018 02:56 PM EDT

The House passed two bills aimed at spurring advanced nuclear energy technology and improving coordination among the Energy Department's scientific arms.

Lawmakers approved on a voice vote the Nuclear Energy Innovation Capabilities Act, S. 97 (115), a bipartisan measure that's been creeping through Congress since 2015 and directs DOE to craft plans for a new civilian nuclear research user facility and dedicate more computational resources to assessing advanced reactor designs.

The bill, pushed by Idaho Sen. Mike Crapo (R) authorizes the creation of a National Reactor Innovation Center to foster testing of new reactors, and it directs DOE to report to Congress within 180 days what the agency can do to "authorize, host, and oversee" privately funded experimental advanced nuclear reactors.

House lawmakers also approved outgoing Rep. Lamar Smith's Department of Energy Research and Innovation Act, H.R. 589 (115) on a voice vote. The measure combines several previously passed bills from Smith's House Science Committee that aim to promote more "crosscutting" between DOE programs and push national lab research into the private sector. The bill directs DOE support for nuclear fusion research, the creation of a research program assessing the risks related to low doses of radiation, and greater emphasis on exascale computing.

WHAT'S NEXT: Both bills have already cleared the Senate by voice votes and now await Trump's signature to put them into law.

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Spending leaders announce stopgap spending bill through Dec. 7 Back

By Sarah Ferris | 09/13/2018 12:01 PM EDT

Capitol Hill spending leaders today announced plans for a stopgap funding bill through Dec. 7 if needed to stave off a partial government shutdown at the end of this month.

The continuing resolution will be attached to a "minibus" fiscal 2019 spending package, H.R. 6157 (115), which includes funding for the Pentagon as well as the departments of Education, Labor and Health and Human Services.

"It is merely a continuation of current levels with a few minor, technical adjustments," said House Appropriations Chairman Rodney Frelinghuysen (R-N.J.). A conference committee is meeting this morning to discuss the legislation.

The continuing resolution would apply to all agencies that have not otherwise received full-year funding by Sept. 30.

Both chambers are on track by the end of today to approve the first minibus, H.R. 5895 (115), which funds the Department of Veterans Affairs as well as energy programs, military construction and congressional operations.

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House committee advances bill parks maintenance backlog Back

By Anthony Adragna | 09/13/2018 11:22 AM EDT

The House Natural Resources Committee advanced bipartisan legislation H.R. 6510 (115) today that would create a dedicated funding source to address billions in the maintenance backlog on the nation's public lands

The fund would provide 50 percent of unallocated revenue from energy production on federal lands, including renewable energy, to address the backlog on National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management and Bureau of Indian Education lands. It would be capped at $1.3 billion annually.

"This simply says that if that excess revenue is there, it's not going to grow government, it's going to pay for what we already have a responsibility to do," Chairman Rob Bishop (R-Utah) said.

The committee adopted a substitute amendment changing how the fund would be divvied up and other technical corrections. It shot down three amendments from Rep. James Michael Johnson (R-La.) and half a dozen late amendments from Rep. Garret Graves (R-La.).

The legislation has 150 co-sponsors, including 63 Republicans.

WHAT'S NEXT: Bishop said the legislation could hit the House floor as standalone legislation.

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Gov. Brown: Trump administration's rollback of methane rules 'insane' Back

By Jeremy B. White | 09/11/2018 01:19 PM EDT

Gov. Jerry Brown used the spotlight of a global climate change conference to excoriate the Trump administration for rolling back restrictions on releasing methane, calling the reversal "insane."

"It borders on criminality," Brown said to applause from an international audience of climate experts and government officials gathered in San Francisco.

As the White House has weakened environmental policies, California has charged in the opposite direction - and Brown has often played the role of both a champion of his state's path and a vocal antagonist of the White House.

When California sued over the administration's effort to blunt reductions in vehicle emissions, Brown branded then- Environmental Protection Agency chief Scott Pruitt "outlaw Pruitt." More recently, when Washington moved to revoke California's authority to set more stringent emissions standards, Brown vowed to "fight this stupidity in every conceivable way."

Continuing its efforts to erode Obama-era environmental laws, the EPA is poised to dilute a requirement that energy companies check for methane leaking from new wells. The walkback is expected to result in hundreds of thousands of additional tons of methane flowing into the atmosphere.

Noting that methane is one of the more potent greenhouse gases - meaning that its release would accelerate the effects of climate change - Brown called the move "the most obvious and dangerous and irresponsible action by Mr. Trump."

"That's saying quite a lot," said Brown, who has regularly clashed with Washington over environmental policies.

The governor didn't restrict his criticism to Trump, lambasting Republicans in Washington for enabling the president's environmental agenda.

"Unfortunately, his acolytes in Congress will probably cheer. So they're cheering destruction on a large scale," Brown said.

Brown's remarks came a day after he signed a bill that would have California derive all of its retail electricity from clean sources by 2045, a landmark measure that Brown and his allies trumpeted as a sign of California's climate progress even as Washington moves in a different direction.

Over the weekend the governor signed a pair of bills prohibiting new oil exploration off of California's coast, lauding them as tools to counteract a Trump administration order opening coastal waters to more energy development.

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EPA proposes easing Obama methane rule for new oil and gas wells Back

By Alex Guillén | 09/11/2018 12:09 PM EDT

EPA issued a new rollback of the Obama administration's regulation curbing methane emissions today, proposing to reduce how often oil and gas producers must check for leaks of the powerful greenhouse gas from new wells.

EPA also proposed easing a requirement for certain wells to install pneumatic pump technology; allowing oil and gas producers to certify closed vent systems with in-house experts instead of outside professional engineers; and expanding an option for well owners to use emerging technologies as a "alternative means" of curbing methane pollution. The proposal includes some other minor technical changes.

The changes will save the oil and gas industry $484 million in regulatory costs from 2019 through 2025, according to EPA. It identified foregone domestic climate benefits at $54 million and the lost value of the methane at $62 million.

The agency estimated the proposal would lead to an increase of 380,000 tons of methane, equivalent to about 8.5 million metric tons of carbon dioxide. It would also increase volatile organic compound emissions by 100,000 tons and hazardous air pollutants by 3,800 tons, according to the proposal.

EPA said there are further issues it plans to reconsider in a separate, upcoming rulemaking, including the broader issue of how and whether to regulate greenhouse gases from the oil and gas sector.

WHAT'S NEXT: EPA will take public comment on the proposal for 60 days once published in the Federal Register.

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Separated parents would get another chance at asylum under settlement proposal Back

By Ted Hesson | 09/13/2018 01:03 PM EDT

Migrant parents who failed an asylum screening after being separated from their children at the border would get another chance to seek refuge under a proposed settlement agreement filed Wednesday evening.

The proposed agreement — issued jointly by plaintiffs in three related lawsuits and the Trump administration — outlines a plan to address the asylum claims of parents and children who were split at the border.

Parents who failed an initial interview to determine whether they had "credible fear" to return to their home country, but who remain in the United States, would be granted a new interview under the agreement.

"The reason this is so significant is because when you present yourself at the U.S. border, you get one shot to show you qualify for asylum," said Sirine Shebaya, senior staff attorney for Muslim Advocates, which represented parents in one of the cases. "And that shot was essentially denied."

The plaintiffs argued parents couldn't reasonably participate in credible fear interviews as their children were being forcibly taken from them.

"Some of the parents were so traumatized that they actually couldn't remember what happened at the end of their interview," said Shebaya.

In the proposal, the Trump administration does not agree to bring deported parents back to the U.S., but such requests — which plaintiffs contend would be "rare and unusual" — could be raised on a case-by-case basis.

Under President Donald Trump's "zero tolerance" border enforcement strategy, thousands of families were separated at the U.S.-Mexico border over a three-month period. San Diego-based U.S. District Court Judge Dana Sabraw in late June ordered families to be rejoined, an undertaking that's still ongoing, with more than 400 children still in federal custody after being split from parents.

The settlement agreement would address the process to provide asylum seekers with a chance to seek the benefit. If either a parent or child passes the credible fear interview, the family would not be subject to immediate removal, according to the proposal.

Sirine estimates that hundreds, or possibly more than 1,000, parents could receive a new screening based on the agreement.

The parties requested that Sabraw address the settlement proposal at the next status conference for the related lawsuits, which is scheduled for Friday.

If the judge approves the agreement, he likely would lift a temporary restraining order he issued in mid-August that prohibited the federal government from deporting families separated at the border.

A Justice Department spokesman declined to comment on the proposed agreement.

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Back

The one thing Trump can't sell: A booming economy Back

By Ben White and Nancy Cook | 09/13/2018 05:14 AM EDT

In an alternate universe, President Donald Trump would be heading into the midterms relentlessly touting his stewardship of a strong economy with results that include historically low unemployment, solid economic growth, sky-high enthusiasm among small businesses and shattered records for job openings.

Instead, the president is repeatedly muddling that message with easily debunked falsehoods or hyperbole about the state of the economy while pressing on with unpopular trade wars that frustrate establishment Republicans and business groups worried about price increases. His undisciplined approach — coupled with his obsessing about the Russia investigation, Hillary Clinton and the 2016 election — is damaging what many Republicans say should have been a political slam dunk for the GOP heading into the fall.

The result is that one of the White House's most critical projects for the midterm elections — getting Americans to credit Trump and the party with a hot economy — is in danger of failing.

"The economy is the admission ticket for Republicans," said Josh Holmes, former chief of staff to Mitch McConnell, the Senate's majority leader. "But it is clearly not the only thing that matters, and in a news cycle increasingly driven by the president, an awful lot of new things are entering the lexicon of everyday Americans."

Top lawmakers have repeatedly implored Trump, as recently as last week, to stay focused on the economy, but they haven't found much success with a president who prefers his own method of communicating. And senior administration aides, at this point, find it futile to try to corral Trump, even just urging him to stick to an optimistic economic message that focuses on facts and avoids wild exaggerations. One aide argued they don't think the press will cover the economy fairly anyway. "We have a ton of good facts and a good story to tell, but he's not a perfect messenger," this person said. "And we have a media problem as well."

Polls show voters rate the economy highly, but approval ratings for both Trump and the GOP remain mired in deeply negative territory. Surveys also show sharp skepticism over Trump's trade battles with Canada, Mexico, China and Europe. That means a booming economy could be turning into a political bust for the party.

"It's just harder to drive a sustained message of economic enthusiasm with the shadow of a trade war looming over those efforts," said Kevin Madden, a partner at Hamilton Place Strategies and spokesman for Mitt Romney's 2012 campaign. "Too much political capital was left on the field. Small business enthusiasm, coupled with tax reform and regulatory relief, could have yielded broader political benefits heading into a tough mid-term cycle if there was a more focused message."

Just this week, as the White House rolled out a fresh push to tout the strong economy, Trump tweeted that economic growth was higher than the jobless rate for the first time in 100 years. It was actually the first time in 12 years. And he suggested that if Hillary Clinton had won the White House, the economy would be sharply contracting right now, an assertion not supported by any available facts or mainstream economists.

The claims follow months in which Trump claimed the GOP tax cut was the biggest in history. It wasn't. And he repeatedly suggested the U.S. economy is now stronger than at any time in history. It isn't.

White House Council of Economic Advisers Chairman Kevin Hassett, who took to the briefing room on Monday to argue that Trump's economy is much more than just a continuation of trends that began a decade ago

under President Barack Obama, wound up having to explain why Trump tweeted his false claim about GDP and unemployment.

And he came away from the appearance frustrated that the press doesn't cover Trump's successes on the economy more positively.

"This is a historically good economy, one of those special moments that we see every now and then. If you don't agree that there is enough economic data to support this then you are a science denier as much as a denier in any other area," Hassett said in an interview while traveling in Ireland this week. "The treatment of the president is very hostile. I suppose that if we all became saintly, perfect beings that maybe there is a chance that someone might cover things positively. But it doesn't look like it to me."

Inside the White House, part of the problem stems from a long-standing lack of cohesive strategy on messaging and communications — a quandary that Trump tried to solve by bringing on a former Fox News executive, Bill Shine, as deputy chief of staff for communications.

One senior administration official also said that Trump, as a former businessman and not politician, does not always bask in or relish his administration's successes, or boast about them enough since he's often so eager to move onto the next thing and does not always realize how hard-fought victories can be in government.

A former administration official said Trump usually zeroes in on touting the economy on days when new economic data comes out, such as jobs or GDP numbers.

His Twitter stream this week, with less than two months until the midterms, has focused on the impending hurricane, a tell-all book by Bob Woodward, the NFL anthem controversy, North Korea, trade with China, Hillary Clinton — and the economy.

Republican congressional leaders continue to believe the economic message is the most potent one heading into the midterms and plan to keep up the drumbeat of that message — especially in swing suburban districts where House seats are in play. Leaders including McConnell and Speaker Paul Ryan gently brought that up at a meeting at the White House last week, where much of the discussion centered on the economy, said a person briefed on it.

"Would it be terrific if the only thing people cared about was the economy?" Holmes asked. "Yeah. But things like immigration, while not important to everyone, are very important to driving base turnout and focusing on things like that are an important part of the mix."

Polling also suggests that when the economy is bad, it is by far the top issue on people's minds. When it's good, it takes a back seat to other concerns such as health care.

Outside the White House, Trump's seeming inability to stick to strong economic facts to make his case without resorting to inaccurate superlatives or contrasts to Obama is also frustrating economic conservatives who want the president to stay laser-focused on what he's done on taxes and regulation rather than fight with a former president, or the Canadians or anyone else.

"As is often the case, the president is his own worst enemy here," said David Bahnsen, chief investment officer of The Bahnsen Group, a wealth-management firm. "The deregulatory efforts are indeed laudable and pro-growth for us free-enterprise advocates. But how many times has the president talked about 10 percent business investment growth, or capital expenditures. Instead his messaging is that Canada is ripping off Americans. It's exasperating."

Polling data show just how challenged Trump is in getting wider credit for the strong economy. A Quinnipiac poll out this week showed 70 percent of Americans rate the economy as "excellent" or "good," matching an all-time high. But that's not translating into any higher support for the president.

The same poll shows him with just a 38 percent approval rating. And 60 percent of respondents in the poll said they believe Trump is dishonest, underscoring the potential damage he does when he says untrue things about the economy. Both figures are similar to those in a recent CNN survey that pegged Trump's approval rating at 36 percent, with just 32 percent describing the president as honest.

Democrats now enjoy a near-double-digit lead in generic ballot surveys asking which party Americans plan to vote for in the fall, suggesting a run of very strong economic data on growth, job openings and confidence are not boosting the GOP's prospects this fall.

Part of the problem, according to pollsters, is that for many Americans, even a strong economy won't change their opinions about the president.

"Americans made up their mind pretty quickly about Trump's presidency and many aspects of the verdict have been negative and strong," said Karlyn Bowman, who studies polling data for the American Enterprise Institute.

Bowman also noted that while the economy is strong, negative feelings about the U.S. financial system lingering from the 2008 financial crisis and Great Recession persist, further frustrating efforts by the White House to have some of the glow of the economy rub off on the president.

"Given the depths public opinion sank to after the crash and the public's conviction that our financial system isn't more secure than it was then, perhaps it shouldn't surprise us that he's not getting a lot of credit."

To view online click here.

Back

Obama jumps into Dem fight to reclaim Ohio Back

By Daniel Strauss | 09/13/2018 05:09 AM EDT

COLUMBUS, Ohio — Barack Obama is diving into Democrats' campaign to retake the Midwest on Thursday, headlining an Ohio rally for former top appointee Richard Cordray in a bid to rebuild the stricken state Democratic Party.

Cordray, the former attorney general of Ohio appointed by Obama to run the Consumer Financial Protection Bureau, is locked in a dead-heat race with Republican state Attorney General Mike DeWine — a sign of Democrats' resurgence since President Donald Trump swept Ohio and neighboring states on his way to victory in 2016.

The campaign has become a focus for national Democrats intent on rebuilding their party. Sen. Elizabeth Warren (D-Mass.), a Cordray mentor, has stumped for him, as has Sen. Kamala Harris (D-Calif.), another potential 2020 presidential candidate. Former Vice President Joe Biden will soon return to Ohio to boost Cordray, though the specifics of his next visit have not yet come together. They are hoping to undo years of reversals for the state Democrats, who have been locked out of every statewide constitutional office since 2010

and had no leverage on the last redistricting process, allowing Republicans to cement majorities in the state legislature.

"Democrats have always had significant trouble in Ohio picking up statehouse seats and statewide offices when a Democrat occupies the White House. It's been that way since World War II," said Joe Rugola, a Democratic National Committee member and the executive director of the Ohio Association of Public School Employees. Rugola added: "There's no question that we have a dynamic working in our favor" this year.

Cordray is an awkward fit in some ways for a marquee 2018 race. The former bureaucrat, who led the CFPB after serving as Ohio's attorney general, has invoked his kids to defend himself against charges that he's too bland — "I don't think I'm boring, and my children don't think I'm boring," he told the Cleveland Plain Dealer — in a year when Democratic activists have demanded a more strident approach to politics.

But Cordray insists his approach is the right fit for Ohio, where he is campaigning relentlessly on his record regulating Wall Street banks.

"People can make their own judgments about ideologies or anything else," Cordray said in an interview. "But people here want to know that you care about things that matter to them, you have plans and you'll be able to execute those plans."

DeWine, a statewide officeholder for 24 of the past 28 years, is also stylistically out of place in Trump's GOP. But while DeWine may not be the archetypal Trump Republican, he does have the president's backing. Donald Trump Jr. is headlining a fundraising event for DeWine on Thursday in Salem as Obama rallies for Cordray.

Republicans are also hammering Cordray in an effort to prevent a Democratic takeover in a key state. The Republican Governors Association has been on air across the state with an ad focused on an accusation of discrimination at the CFPB while Cordray was running the agency. The Republican National Committee has kept Cordray in its cross hairs as well, using Cordray and Sen. Sherrod Brown as figureheads for Democrats purportedly opposed to the country's economic progress.

When news broke about Obama's planned visit to Ohio for Cordray, the RNC sent out an email arguing that Cordray "hurt small businesses and consumers" while running the CFPB.

"It's no surprise that President Obama is attempting to inject life into Richard Cordray's campaign, after Cordray spent years in Washington implementing a partisan agenda of over-regulation at the nation's most unaccountable agency," RNC spokesperson Mandi Merritt said in a statement. "Ohioans spoke when they rejected these Obama and Strickland era policies, and Richard Cordray's desire to turn back time on our economic progress proves just how out-of-touch he really is."

Obama's ties to Cordray go back beyond the CFPB, to when Cordray was one of the few top Ohio Democrats to support him over Hillary Clinton ahead of the 2008 Ohio Democratic presidential primary. Besides the public event with Cordray, Obama will meet with a small group of supporters for a photo opportunity, according to two Democrats with knowledge of the plans.

Both campaigns are raising money at a torrid pace to compete in the big battleground state, with Cordray raising $2.7 million to DeWine's $2.4 million in the most recent fundraising period. (DeWine had more cash in his account, $9.6 million to Cordray's $5.3 million.)

While Cordray has had to answer questions about his intensity on the campaign trail, he has benefited from plenty among members of the Democratic base, who have flooded his campaign with online donations and shown eagerness to support the Democratic ticket in November.

"What you're seeing is a changing of the guard," said Democrat Aftab Pureval, the candidate running against GOP Rep. Steve Chabot in Cincinnati. Pureval is set to deliver remarks before Obama's speech at the Thursday rally. "Folks like me and so many other first-time candidates making an argument for a new generation of leadership."

But Cordray, ever subdued, said being a competitive candidate isn't only about being new.

"I don't know about a new wave of candidates," Cordray said, rattling off his experience as state treasurer and attorney general. He continued: "People are very worried about their economic futures. They're being told the economy is good and, on average, that's so, but they don't live their lives in the average, they live their lives in the concrete, and there's a lot of communities here that feel left out and left behind of that prosperity."

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Subject: DOE: Perry pressed Russian energy official on grid cyberattacks

By Darius Dixon

09/13/2018 12:01 PM EDT

Energy Secretary Rick Perry signaled his "disappointment" in Russian attempts to undermine the U.S. electric grid in a meeting today with his Kremlin counterpart in Moscow, according to DOE.

Perry and Russian Energy Minister Alexander Novak also discussed how to use their prowess in oil and natural gas production to "ensure world energy market stability, transparency, and sustainability," DOE spokesperson Shaylyn Hynes said in a readout of the meeting.

Hynes said Perry expressed his "disappointment and concern about Russia's continued attempts to infiltrate the American electric grid." A Wall Street Journal report this summer that some cybersecurity experts have criticized said that officials at the Department of Homeland Security have been warning utility executives since 2014 about a long-running campaign by Russian-affiliated hackers to infiltrate U.S. critical infrastructure.

Perry made it clear that "Moscow can no longer use energy as an economic weapon," Hynes said. DOE has sought to leverage recent data showing that the U.S. recently overtook Russia as the world's largest crude oil producer for the first time in nearly two decades.

Despite the tensions over issues like the Nordstream 2 gas pipeline and attempted cyberattacks, the two men pledged to continue having an open line of communication.

Perry and Novak, Hynes said, agreed to continue this "previously dormant energy dialogue and to search for ways to work together, within the guidelines and limitations of our current bilateral relationship. The future of our energy relations is predicated on successfully addressing our broader disagreements."

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Subject: Budget & Appropriations: Conference report closeout — Negotiators resist policy riders — Senators prepare to scrutinize CBO

By Sarah Ferris and Jennifer Scholtes | 09/11/2018 04:16 PM EDT

'IMPORTANT NATURE,' INDEED: Unless Florence barrels in with schedule-scattering force, the House is set to approve the final conference report this week for three of the 12 annual spending bills and hold conference meetings on six more. The craziest part: They've still got more than two weeks left before they're thrust into fiscal 2019.

Keep that plane ticket: Although several North Carolina lawmakers are already vowing to stay put in their districts as this Hulk of a hurricane spins toward them, House Majority Leader Kevin McCarthy says the Cat 4 isn't canceling congressional action — yet. "Please be advised that — due to the important nature of votes expected on the Floor and in committee this week — there are no changes to the House schedule at this time," the majority leader announced midday.

Formal sit-downs: Besides that pressing floor action, appropriators also announced today that negotiators will be getting together Thursday for conference meetings on the other two minibuses — H.R. 6157 (115) and H.R. 6147 (115) — which currently carry Labor-HHS-Education, Defense, Agriculture, Financial Services, Transportation-HUD and Interior-Environment. The meetings are largely a formality and each likely to be an hourlong slog of opening statements. Don't tune out entirely, though. Negotiators could still decide to air their grievances about the state of play on their favorite projects and policies.

At what cost? The House and Senate were only planning to be in session for three days this week anyway. But these September workdays are extra precious now that congressional Republicans have campaign priorities competing with legislative headway on spending bills. As Rachael Bade and Burgess Everett report, GOP leaders are already narrowing this month's to-do list in hopes of skipping town early.

GOOD TUESDAY AFTERNOON! Reach out: jscholtes@politico.com (@jascholtes) and sferris@politico.com (@sarahnferris).

Doc of the day — Fifty-four House Democrats sent a letter to Transportation Secretary Elaine Chao this week claiming that the Federal Transit Administration has repeatedly stalled transit projects that have already been granted funding.

#DailyBudgetFact — Since the Victims Compensation Fund was reopened in 2011 for those injured or sickened at the scene of the Sept. 11, 2001 terrorist attacks, the fund has paid $4.2 billion to more than 20,000 first responders. The initial fund, established in the immediate aftermath of the attacks, paid out over $7 billion to more than 5,500 individuals and families.

FOR YOUR RADAR — On Wednesday, the Census Bureau will release highly anticipated stats on poverty, income and health insurance coverage in 2017. That includes data on food stamps, which could shape the GOP's internal fight this month over whether to tighten restrictions for the program in this year's farm bill.

APPROPRIATIONS

RIDERS DIE: With Monday's funding breakthrough, Congress is highly likely to get at least three funding bills signed into law on time this year — something that hasn't happened since 2009. As Sarah reports for Pros, House and Senate appropriators have agreed to big budget increases for nuclear security efforts, energy research and the Department of Veterans Affairs — almost all of which exceed President Donald Trump's own requests. The bill is also almost entirely rider-free, marking something of a win for Democrats with Republicans still in control of all three branches.

For further reading: Energy-Water summary | Energy-Water one-pager | Legislative Branch summary | Legislative Branch one-pager | Military Construction-VA summary | Military Construction-VA one-pager

What's in:

— Money for all congressional offices to pay interns

— Senate candidate e-file requirement

— Member pay freeze

— One year of funding for VA Mission

— DOE boost

What's out:

— Funding for Yucca Mountain nuclear waste site

— Permanent fix for VA Mission funding shortfall

— GOP riders, like repeal of WOTUS or guns on Army Corps lands

— Budgets for ex-House speakers

What's iffy:

— Language on endangered salmon in Washington state. (The bill does condemn recent court decisions that have made life difficult for power companies. But it does not overturn the court decisions outright, as Annie Snider explains.) Now, are there any dam questions?

BUDGET

SCRUTINIZING CBO: The head of the CBO is headed to Capitol Hill this week for the GOP's latest hearing on the agency's ongoing "transparency" efforts. Director Keith Hall will appear before the Senate Budget Committee on Thursday morning to discuss a recent CBO report showcasing the agency's attempts to be more public about its work.

Related: CBO got a slight funding boost in Congress' minibus, which came out Monday night. If signed into law, the agency would see a $782,000 increase, bringing its total budget to $50.7 million. Senate Republicans pointed out that "specific funding is included for increased transparency at CBO."

TAX

HERE WE GO AGAIN: Budget observers were busy with the newly unveiled minibus, but GOP leaders rolled out another high-profile bill on Monday night: Tax reform 2.0. The measure is just what Ways and Means Chairman Kevin Brady (R-Texas) has been promising for weeks: Legislation that would make a slew of last year's individual tax breaks permanent, while creating new tax breaks for things like retirement and savings, as Brian Faler reports for Pros.

Price tag: The plan would cost roughly $657 billion over a decade, according to new data from the Joint Committee on Taxation. But that's actually an understatement because most of the cost would fall outside of the agency's budget window, Brian explains. The total cost could be as much as $5 trillion over 20 years, when accounting for interest costs, the Committee for a Responsible Federal Budget projects. The Tax Foundation, meanwhile, has estimated that just extending the individual cuts would cost $113 billion a year, even when accounting for economic growth.

Pro tip: The plan is actually a trio of measures: H.R. 6760 (115), H.R. 6757 (115) and H.R. 6756 (115).

But first: The House will vote this week on a bill repealing Obamacare's employer mandate and tanning tax, H.R. 3798 (115). That bill would cost $58.5 billion over a decade, according to the Joint Committee on Taxation analysis today. It would also push back the so-called Cadillac tax until 2023.

EARMARKS

— Army Futures Command "not going to perform miracles" for acquisition, commander cautions. POLITICO Pro.

— At least 180 lawmakers voice support for federal pay raise as Congress goes to conference. Federal News Radio.

— Tennessee Senate race: Bredesen, Blackburn outline plans to address national debt. The Tennessean.

— What Congress wants to study and "explore" about itself. Roll Call.

— Trump fights to wrest credit for the economy from Obama. POLITICO.

WE'RE COUNTING: Federal funding runs out in 19 days (Sept. 30) and the National Flood Insurance Program expires in 80 days (Nov. 30).

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Stories from POLITICO Pro

GOP faces deadline crunch as threat of losing House deepens Back

By Rachael Bade and Burgess Everett | 09/10/2018 06:46 PM EDT

Congressional Republicans, eager to hit the campaign trail to save their imperiled majorities, are starting to narrow their September legislative to-do list in hopes of skipping town early.

But they still have to deal with a handful of looming deadlines, a potential shutdown fight and internal policy tensions — and all on tight timelines.

Appropriators in both chambers still face numerous policy disputes over controversial issues such as abortion as they work to cut deals on spending bills before the close of the fiscal year on Sept. 30. With this week cut short due to the Jewish holiday, and the House on recess next week, lawmakers have just seven legislative days in which both chambers are scheduled to be in session before the government runs out of money.

Leaders also have to dispense with a massive farm bill that's been stalled amid a House-Senate clash over food stamps. House Republicans, with President Donald Trump's backing, are still demanding work requirements for low-income beneficiaries — a controversial conservative proposal that has Senate GOP support but cannot attract enough Democrats to become law.

Failure to pass a new farm bill by the Sept. 30 deadline could be a disaster: Republicans say it's the best way to counteract the ill effects of Trump's trade war.

The outstanding differences are so great that leaders have all but decided to sideline one of their original three "minibus" spending packages. The new plan includes passing the remaining two and simply extending funding for the rest of the half-dozen or so departments until early December in a so-called continuing resolution, according to three sources with knowledge of the plan. Senate leaders are still hoping they can finish work on the package and pressure the House to take it up.

Leaders also haven't ruled out extending the farm bill deadline to give themselves more negotiating time, though Republicans in both chambers say they hope they can avoid that. And tensions between the two chambers have simmered below the surface, as Senate and House Republicans blame each other for their slowed progress.

House members "tend to want to do their own thing, but I think in the end the most important thing is to get an appropriations bill passed," said Senate Majority Whip John Cornyn (R-Texas). "They've got their own prerogative, but the goal is to get the government funded and eliminate the drama."

Rep. Frank Lucas (R-Okla.), former chairman of the House Agriculture Committee, had his own choice words for the upper chamber on the farm bill. "The Senate has taken a very hard-core position" against work requirements, he said. "You won't see House language as passed but, by the same token, the Senate is going to have to give. We can't just maintain the status quo. There is a compromise out there somewhere."

Meanwhile, GOP lawmakers are on edge, crossing their fingers and praying that Trump doesn't shut down the government to get his wall before Election Day. Speaker Paul Ryan (R-Wis.) and Senate Majority Leader Mitch McConnell (R-Ky.) seem confident that won't happen, the latter predicting last week that there was "zero" percent chance of agencies getting shuttered.

But top appropriators like Senate Appropriations Chairman Richard Shelby (R-Ala.) won't express the same confidence.

"I would think he would [sign our bills]," Shelby predicted hesitantly. "In my judgment, it's not in the president's interest to shut down the government in any way. ... That's something I try to not think about."

The legislative pile-up comes as rank-and-file GOP members are increasingly worried that they will lose the House this fall and are itching to hit the campaign trail full time. There's been a notable shift in attitude among House Republicans, who once predicted a "50-50" shot at keeping the majority and now worry they are severe underdogs despite a buzzing economy.

House Republicans say they're likely to completely cancel their two-week session in October to campaign. Some were even hoping to do the same for the last week of September but now realize that won't be possible.

There may be less imperative for the Senate to split early in October, with few vulnerable GOP incumbents and a host of nominations to process.

Still, Senate Republicans, who have a more favorable congressional map this fall, are struggling to defend deep-red states after hoping to grow their two-seat majority. A rescue mission is now underway, for example, to save archconservative Ted Cruz in conservative Texas, and races in Tennessee and Arizona are too close for GOP comfort.

Yet in order to get out on the trail, lawmakers have to take care of legislative business first.

To do so, they've narrowed their legislative ambitions for the fall. GOP leaders had hoped to pass the three "minibus" spending bills — dispensing with nine of the 12 annual must-do appropriations — before the House leaves for its September recess. That turned out to be wishful thinking, and they've decided to focus on getting two over the finish line.

Beyond scaling back appropriations plans, the Senate will not pass another tax cut bill or take another crack at Obamacare repeal, preferring instead to focus on confirming Trump's Supreme Court nominee Brett Kavanaugh. Also on hold are negotiations over provisions protecting staffers from sexual harassment.

The top priority remains funding the government. GOP leaders on Monday unveiled a final deal on their first "minibus" that funds energy and water projects and the VA. They had hoped to dispense with the bill last week but talks stalled over policy riders, including one helping vulnerable Washington state Republicans facing tough races.

The House hopes to vote on the agreement this week, though a looming Category 4 hurricane could upend those plans if votes are canceled due to severe weather.

Even if Republicans pass the first "minibus" this week, both chambers still need to hash out a deal on the most contentious spending package: a military, labor and health care spending bill, where the House's more conservative view on abortion restrictions clashes sharply with the Senate's vow not to include "poison pill" riders in spending bills.

By sidelining the third "minibus" bill for now, GOP leaders hope they can get the defense-labor-health funding bill passed, since it includes the bulk of all government funding.

Though the House is in recess next week, work among top appropriators is expected to continue remotely. Spending bill conferences, however, typically proceed more rapidly when both chambers are in session.

That leaves a lot for members to do after the House returns the last week of September, when Congress is also expected to pass a stopgap "continuing resolution" to extend funding for the rest of the departments.

The stakes are huge. Both political parties are eager to tap $36 billion in new funding for domestic and military spending from this year's budget deal. And if the appropriations process falls apart, there may be less will to do a difficult budget deal next year.

What's more, if lawmakers are unable to pass their "minibuses," they could be in for the nightmare scenario: a full shutdown before Election Day.

Trump has sent mixed signals about whether he would veto spending legislation that doesn't include wall money. GOP leaders know he wants to fight on the issue and has demanded $5 billion for construction, money Senate Democrats object to without a broader immigration deal. But they've asked him to delay his shutdown showdown until after the election.

Trump has agreed to the plan, doing so as recently as last week in an Oval Office meeting with GOP leaders. But Trump has been known to change his mind. And there's a hard-line contingent in the White House that believes the House is already lost and that Trump should fight on spending now, an attitude that worries many on Capitol Hill.

"He has his view that this issue motivates the base, which it does," said Sen. John Thune (R-S.D.). "But I also think that as we run up into the midterms, particularly in some of these districts that we need to win to keep the House, shutting down the government is not a particularly good strategy."

Vulnerable Rep. Erik Paulsen echoed that view during a brief hallway interview Friday: "We don't want drama. We don't need that."

John Bresnahan contributed.

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Spending leaders reach rare 'minibus' compromise Back

By Sarah Ferris | 09/10/2018 05:30 PM EDT

House and Senate spending leaders unveiled a final "minibus" deal Monday, striking a bicameral agreement party leaders hope will help stave off a shutdown at month's end.

The conference report on the three-bill package, H.R. 5895 (115), is expected to easily clear both chambers and reach President Donald Trump's desk with days to spare before the Sept. 30 deadline. It lays out fiscal 2019 funding for the departments of Veterans Affairs and Energy, as well as water projects, congressional operations and military construction.

If approved, it would be the first time since 2009 that more than one spending bill has become law before the start of the new fiscal year.

Although GOP leaders hailed the progress, the bundle covers only about 10 percent of Congress' annual spending duties, and some of the government's biggest agencies are still on track to be funded under a stopgap spending bill come Oct. 1.

Within the roughly $147 billion measure, negotiators agreed to drastic funding boosts for nuclear security efforts, energy research and the Department of Veterans Affairs — almost all of which exceed Trump's own requests — thanks to extra authority from the budget deal, H.R. 1892 (115), struck earlier this year.

Democrats in both chambers mostly fought off the most partisan policy provisions House Republicans put forth, such as repealing Obama administration regulations and allowing firearms to be used on Army Corps of Engineers lands.

But House Republicans won out in a few key areas, including a ban on new nuclear nonproliferation projects in Russia without special permission from the administration. The bill also includes language favored by Rep. Cathy McMorris Rodgers (R-Wash.) that condemns "judicial interference" related to hydro dams that are said to pose a risk to endangered salmon, though Democrats say it is nonbinding.

In a win for politically endangered Sen. Dean Heller (R-Nev.), the bill bucks the Trump administration's calls to move ahead with nuclear waste storage projects at Yucca Mountain.

The package also contains bipartisan victories, such as an $8.8 million program for paid congressional interns.

The full text of the conference report is here, and the summary is here.

The Energy-Water portion of the bill contains $44.6 billion, which is $1.4 billion above current levels and $8.1 billion above the president's budget request. The House bill proposed $44.7 billion, while the Senate measure suggested nearly $43.8 billion.

The Military Construction-VA title would be funded at $98.1 billion, which is $5.3 billion above current levels. The House bill proposed $96.9 billion, and the Senate measure laid out $97.1 billion.

Under the conference report, the VA would see a 6.2 percent funding increase, with a discretionary budget of $86.5 billion. That's the highest dollar amount ever approved for the department, in part because Congress now controls a larger part of the VA budget, which had previously been on "autopilot."

The Legislative Branch portion of the bill contains $4.8 billion for both chambers. It includes $1 million to pay for heightened security for lawmakers at off-campus events, after a gunman opened fire at the GOP's congressional baseball practice last year.

Also for the first time, the bill would require Senate candidates to file their campaign finance reports electronically. In the House, the bill would permanently cut funding for the office of former House speakers. Under current law, all former speakers receive a budget for five years after leaving office.

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Daines: Spending bill will require e-filing of Senate FEC reports Back

By Zach Montellaro | 09/10/2018 03:57 PM EDT

The final conference agreement for the first minibus appropriations package, H.R. 5895 (115), includes a provision that would require Senate candidates to file their campaign finance reports electronically, according to Sen. Steve Daines (R-Mont.), who championed the measure.

"This is great news," Daines said in a statement. "As chairman of the U.S. Senate Committee on Appropriations' Subcommittee on the Legislative Branch, I fought to include language to increase transparency and access for U.S. Senate campaign finances, and after today's announcement, we're one step closer. ... I look forward to getting this through the House, the Senate, and on to the president's desk for signature."

Sen. Jon Tester (D-Mont.) introduced standalone legislation, S. 298 (115), earlier this Congress with the provision that was eventually included in the minibus and has been the lead sponsor of similar legislation since 2010.

The provision would require Senate candidates to electronically file reports directly to the FEC. Currently, Senate candidates send paper reports to the secretary of the Senate, who then scans the documents and sends them to the FEC, which converts the data into an electronic format.

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Spending deal includes boost for DOE Back

By Darius Dixon | 09/10/2018 05:34 PM EDT

Congressional negotiators have agreed to boost funding to almost every major Energy Department account in another rebuff to President Donald Trump, according to bill summaries released by appropriators this afternoon.

While the White House has sought deep spending cuts to most offices at DOE, the minibus, H.R. 5895 (115), — which includes appropriations for energy and water, military construction and veterans affairs — offers funding increases in fiscal 2019. DOE energy programs receive $13.5 billion, up $554 million from the current fiscal year, according to a summary. Energy efficiency and renewable energy, as well as fossil and nuclear research see increases.

And where Trump called for axing the Advanced Research Projects Agency-Energy program, Congress is seeking to give it $12.7 million more than fiscal 2018, bringing its funding to $366 million. DOE's controversial loan program also survives.

Read the conference report here and an explanatory statement from the conference committee here.

Appropriators have given their blessing to DOE's new cybersecurity office, according to the bill summary. The office was created earlier this year and had its leader, Karen Evans, recently confirmed.

The conference report does not include funding for the Yucca Mountain nuclear waste project yet again that House Republicans have been pushing.

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Lawmakers battle over busting budget to pay for veterans health care Back

By Sarah Ferris and Jennifer Scholtes | 07/12/2018 07:38 PM EDT

Spooking House conservatives and risking a presidential veto, Senate spending leaders are proposing to blow past budget limits to fund a popular private health care program for military veterans.

Minutes before they were to meet on Thursday, congressional appropriators canceled their first public conference talk that had been intended to settle differences in three of the 12 annual spending bills President Donald Trump must sign by Sept. 30 to avert a government shutdown. One of the three provides for spending on veterans.

The 11th-hour cancellation came amid a cross-Congress showdown over how to pay for a program that allows some veterans to spend taxpayer money on private doctors and hospitals. The question is whether to break budget limits, known as caps, to come up with the cash.

"They canceled the meeting. But it's all about the VA," Senate Appropriations Chairman Richard Shelby (R-Ala.) told reporters Thursday, apparently referring to GOP leaders. "Do we break the caps? Do we prorate everything else? Do we cut other veterans programs to fund this? We got a shortfall, and we got to work it out. And we're not there yet."

Congress needs to approve $1.6 billion for fiscal 2019, plus nearly $18.2 billion more in the two years thereafter, to fully fund what has been authorized for the VA Choice program and its successor within the new VA Mission Act.

The suggestion that Congress "break the caps" set by the budget deal, H.R. 1892 (115), struck this year is already irking House conservatives, who would be loath to vote on any final spending bill that goes above those limits — even in the face of an impending shutdown this fall. The idea likely would not play well, either, in talks with a White House that was already seen as surprisingly conciliatory in signing that grand budget deal.

Money for veterans programs comes with special political protections, however, since policymakers want to avoid the uncomfortable optics of fighting funding for those who have served in the military. And top Democrats are already trying to use that perception to their advantage.

"You don't go to a veterans assembly and say, 'We're not going to help the veterans,'" Sen. Patrick Leahy (D-Vt.), ranking Democrat on the Senate Appropriations Committee, said Thursday.

The administration has been heavily involved in discussions for weeks. The White House budget office has argued that any extra VA money would be akin to breaking this year's budget deal.

"It's obviously critically important to give veterans the resources they need, and we think that can happen inside the existing caps," according to a senior administration official.

Leahy planned to offer an amendment during the conference meeting that would have added funding for the veterans health care program. The meeting was then postponed, he said, because negotiators didn't want to go on record against doling out that cash. A GOP aide said that Republicans weren't expecting any amendments in Thursday's meeting, the first time negotiators would meet face-to-face.

"A lot of the people were, I think, concerned, I'm told, that they'd have to vote today," Leahy said.

The issue isn't as simple as supporting or opposing money for VA Choice, though.

The funding problem began last month, when Congress enacted a bill, S. 2372 (115), that created a budget gap by switching the program's community care services from the mandatory side of the ledger to the discretionary side.

Democrats — as well as some Republican appropriators — are in favor of exempting the new money from Congress' strict spending caps. But many Republicans, including White House officials, say the cash should

come out of the government's already-determined budget, even if that means trimming the toplines for other programs.

That means Congress would need to divert hundreds of millions of dollars from other programs into the veterans health care program, which until this year, was funded automatically.

For their part, House lawmakers have already agreed to pay for part of the program without blowing through budget limits. The veterans spending bill, H.R. 5786 (115), that the House passed last month as part of a three-bill minibus would fully fund the program for fiscal 2019.

In a statement to POLITICO on Thursday, House Speaker Paul Ryan called out Leahy by name, saying the Senate spending bill "neglected" to fund the VA program, despite the House's action.

"This attack is the height of hypocrisy," said a senior House GOP aide. "Democrats are scrambling to cover up the fact they have not kept their promises as the House did."

House GOP leaders have repeatedly refused to adjust Congress' current spending cap to pay for the additional discretionary spending on the veterans program. Instead, Republicans agreed to pitch in that $1.1 billion by reshuffling existing money from the House's funding bill for the Department of Homeland Security.

Their Democratic counterparts, led by Rep. Nita Lowey of New York, have protested the move, arguing that it will shortchange other domestic programs. Lowey's own caps-busting amendment was rejected by the spending committee.

The fight over the budget caps has been long simmering and nearly broke out into the open earlier this summer.

Shelby had long backed Leahy's amendment to surpass the caps, but the GOP chairman was forced to shelve his support for bringing it to the floor at the last minute after several conservatives raised issues with it, according to Senate aides.

Shelby even declared on the Senate floor in May that he would support a plan that exceeds the caps, warning that Congress' newest version of the veterans law authorized large sums of spending "without providing any way to pay for it under the spending caps."

"Fortunately, there is existing law and ample precedent for adjusting spending caps to reflect changes resulting from a shift in mandatory spending to discretionary spending," Shelby said on the floor.

Anthony Adragna and John Bresnahan contributed to this report.

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Minibus stops short of overturning dam decision Back

By Annie Snider | 09/10/2018 06:03 PM EDT

A massive spending deal agreed to by congressional negotiators today blocked GOP efforts to overturn a court decision requiring hydropower dams to be operated for the benefit of endangered salmon, but handed

Republican lawmakers a consolation prize by denying immediate funding for green groups' ultimate goal of removing the dams.

The conference report notes "grave concerns" among some lawmakers "about judicial interference in the operation of hydroelectric dams on the Columbia and Snake rivers," a reference to a court decision affirmed by the 9th Circuit Court of Appeals this spring ordering power companies to spill more water over their dams to protect salmon that live in the rivers. The decision has already resulted in reduced hydropower production along the system, a major supplier of power in the Pacific Northwest.

The issue — a priority for lawmakers Washington state Republicans, including Rep. Cathy McMorris Rodgers, a member of GOP leadership — was one of the last sticking points before lawmakers released their first minibus appropriations bill, H.R. 5895 (115) , earlier today. The final language represents a compromise from the House-passed energy and water spending bill, which would have blocked funding for the court order altogether.

The appropriations fight is the latest front in a years' long battle over the nearly 100-year-old hydropower system on the rivers, which produces large amounts of power, but hinders the migration of species that are protected under the Endangered Species Act and treaties with Native American tribes

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House Republicans unveil plans for Tax Cuts 2.0 Back

By Brian Faler | 09/10/2018 05:29 PM EDT

House Republicans unveiled Monday their plans for a second round of tax cuts.

In a bid to highlight the GOP's commitment to cutting taxes, lawmakers released a trio of bills that would make a raft of temporary tax breaks permanent while also creating new breaks for things like retirement and savings.

As expected, the centerpiece of the plan would extend tax cuts for individuals due to expire in 2025, including a newly expanded standard deduction and a beefed-up child tax credit. Those provisions were part of the 2017 Tax Cuts and Jobs Act.

But the plan also calls for making permanent that law's $10,000 cap on state and local tax deductions, a proposal so controversial even among Republicans that it has raised questions about whether the plan can pass the House.

Even if it does clear the chamber, the legislation is certain to die in the Senate.

An official cost estimate was not immediately available, though the price tag likely runs in the hundreds of billions.

The effort comes even as polling shows last year's tax cuts are not nearly as popular with voters as many Republicans had hoped.

Said Ways and Means Chairman Kevin Brady: "It's time to change the culture in Washington where we only do tax reform once a generation."

"This legislation is our commitment to the American worker to ensure our tax code remains the most competitive in the world," he said.

Democrats scoffed at the proposal.

"With this second attempt at major tax legislation, congressional Republicans have doubled down on their initial tax scam and are yet again putting the wealthiest, most privileged Americans ahead of average, hardworking families," said Massachusetts Rep. Richard Neal, the panel's ranking Democrat.

There were few surprises in the legislation. Many of the new provisions had been previewed by Republicans ahead of the bills' release, particularly those dealing with retirement and savings.

The bill proposes to create so-called universal savings account, and to allow people to tap retirement savings penalty free when they have a child. It would also lift the maximum age for contributing to individual retirement accounts.

Likewise, Republicans have long talked up their desire to make permanent provisions they were forced to make temporary as part of last year's tax cuts, in order to comply with congressional budgeting rules.

Brady had said the panel would take up the plan Thursday, though it's possible that will change because of a hurricane that forecasters warn could hit the mid-Atlantic later this week.

The bills, which together run 168 pages, are H.R. 6760, H.R. 6757 and H.R. 6756.

To view online click here.

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Army Futures Command 'not going to perform miracles,' commander cautions Back

By Wesley Morgan | 09/11/2018 10:08 AM EDT

The Army's new Futures Command is not a silver bullet that can quickly reform the service's notoriously slow acquisition process, its commander cautioned today.

"We're not going to perform miracles," Gen. John Murray, the first commander of the new modernization headquarters that stood up this summer in Austin, Texas, said in an interview. "I'm not going to deliver a new tank in the first year."

With less than 40 people currently on its headquarters staff out of an expected 250 and "no connectivity" yet over secure Army networks at its Austin headquarters, the Futures Command is still in its earliest phases, Murray said.

"This is really more of a merger than building an organization" from scratch, he explained, adding that while the headquarters is coming together slowly, the command will soon formally take charge of several existing Army organizations.

For instance, he said, the Army Capabilities Integration Center will mostly answer to the Futures Command by the end of year.

Still, the newborn command has a long way to go to prove itself to critics, including those who hold its purse strings in Congress.

"I have been promoted, we do have a building in Austin, but that's obviously not the final vote they get," Murray said of the congressional committees watching the command's progress.

"There are skeptics in Congress. There are skeptics in think tanks. There are skeptics in the Army," he said.

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Trump fights to wrest credit for the economy from Obama Back

By Timothy Noah | 09/10/2018 07:37 PM EDT

President Donald Trump and his economic advisers want recognition for their 20 months in the White House.

The White House on Monday extended its argument that the strong economic growth underway across the U.S. is its own — not a trend that began years ago under former President Barack Obama.

The latest assertion, in a lengthy appearance during the White House press briefing by Council of Economic Advisers Chairman Kevin Hassett, contradicted the conclusions of most mainstream economists and appeared to signal that the Trump White House feels a strong economy isn't sufficient reason to vote Republican in the midterms unless it creates a contrast with Obama.

Hassett denied his appearance was prompted by a Friday speech in which Obama said, "When you hear how great the economy's doing right now, let's just remember when this recovery started." The current economic expansion began in mid-2009, six months into Obama's first term.

Trump replied shortly afterward at an appearance in Fargo, N.D.: "He was trying to take credit for this incredible thing that's happening. ... It wasn't him."

The dispute goes to the heart of Trump's arguments this fall. Facing ugly projections for a GOP rout, the president is trying to persuade voters to stick with Republicans by arguing they've delivered an economic turnaround. But many major gauges on economic growth and job growth were just as strong during parts of the Obama years, even without Trump's deregulation and deficit-boosting tax cuts.

"One of the hypotheses that's been floating around," Hassett said in the briefing, "is that the strong economy that we're seeing is just a continuation of recent trends." But "economic historians will 100 percent accept the fact that there was an inflection at the election of Donald Trump, and that a whole bunch of data items started heading north."

Hassett made his case against the Obama economy in a series of charts that were also posted online, including measures of small-business optimism and business investment.

The charts showed capital investment to have declined by various measures during the second half of Obama's second term and then to have abruptly increased after Trump's election. A former Obama administration official countered that capital investment is rising globally, making it doubtful that it can be attributed to U.S government policy.

The former official also puzzled over the charts' presentation of data as a series of six-quarter averages rather than by the usual measure of a month, a quarter or a year. "They form-shopped what they were doing," this person said.

Hassett conceded, however, that Trump erred earlier in the day when he tweeted, "The GDP Rate (4.2%) is higher than the Unemployment Rate (3.9%) for the first time in over 100 years!"

"What is true is that it's the highest in 10 years," Hassett said, noting, "I don't run the council of Twitter advisers."

What no one disputes is that under both presidents, unemployment fell and wages grew slowly. In a further sign that the Trump administration feels the lily of strong economic growth needs gilding, Hassett released a report last week recalculating after-tax wage growth to 1.4 percent over the past year; according to the standard measure used by the Bureau of Labor Statistics, average wage gains have during the past year run about even with inflation. (But on Friday, BLS reported that average hourly earnings in August were up 2.9 percent over the previous year, the best monthly performance in a decade.)

Ernie Tedeschi, an economist at Evercore ISI who worked at the Treasury Department under Obama, noted that some of Hassett's data were based on surveys of employers. "I agree with Hassett that there does seem to have been a firming of sentiment," he said.

But Tedeschi said that recent increases in fixed investment were driven in part by expenditures for hurricane recovery and "some one-time effects related to the tariffs." For example, he said, a recent surge in exports may reflect U.S. companies "trying to get in before the tariffs took effect."

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By Garrett Ross and David Beavers | 09/11/2018 03:54 PM EDT

With help from Darius Dixon and Anthony Adragna

BRACING FOR A WRDA WAVE: Congress' breakthrough on a bipartisan water deal this week could have major implications for midterm races come November, Pro's Annie Snider reports. Pressure to move the legislation will likely ratchet up as the fall's midterm elections loom and water issues addressed by the bill take on leading roles in key races.

Toxic algae plaguing Florida's beaches — home to moderate Republican voters — is a top issue in the state's heated Senate race. The new water infrastructure bill includes a project sought by Florida Sens. Bill Nelson (D) and Marco Rubio (R) to build a reservoir near the northern end of the Everglades that would reduce the flow of pollution contributing to the algae blooms. Republican Gov. Rick Scott, who is locked in a tight race for Nelson's seat, had accused the Democratic senator of not doing enough to get that project approved.

Drinking water, meanwhile, has become a critical topic in several competitive House races as the breadth of contamination from nonstick chemicals called PFAS continues to be understood. The issue is particularly salient in Michigan, where the state has undertaken a proactive program to test for the chemicals that has brought problems to light in a number of communities, including the city of Parchment, in Republican Rep. Fred Upton's district.

In California, ground zero for Democrats' bid to retake the House, Republicans have played up their efforts to secure reliable water supplies. GOP Rep. Jeff Denham, whose agriculture-heavy Central Valley district is rated a toss-up by the Cook Political Report, swiftly touted a provision he helped secure in the new water measure that would allow water storage projects to receive federal financing under an expanded version of WIFIA.

However, the Land and Water Conservation Fund is not addressed in the bill, potentially complicating its prospects. Sen. Richard Burr (R-N.C.) has vowed to stall legislation until a deal is reached to reauthorize the LWCF, and his office did not respond to a request for comment Tuesday on whether he is ready to stand down. Read more here.

Welcome to Afternoon Energy! We're your hosts Garrett Ross and David Beavers. Send suggestions, news and tips to gross@politico.com, dbeavers@politico.com, mdaily@politico.com and njuliano@politico.com, and keep up with us on Twitter at @garrett_ross, @davidabeavers, @dailym1, @nickjuliano, @Morning_Energy and @POLITICOPro.

EPA PROPOSES METHANE RULE ROLLBACK: EPA rolled out a rollback of the Obama-era methane emissions rule today, proposing to reduce how often oil and gas producers must check for leaks from new wells, Pro's Alex Guillén reports. EPA also proposed easing a requirement for certain wells to install pneumatic pump technology; allowing oil and gas producers to certify closed vent systems with in-house experts instead of outside professional engineers; and expanding an option for well owners to use emerging technologies as a

"alternative means" of curbing methane pollution. The proposal includes some other minor technical changes. Read more here.

— **California keeps up attack on Trump:** Gov. Jerry Brown called the methane proposal "insane," POLITICO's Jeremy B. White reports. "It borders on criminality," Brown continued, to applause from an international audience of climate experts and government officials gathered in San Francisco. Noting that methane is one of the more potent greenhouse gases — meaning that its release would accelerate the effects of climate change — Brown called the move "the most obvious and dangerous and irresponsible action by Mr. Trump." Read more here.

MEETING OF THE MINDS: Conferees on a minibus, H.R. 6147 (115), containing the fiscal 2019 Interior and Environment title gather this Thursday at 1 p.m. for their first formal meeting in hopes of ironing out differences between the House and Senate versions of the bills. There's still hope of getting a negotiated compromise across the finish line before the end of the fiscal year, but the chambers face a daunting to-do list before then and significantly different approaches to policy riders in their bills.

NO COMMENT: FERC Chairman Kevin McIntyre again declined to weigh in on controversial statements FERC chief of staff Anthony Pugliese made in an interview with Breitbart and a speech to a nuclear energy conference earlier this summer, instead praising the top aide's work on cybersecurity and natural gas infrastructure, Pro's Darius Dixon reports. In an official FERC podcast, McIntyre said the commission "speaks through its orders, not through speeches, tweets, or other statements of the commission's chairman, other commissioners or staff." McIntyre also credited Pugliese's "demonstrated leadership ability" with contributing to FERC's increased coordination with the Energy Department and the national security community on cybersecurity issues. Read more here.

I'm fine, thank you very much: McIntyre's health is perhaps the most talked about subject in all of FERC world, and he offered reassurances on that front in the podcast too. "I am grateful for everyone's concern while I have been recovering. I also am happy to report that I have continued to work full steam ahead with my colleagues, my personal staff and the commission's professional staff, to ensure that the commission's work continues unabated," he said. On a FERC podcast in July, McIntyre announced that his doctors had discovered two fractured vertebrae a few weeks prior. "I'm sorry to report is every bit as painful as it sounds," he said of his back in the new podcast. "I am now well on the mend and am feeling better every day."

LYFT GOES GREEN: In a blog post this morning, Lyft announced a pair of initiatives that it says will make the ride-share company fully carbon neutral. Lyft will purchase enough carbon offsets to counterbalance the remainder of its vehicle emissions not already covered under a previous carbon offset initiative and buy power for its company offices and driver hubs with renewable energy or purchase renewable energy credits where renewable supply isn't available. In its announcement , the San Francisco-based company links its decisions with the global climate change conference currently taking place there.

OP-ED CORNER: GAS VS. TRUMP ADMIN: As Hurricane Florence barrels down on the East Coast, the CEOs of the five trade groups making up the Natural Gas Council penned an op-ed this morning in the Washington Examiner touting natural gas' resiliency during extreme weather incidents — and slamming the Trump administration's proposal to subsidize economically struggling coal and nuclear power plants in the process. Citing a recent study by RBN Energy on behalf of the Natural Gas Council that found natural gas availability was minimally impacted by recent extreme weather incidents in Florida, the Gulf Coast and northeastern states, the CEOs say the Trump administration "continues to hunt for evidence to the contrary. This is part of an effort to justify subsidizing uneconomic coal and nuclear power plants." Read the op-ed here.

KOCH GROUP LOSES COURT FIGHT: GOP megadonors Charles and David Koch's Americans for Prosperity Foundation must disclose its largest givers to law enforcement authorities in California, a federal appeals court ruled Tuesday, POLITICO's Josh Gerstein reports. "In 2016, the group persuaded a federal judge

in Los Angeles to issue a permanent injunction against the requirement. U.S. District Court Judge Manuel Real said the state rarely used the information, but often disclosed it accidentally with charities' public tax filings. However, a three-judge panel of the 9th Circuit Court of Appeals unanimously reversed that ruling Tuesday, holding that the state had a legitimate need for the data and that the Koch-founded group had not shown a significant burden on donors." Read more here.

SWAMP WATCH: The National Wildlife Federation hired Peter Umhofer of E2 Strategies to lobby on S. 569 (115), the Land and Water Conservation Authorization and Funding Act, per a disclosure filing. California utility Pacific Gas and Electric Company hired Cassidy and Associates to lobby on energy and environmental issues, POLITICO Influence's Theodoric Meyer reports.

QUICK HITS:

— "Instead of removing toxic waste seeping into Illinois' only scenic river, power company wants to wall it off with rocks," Chicago Tribune.

— "Hurricane Florence could cancel House votes this week, posing challenges to GOP agenda," The Hill.

— "World Hunger Rises as Climate Change, Conflict Curb Food Access," Bloomberg.

— "Mexico's president-elect promises to clean up the environment — and build a new oil refinery," The Washington Post.

— "Navajo activists protest company eyeing coal-fired plant," Associated Press.

WIDE WORLD OF POLITICS:

— 'Something has actually changed': Women, minorities, first-time candidates drive Democratic House hopes

— Fighting against Trump's trade war from within

— Growing Russian and Chinese influence could spark extremism, task force says

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Stories from POLITICO Pro

Bipartisan water deal may resonate in congressional races Back

By Annie Snider | 09/11/2018 01:41 PM EDT

Key lawmakers in the House and Senate have brokered a deal on water resources legislation that could help ease the path for passage ahead of this year's midterm elections, although it fails to make progress on the most immediate hurdle in the upper chamber.

The bipartisan measure, dubbed America's Water Infrastructure Act of 2018, S. 3021 (115), includes provisions aimed at issues that have become hot election topics in tight races from Florida to California, including improving drinking water safety, expanding water storage in the West, aiding drought-riddled farmers in Oregon and tackling south Florida's toxic algae crisis.

But the new bill appears to still face the same problem that kept the upper chamber from considering its previous version of the measure this summer: an objection from Sen. Richard Burr (R-N.C.) who has vowed to stall legislation until a deal can be reached to reauthorize the Land and Water Conservation Fund. Burr's office did not respond to a request for comment, but the new measure contains no language relating to the fund. The House is expected to take up the bill as soon as Thursday, but plans in the Senate are unclear.

The new package grows out of two earlier bills: the House-passed Water Resources Development Act, H.R. 8 (115), and America's Water Infrastructure Act, S. 2800 (115), which advanced out of the Senate Environment and Public Works Committee unanimously in May but never made it to the floor. Leaders of EPW and the House Transportation and Infrastructure and Energy and Commerce committees released the bill late Monday. It would authorize a suite of new Army Corps of Engineers projects, incorporate key provisions from a House-passed drinking water measure, and include a handful of relatively noncontroversial provisions relating to hydropower.

Pressure to move the legislation will likely ratchet up as the fall's midterm elections loom and water issues addressed by the bill take on leading roles in key races.

For instance, toxic algae plaguing Florida's beaches — home to moderate Republican voters — is a top issue in the state's heated Senate race. The new water infrastructure bill includes a project sought by Florida Sens. Bill Nelson (D) and Marco Rubio (R), to build a reservoir near the northern end of the Everglades that would reduce the flow of pollution contributing to the algae blooms. Republican Gov. Rick Scott, who hopes to unseat Nelson in November, had accused the Democratic senator of not doing enough to get that project approved.

Meanwhile, drinking water has become a critical topic in several competitive House races as the breadth of contamination from nonstick chemicals called PFAS continues to be understood. The issue is particularly salient in Michigan, where the state has undertaken a proactive program to test for the chemicals that has brought problems to light in a number of communities, including the city of Parchment, in Republican Rep. Fred Upton's district, where the state has been providing bottled water for more than a month after the city found extremely high levels of PFAS in municipal wells.

Upton has repeatedly touted the drinking water language included in the infrastructure package as an important first step towards dealing with the problem, although it does not specifically address the chemicals. The provisions are drawn from an earlier bipartisan bill, H.R. 3387 (115), that passed the House last year. It would increase the authorization for the popular Drinking Water State Revolving Fund and make some modest policy changes aimed at improving drinking water management.

And in California, ground zero for Democrats' bid to retake the House, Republicans have played up their efforts to secure reliable water supplies. GOP Rep. Jeff Denham, whose agriculture-heavy Central Valley district is rated a toss-up by the Cook Political Report, swiftly touted a provision he helped secure in the new water measure that would allow water storage projects to receive federal financing under an expanded version of WIFIA, a low-interest loan program originally authorized for drinking water and wastewater projects.

"We need new water storage in the Valley, period." Denham said in a statement Tuesday morning. "My bill will deliver the money to build new storage and keep water here in the Valley instead of flushing it out to the ocean."

Other winners in the bill include EPW Chairman John Barrasso (R-Wyo.), whose state could see expanded water storage at reservoir on the Colorado River's headwaters under the measure — a controversial move on the already over-stretched river, and House Energy and Commerce Chairman Greg Walden (R-Ore.) who secured drought relief for farmers in his district's Klamath River Basin.

To view online click here.

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EPA proposes easing Obama methane rule for new oil and gas wells Back

By Alex Guillén | 09/11/2018 12:09 PM EDT

EPA issued a new rollback of the Obama administration's regulation curbing methane emissions today, proposing to reduce how often oil and gas producers must check for leaks of the powerful greenhouse gas from new wells.

EPA also proposed easing a requirement for certain wells to install pneumatic pump technology; allowing oil and gas producers to certify closed vent systems with in-house experts instead of outside professional engineers; and expanding an option for well owners to use emerging technologies as a "alternative means" of curbing methane pollution. The proposal includes some other minor technical changes.

The changes will save the oil and gas industry $484 million in regulatory costs from 2019 through 2025, according to EPA. It identified foregone domestic climate benefits at $54 million and the lost value of the methane at $62 million.

The agency estimated the proposal would lead to an increase of 380,000 tons of methane, equivalent to about 8.5 million metric tons of carbon dioxide. It would also increase volatile organic compound emissions by 100,000 tons and hazardous air pollutants by 3,800 tons, according to the proposal.

EPA said there are further issues it plans to reconsider in a separate, upcoming rulemaking, including the broader issue of how and whether to regulate greenhouse gases from the oil and gas sector.

WHAT'S NEXT: EPA will take public comment on the proposal for 60 days once published in the Federal Register.

To view online click here.

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Gov. Brown: Trump administration's rollback of methane rules 'insane' Back

By Jeremy B. White | 09/11/2018 01:19 PM EDT

Gov. Jerry Brown used the spotlight of a global climate change conference to excoriate the Trump administration for rolling back restrictions on releasing methane, calling the reversal "insane."

"It borders on criminality," Brown said to applause from an international audience of climate experts and government officials gathered in San Francisco.

As the White House has weakened environmental policies, California has charged in the opposite direction - and Brown has often played the role of both a champion of his state's path and a vocal antagonist of the White House.

When California sued over the administration's effort to blunt reductions in vehicle emissions, Brown branded then- Environmental Protection Agency chief Scott Pruitt "outlaw Pruitt." More recently, when Washington moved to revoke California's authority to set more stringent emissions standards, Brown vowed to "fight this stupidity in every conceivable way."

Continuing its efforts to erode Obama-era environmental laws, the EPA is poised to dilute a requirement that energy companies check for methane leaking from new wells. The walkback is expected to result in hundreds of thousands of additional tons of methane flowing into the atmosphere.

Noting that methane is one of the more potent greenhouse gases - meaning that its release would accelerate the effects of climate change - Brown called the move "the most obvious and dangerous and irresponsible action by Mr. Trump."

"That's saying quite a lot," said Brown, who has regularly clashed with Washington over environmental policies.
The governor didn't restrict his criticism to Trump, lambasting Republicans in Washington for enabling the president's environmental agenda.

"Unfortunately, his acolytes in Congress will probably cheer. So they're cheering destruction on a large scale," Brown said.

Brown's remarks came a day after he signed a bill that would have California derive all of its retail electricity from clean sources by 2045, a landmark measure that Brown and his allies trumpeted as a sign of California's climate progress even as Washington moves in a different direction.

Over the weekend the governor signed a pair of bills prohibiting new oil exploration off of California's coast, lauding them as tools to counteract a Trump administration order opening coastal waters to more energy development.

To view online click here.

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GOP faces deadline crunch as threat of losing House deepens Back

By Rachael Bade and Burgess Everett | 09/10/2018 06:46 PM EDT

Congressional Republicans, eager to hit the campaign trail to save their imperiled majorities, are starting to narrow their September legislative to-do list in hopes of skipping town early.

But they still have to deal with a handful of looming deadlines, a potential shutdown fight and internal policy tensions — and all on tight timelines.

Appropriators in both chambers still face numerous policy disputes over controversial issues such as abortion as they work to cut deals on spending bills before the close of the fiscal year on Sept. 30. With this week cut short due to the Jewish holiday, and the House on recess next week, lawmakers have just seven legislative days in which both chambers are scheduled to be in session before the government runs out of money.

Leaders also have to dispense with a massive farm bill that's been stalled amid a House-Senate clash over food stamps. House Republicans, with President Donald Trump's backing, are still demanding work requirements for low-income beneficiaries — a controversial conservative proposal that has Senate GOP support but cannot attract enough Democrats to become law.

Failure to pass a new farm bill by the Sept. 30 deadline could be a disaster: Republicans say it's the best way to counteract the ill effects of Trump's trade war.

The outstanding differences are so great that leaders have all but decided to sideline one of their original three "minibus" spending packages. The new plan includes passing the remaining two and simply extending funding for the rest of the half-dozen or so departments until early December in a so-called continuing resolution, according to three sources with knowledge of the plan. Senate leaders are still hoping they can finish work on the package and pressure the House to take it up.

Leaders also haven't ruled out extending the farm bill deadline to give themselves more negotiating time, though Republicans in both chambers say they hope they can avoid that. And tensions between the two chambers have simmered below the surface, as Senate and House Republicans blame each other for their slowed progress.

House members "tend to want to do their own thing, but I think in the end the most important thing is to get an appropriations bill passed," said Senate Majority Whip John Cornyn (R-Texas). "They've got their own prerogative, but the goal is to get the government funded and eliminate the drama."

Rep. Frank Lucas (R-Okla.), former chairman of the House Agriculture Committee, had his own choice words for the upper chamber on the farm bill. "The Senate has taken a very hard-core position" against work requirements, he said. "You won't see House language as passed but, by the same token, the Senate is going to have to give. We can't just maintain the status quo. There is a compromise out there somewhere."

Meanwhile, GOP lawmakers are on edge, crossing their fingers and praying that Trump doesn't shut down the government to get his wall before Election Day. Speaker Paul Ryan (R-Wis.) and Senate Majority Leader Mitch McConnell (R-Ky.) seem confident that won't happen, the latter predicting last week that there was "zero" percent chance of agencies getting shuttered.

But top appropriators like Senate Appropriations Chairman Richard Shelby (R-Ala.) won't express the same confidence.

"I would think he would [sign our bills]," Shelby predicted hesitantly. "In my judgment, it's not in the president's interest to shut down the government in any way. ... That's something I try to not think about."

The legislative pile-up comes as rank-and-file GOP members are increasingly worried that they will lose the House this fall and are itching to hit the campaign trail full time. There's been a notable shift in attitude among House Republicans, who once predicted a "50-50" shot at keeping the majority and now worry they are severe underdogs despite a buzzing economy.

House Republicans say they're likely to completely cancel their two-week session in October to campaign. Some were even hoping to do the same for the last week of September but now realize that won't be possible.

There may be less imperative for the Senate to split early in October, with few vulnerable GOP incumbents and a host of nominations to process.

Still, Senate Republicans, who have a more favorable congressional map this fall, are struggling to defend deep-red states after hoping to grow their two-seat majority. A rescue mission is now underway, for example, to save archconservative Ted Cruz in conservative Texas, and races in Tennessee and Arizona are too close for GOP comfort.

Yet in order to get out on the trail, lawmakers have to take care of legislative business first.

To do so, they've narrowed their legislative ambitions for the fall. GOP leaders had hoped to pass the three "minibus" spending bills — dispensing with nine of the 12 annual must-do appropriations — before the House leaves for its September recess. That turned out to be wishful thinking, and they've decided to focus on getting two over the finish line.

Beyond scaling back appropriations plans, the Senate will not pass another tax cut bill or take another crack at Obamacare repeal, preferring instead to focus on confirming Trump's Supreme Court nominee Brett Kavanaugh. Also on hold are negotiations over provisions protecting staffers from sexual harassment.

The top priority remains funding the government. GOP leaders on Monday unveiled a final deal on their first "minibus" that funds energy and water projects and the VA. They had hoped to dispense with the bill last week but talks stalled over policy riders, including one helping vulnerable Washington state Republicans facing tough races.

The House hopes to vote on the agreement this week, though a looming Category 4 hurricane could upend those plans if votes are canceled due to severe weather.

Even if Republicans pass the first "minibus" this week, both chambers still need to hash out a deal on the most contentious spending package: a military, labor and health care spending bill, where the House's more conservative view on abortion restrictions clashes sharply with the Senate's vow not to include "poison pill" riders in spending bills.

By sidelining the third "minibus" bill for now, GOP leaders hope they can get the defense-labor-health funding bill passed, since it includes the bulk of all government funding.

Though the House is in recess next week, work among top appropriators is expected to continue remotely. Spending bill conferences, however, typically proceed more rapidly when both chambers are in session.

That leaves a lot for members to do after the House returns the last week of September, when Congress is also expected to pass a stopgap "continuing resolution" to extend funding for the rest of the departments.

The stakes are huge. Both political parties are eager to tap $36 billion in new funding for domestic and military spending from this year's budget deal. And if the appropriations process falls apart, there may be less will to do a difficult budget deal next year.

What's more, if lawmakers are unable to pass their "minibuses," they could be in for the nightmare scenario: a full shutdown before Election Day.

Trump has sent mixed signals about whether he would veto spending legislation that doesn't include wall money. GOP leaders know he wants to fight on the issue and has demanded $5 billion for construction, money Senate Democrats object to without a broader immigration deal. But they've asked him to delay his shutdown showdown until after the election.

Trump has agreed to the plan, doing so as recently as last week in an Oval Office meeting with GOP leaders. But Trump has been known to change his mind. And there's a hard-line contingent in the White House that believes the House is already lost and that Trump should fight on spending now, an attitude that worries many on Capitol Hill.

"He has his view that this issue motivates the base, which it does," said Sen. John Thune (R-S.D.). "But I also think that as we run up into the midterms, particularly in some of these districts that we need to win to keep the House, shutting down the government is not a particularly good strategy."

Vulnerable Rep. Erik Paulsen echoed that view during a brief hallway interview Friday: "We don't want drama. We don't need that."

John Bresnahan contributed.

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McIntyre praises his top aide without addressing controversial comments Back

By Darius Dixon | 09/11/2018 11:49 AM EDT

FERC Chairman Kevin McIntyre praised his top aide's work on cybersecurity and natural gas infrastructure, but again stopped short of weighing in on his most controversial statements.

In an official FERC podcast released this morning, McIntyre did not address FERC chief of staff Anthony Pugliese's criticism of Democrats in an interview with Breitbart and a speech to a nuclear energy conference this summer. But he said the agency "speaks through its orders, not through speeches, tweets, or other statements of the Commission's chairman, other commissioners or staff." Those comments echo a letter he sent to Democratic lawmakers who said the partisan attacks were inappropriate from someone at an independent agency.

McIntyre said that thanks to Pugliese's "demonstrated leadership ability," FERC has "markedly increased" its coordination with the Energy Department and the national security community on cybersecurity. Concern about cyber threats to natural gas infrastructure are central to the Trump administration's effort to prop up coal and nuclear plants.

Pugliese's work to coordinate on cybersecurity issues also extends to states, governmental entities and power companies subject to FERC regulations.

McIntyre also said that FERC's recent memorandum of understanding with the Transportation Department's Pipeline and Hazardous Materials Safety Administration wouldn't have come together without Pugliese.

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'Something has actually changed': Women, minorities, first-time candidates drive Democratic House hopes Back

By Elena Schneider | 09/11/2018 05:11 AM EDT

A flood of women, minorities and first-time candidates is poised to radically alter the composition of Congress next year after winning Democratic primaries in record numbers in 2018.

White men are in the minority in the House Democratic candidate pool, a POLITICO analysis shows. Democrats have nominated a whopping 180 female candidates in House primaries — shattering the party's previous record of 120, according to Rutgers' Center for American Women and Politics. Heading into the final primaries of 2018 this week, Democrats have also nominated at least 133 people of color and 158 first-time candidates to run for the House.

The numbers are even starker in the districts without Democratic incumbents. In the 125 districts where a Democratic incumbent is leaving office or a Republican seat is at risk of flipping, according to POLITICO's race ratings, more than half the nominees (65) are women. An overlapping group of 30 Democratic primary winners are people of color, and 73 of them have never run for elected office before, tapping into voter disdain for politics as usual.

Their success in primaries could herald a major shift in Congress, which is majority-white, majority-male and still mostly made up of former state legislators who climbed the political ladder to Washington. And the candidates could also mark the beginning of a new era for the rebuilding Democratic Party, which is counting on new types of candidates to take back the House.

"These grass-roots candidates came out of non-political, non-traditional networks, meaning that they're running very different kinds of campaigns than we've ever seen," said Martha McKenna, a Democratic consultant who once led EMILY's List, the pro-abortion rights group. "When a state legislator runs for Congress, that's a formula we know. But when a nurse or a mom or a young veteran decides to run, their campaign looks and feels different, and in 2018, there's a lot of power in that."

"The way these new candidates will govern will also be different from what we've ever seen before," McKenna added.

(See POLITICO's "Women Rule" Candidate Tracker.)

Republican women could also make history in a handful of House districts, though the GOP's 52 female nominees are dwarfed by Democrats' totals. In California, former state legislator Young Kim would be the first Korean-American woman to serve in Congress if she can hold a tough open seat for the GOP, while Lea Marquez Peterson, president of the Tucson Hispanic Chamber of Commerce, would be the first Latina to represent Arizona in Congress.

But it was the Democrats' new wave of candidates that pulled some of the most stunning upsets of the primary season — Alexandria Ocasio-Cortez and Ayanna Pressley, both women of color, knocked off a pair of 10-term white congressmen in the Northeast: Reps. Joe Crowley of New York and Mike Capuano of Massachusetts.

They have also come out of nowhere to galvanize liberal activists with their personal stories and make some longtime Republican districts competitive by force of personality.

Amy McGrath, a former Marine fighter pilot who had never run for office before, defeated a fixture of Kentucky Democratic politics in a primary and is now threatening GOP Rep. Andy Barr in a conservative district. MJ Hegar, a fellow female veteran from Texas, also raised millions of dollars online after producing a

viral Web video on her compelling life story, potentially dragging Rep. John Carter (R-Texas) into his first-ever tough race in his current district.

Hundreds of women signed up to run for office in 2017, but the results out of the early primary contests in Texas last spring signaled to national operatives that, "'Oh, wow, this is sticking, and something has actually changed,' we all were suddenly saying to each other after the first couple of primaries," said Delacey Skinner, a Democratic consultant.

Now, fully half of the Democrats on the House ballot in Texas are women, while Colin Allred, an African-American former pro football player, beat out million-dollar Democratic primary opponents to take on Rep. Pete Sessions (R-Texas) in what could be the state's top battleground district.

"When you look at this large class of women candidates, it's obvious, it's no longer your average white guy in a red tie running," said John Lapp, a Democratic consultant who led the Democratic Congressional Campaign Committee in 2006. "These candidates look and sound different from what we know Congress to be right now, so they start with credibility of being outside of that."

Ocasio-Cortez, an outspoken democratic socialist, came to personify the ideological lines dividing the Democratic Party in 2018. But nationwide, the diverse array of candidates coming out of Democratic primaries had an equally diverse range of views on popular liberal policies currently animating the left, like "Medicare-for-all" and abolishing U.S. Customs and Immigration Enforcement.

Former Rep. Ann Kirkpatrick, a moderate Democrat, won a hard-fought primary battle in Arizona, even after she was booed at a candidate forum for calling for reforms to ICE, rather than abolishment. Meanwhile, Kara Eastman, a first-time candidate and social worker, beat former Blue Dog Democratic Rep. Brad Ashford in Nebraska after running an unapologetically liberal campaign. Ashford, a former state legislator and one-term congressman, had the backing of the Washington establishment, including the DCCC, but Eastman said she was buoyed by the "momentum for candidates who want to represent real people."

"If you think about the reasons for why someone may have voted for Trump, they were looking for someone who's going to get into Washington and break up the system," Eastman said. "I represent some of that as a political outsider who's new to this, running to fundamentally change the system."

Tom Steyer, a billionaire Democratic megadonor and potential 2020 presidential candidate, acknowledged that "there's a lot of cacophony," around the Democratic Party's direction, "but it's democracy, and it means that people are going to be able to get a chance to listen and make up their minds," he said.

One more major House primary remains for Democrats, pitting Maura Sullivan, a veteran and first-time candidate who worked in the Obama administration, against Chris Pappas, an openly gay member of the state executive council. Both are fairly mainstream, conventional Democrats, and while a handful of progressives in the race to replace retiring Rep. Carol Shea-Porter have gone to their left, the battle between the frontrunners has boiled down to biography and resources more than ideology.

Sullivan, a 38-year-old former Marine, emphasized in her ads and in an interview with POLITICO that she's "a part of a group of women veterans running, and I think we approach service and the job differently because we come with a focus on the mission," she said.

EMILY's List President Stephanie Schriock called Sullivan "the right candidate for this critical moment," but Sullivan can't put away questions about her residency. She moved to the area in June 2017 and acknowledged that she was asked in 2017 to consider running for Congress in Illinois or Virginia.

Pappas, in contrast, has focused on his local roots, touting his endorsements from both New Hampshire senators and arguing that Democrats across the country must "find our way forward from the local level up, so that requires a ground up operation ... that's how we retake the House," Pappas said. "We shouldn't be waiting for something to fall out of Washington D.C. to know what we should be talking about [in our districts]."

Republicans have seized on many of these first-time candidates, hoping to personally disqualify them this fall. The Congressional Leadership Fund, the flagship GOP House super PAC, rolled out more than a dozen TV ads in recent weeks, detailing everything from arrest records to sexual harassment allegations against the wave of new candidates.

But some Republican strategists acknowledged that the unprecedented number of female candidates could put the GOP further on defense in the general election.

Female candidates attract female suburban voters, "who are not trending toward us right now," said Mike Noble, a Republican consultant based in Arizona. "Those suburban women are a key bloc that we're tracking, and they're not big fans of Trump."

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Fighting against Trump's trade war from within Back

By Lorraine Woellert and Marianne LeVine | 09/11/2018 05:12 AM EDT

As a candidate, Donald Trump railed against the Trans-Pacific Partnership, rattling manufacturers who preach free trade. Shortly after the election, Trump announced a 35 percent tax on companies that moved jobs overseas. And now, Trump shows little sign of backing off an escalating trade war, using the blunt instrument of tariffs to bludgeon China and other countries while U.S. manufacturers seek cover from foreign retaliation.

But as other executives and trade associations take a public stand against the president, the National Association of Manufacturers and its president, Jay Timmons, have struck a close — if still uneasy — partnership with Trump, betting it's wiser to be on the inside than out as the administration wages a risky fight with the global business community.

"You can scream and yell all you want. I've never particularly found that to be effective," Timmons said in an interview, when asked about corporate pushback on Trump's tariffs. "We have somebody who is in office who has had a very specific view of the world when it comes to trade—for four decades—so he's going to do what he's going to do."

Timmons has emerged as an unlikely Washington power center under the Trump administration, enjoying easy West Wing access and a bond with a president whose tactics have unnerved NAM's largest members even as Trump plays industry booster on a national stage.

During Trump's presidency, the 123-year-old trade group has flourished, posting strong membership and revenue growth. Timmons has redirected resources to take advantage of NAM's new platform and amped up hiring, bringing on White House spokesman Michael Short, Mitch McConnell speechwriter Brian Forest, and Michael Shapiro, a former adviser to House Speaker Paul Ryan.

On Friday, Timmons announced a multimillion-dollar acquisition of the Manufacturing Leadership Council, a research and networking group — a deal that will expand NAM's reach.

Trump has benefited, too. NAM regularly supplies the White House with factory-floor venues — and a ready audience — for rallies and events. Timmons himself was instrumental in pushing tax reform legislation, helping the president land a crucial and early policy win. The trade group keeps the White House supplied with success stories to help Trump boast about his progress.

Timmons has also struck up a rapport with the president, despite their strikingly different styles and backgrounds.

Trump roared in to drain the swamp in Washington, a place Timmons has called home since 1983. Trump is a grandstander, quick to anger, who has been married three times. Timmons, an openly gay husband and father of three, is soft-spoken and not easily provoked. Trump came up in the rough-and-tumble world of New York real estate. Timmons has roots in Rust-Belt manufacturing.

"We're not focused on personality, politics or process," Timmons said, explaining NAM's relationship with Trump. "I don't think of us as bipartisan, I think of us as post-partisan."

Timmons met Trump for the first time in June 2016 at the invitation of campaign donor Harold Hamm, CEO of energy company Continental Resources. In a two-hour meeting with other industry executives at Trump Tower, Timmons made a pitch for free trade and tax cuts. He left impressed with Trump's questions.

That didn't stop him from taking a shot at the candidate later that month in an op-ed supporting TPP after Trump called it a "disaster."

"Some politicians have decided that it's better for their political careers to spread myths about the TPP—and other trade agreements—than to deal with the facts," Timmons wrote. "They have chosen to mislead voters." Tagging Trump, he followed up with a tweet calling the candidate's protectionism "a plan for losing."

The relationship continued being rocky after the election, when Trump threatened to slap a steep tax on companies that outsource and went after the Air Force One contract owned by Boeing, a NAM board member.

Yet the incoming administration assured manufacturers it had their backs. Two days after the Boeing threat, Vice President-elect Mike Pence was at NAM headquarters promising to make good on a manufacturing agenda. Trump's transition team asked NAM Chairman David Farr, CEO of Emerson Electric, to compile a list of regulations the industry wanted to kill.

It helped that Timmons had an early in. He was friends with Rick Dearborn from their days on the Hill, when Timmons worked for Sen. George Allen of Virginia and Dearborn was with Sen. Jeff Sessions of Alabama. Dearborn led the Trump transition and eventually would be named a White House deputy chief of staff.

By March of last year, Timmons and his members were in the West Wing talking tax reform with the president. As the meeting wound up, Trump issued an impromptu invitation.

"I was sitting next to the president and the meeting was over and he said, 'Well OK, well thank you very much. Hey, does everybody want to see my office?'" Timmons said. "He says, 'Come on, follow me.'"

Timmons, a player in Washington politics for decades, had never been inside the Oval Office. That visit wouldn't be his last.

The Timmons-Trump alliance was cemented during tax reform. Timmons was key to getting the legislation passed, according to former Senate aides, pushing tax breaks for mom-and-pop businesses and providing cover to Republican members who took politically risky votes. Timmons pitched the final bill as a fair deal for businesses, helping ensure its passage.

But in the thick of the tax battle, Timmons broke from the White House, going to the mat against a Trump nominee. Trump had appointed Scott Garrett to lead the Export-Import Bank, which guarantees loans for foreign buyers of U.S. exports. As a congressman from New Jersey, Garrett had pushed to shutter the agency, and had enraged some members of his own party by withholding dues to the National Republican Congressional Committee because it recruited gay candidates.

When Timmons called the White House to talk about the importance of the bank, Trump called him back. It was another first for Timmons.

"He returned the call. I appreciated that," Timmons said. "I've never had a president call me before."

The kinship continued. In September 2017, in the thick of the tax and Ex-Im battles, Trump used a meeting of NAM's board of directors to give a major speech predicting the tax bill would be "rocket fuel" for the economy. Timmons thanked Trump with a red bumper sticker that said "Friend of Manufacturing."

A month later, it was Trump's turn to play host. From the Oval Office, the president declared Oct. 6, 2017, National Manufacturing Day. Timmons and more than a dozen NAM members posed behind the Resolute Desk to mark the occasion.

"That was one of the best days of my life," Timmons said. "It represented everything we've been working for."

When the Senate rejected Garrett's nomination in December, Trump didn't lash out at Timmons. He asked for new candidates. One name offered up by NAM: Kimberly Reed, a Treasury official under President George W. Bush. When Trump nominated her, Timmons praised the pick as a "sterling choice."

The president signed the tax bill into law a few days later, and Reed's confirmation looks assured.

The wins kept coming for both sides. Four months after tax cuts took effect, a NAM survey found evidence they were working, handing Trump an opportunity to crow about his signature legislative win in a Rose Garden ceremony. Timmons was back at the West Wing in May, working on the administration's apprenticeship program with Ivanka Trump and Labor Secretary Alex Acosta.

Now the Trump-Timmons partnership is being tested as the president marches the country toward a full-blown trade war and NAM has shown little power to stop him. He has upended decades-old trade treaties and questioned the loyalty of multinational corporations. Another $200 billion in China tariffs is in the works and automakers could be targeted next. The president on Friday threatened even more punishing taxes on Chinese imports if Beijing doesn't change its trade and technology policies.

But while organizations like the National Retail Federation have publicly scolded Trump for a "reckless escalation," Timmons has taken a more diplomatic tack.

"It's not the way I would negotiate it, but the last time I looked I wasn't elected president," Timmons said. "If this is a better way to encourage investment here in the United States, and create jobs and wage growth, we'll have to see."

But as trade conflicts mount, NAM's diverse membership is giving Timmons some room to maneuver. In 2006, NAM's smaller members mounted a revolt against the multinationals that typically set the group's trade agenda, pushing them to endorse legislation that would give the U.S. power to retaliate against China and other countries that manipulate their currency to gain an export edge.

The effort failed, and some of those same small companies now are cheering Trump's tariffs and big-stick swagger.

"I'm extremely happy," said William Jones, president of Penn United Technology Inc., a precision tooler near Pittsburgh. "He's adding tariffs, but the endgame is to bring everybody to the table and renegotiate. We haven't had anybody to this point willing to do this and play hardball."

In June, more than 50 business groups lined up behind legislation that would curb Trump's ability to impose tariffs for national security reasons. In a letter to Sen. Bob Corker (R-Tenn.), the U.S. Chamber of Commerce, Alliance of Automobile Manufacturers, American Petroleum Institute and dozens of other groups wrote that they were "deeply concerned" about the president's unrestricted use of Section 232 of the Trade Expansion Act.

NAM's signature was conspicuously absent, its influence effectively neutralized by some of its biggest members, which support tariffs on steel and aluminum.

"NAM members who are steel consumers feel like we are in Groundhog Day," said one manufacturing lobbyist unhappy with the group's low-key approach. "We don't understand why we're here again and our trade association is still sidelined on this issue."

So far, Trump isn't budging on tariffs, and it's unlikely Timmons can change the president's mind.

"It's fair to question the extent to which any outside organization has been able to move the needle on this. But it's very clear to say that because of the objective approach the NAM has taken, they are taken very seriously by the White House," said Kevin Kolevar, vice president of government affairs at Dow Chemical Co., a NAM member. "When they publicly disagree, and they do, they're still a big part of the conversation."

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Growing Russian and Chinese influence could spark extremism, task force says Back

By Nahal Toosi | 09/11/2018 12:01 AM EDT

Russia's and China's expanding economic and military reach could foster extremism in developing nations, and the U.S. must engage the rest of the world in trying to prevent that threat from materializing, a task force spearheaded by the leaders of the 9/11 Commission argues in a new report.

The report, released Tuesday, the 17th anniversary of the 2001 terrorist attacks, comes as President Donald Trump has pursued overtures to Russian President Vladimir Putin and other autocrats, tried to slash foreign aid spending and broken with America's traditional democratic allies to an unusual degree.

The report's authors — led by former Gov. Tom Kean of New Jersey, a Republican who chaired the 9/11 Commission, and former Rep. Lee Hamilton (D-Ind.), the commission's vice chairman — don't criticize Trump

and avoid any hints at partisanship. Still, many of their conclusions seem at odds with Trump's personal approach to foreign policy.

Since 2001, the U.S. has focused extensively on preventing attacks on American soil and targeting militants abroad, but it must do more to prevent extremist ideas from taking root in the first place in vulnerable countries, the report argues.

"The time has come for a new U.S. strategy," the report states. "Going forward, the priority for U.S. policy should be to strengthen fragile states — to help them build resilience against the alarming growth of violent extremism within their own societies."

Extremist groups have evolved, especially over the past decade, focusing not just on attacking the West but also on establishing political orders that offer frustrated populations alternatives to corrupt and ineffective governments, the report states.

One prominent example was the Islamic State terrorist group's attempts to build a "caliphate" in parts of Iraq and Syria. In Iraq, the extremists were offering unhappy Sunni Muslims an alternative to the Shiite-dominated central government.

Countries such as Russia and China, meanwhile, have increased their economic and military outreach to the governments of "fragile states." The assistance offered by China and Russia, such as loans or military aid, generally doesn't come with requirements to respect human rights, exhibit transparency or other facets of good governance.

This lets China and Russia bolster their influence, and also "allows predatory governments to avoid reforms and has been shown to have increased corruption." Populations in the developing states are more likely to lose faith in their governments and, as a result, be more willing to support alternative rule offered by extremists.

In Africa, the report states, "Moscow is by far the largest weapons supplier. ... When the United States denied Nigeria's request for Cobra attack helicopters because of human rights concerns, Russia stepped in and also agreed to train Nigerian security forces."

China, the report notes, is "Africa's largest single-country trade partner and its biggest creditor," to the point where some African countries' failure to repay their loans could allow the Chinese to take control of much of their infrastructure.

Separately, regional rivalries, such as that between Iran and Saudi Arabia, are fueling violence, extremist ideology and despair across the Middle East and North Africa.

Iran, the report states, is "operating more than a hundred religious institutions in Africa." The Saudis, who between 1982 and 2005 "spent $75 billion to fund mosques, madrassas and religious television channels," are lashing out at Iran in places like Yemen.

Intra-Arab rivalries, such as that between the governments of Saudi Arabia and Qatar, are further exacerbating tensions, the report states.

The report is the first of at least two to be produced by the Task Force on Extremism in Fragile States. The first focuses on laying out the reasoning behind why a new strategy to prevent extremism is needed and establishing some principles of what it should look like; the next report, due in 2019, will propose a comprehensive strategy to implement.

The task force was established at the behest of Congress and is housed at the U.S. Institute of Peace. Its members include prominent Republicans and Democrats, including Dina Powell, a former deputy national security adviser for Trump.

The report selectively quotes Trump to buttress some of its points. It emphasizes aspects of the fight against terrorism that might appeal to him, such as by criticizing Iran.

"It was not intended as a rebuke of the president in any way, shape or form," said Stephen Hadley, a national security adviser to former President George W. Bush who served on the task force. "The co-chairs made very clear that our objective is to try to create a bipartisan consensus that would embrace both the executive branch and the Congress on how to address this problem."

In a call with reporters, Hamilton and Kean cast the new report as a way to follow up on the conclusions of the 9/11 Commission. The commission had three main recommendations: attack terrorists and their organizations; protect against and prepare for terrorist attacks; and stop the growth of terrorism.

The new report "in a way is the continuation of the third point of the 9/11 report — that you have to find a way to prevent terrorism to begin with," Kean said.

The pair also stressed that they've been encouraged by their contacts with aides to the president. "Obviously, they're not going to commit to something one way or the other, but they have said they 'like what we are doing, we want to keep in touch with you, we think it can be useful to us,'" Kean said.

Intentionally or not, the report's recommendations highlight Trump's often-inconsistent approach to foreign affairs — a personal vision that can seem out of sync with his own administration's official National Security Strategy.

The report says the United States needs to partner with other governments, local and national, to come up with strategies to reduce the allure of extremism. But Trump, through his rhetoric and use of tariffs, has badly rattled America's relationships with even some of its staunchest allies, raising concerns about the ability of alliances such as NATO to present a united front on global challenges.

Trump has also sought to improve relations with Russia, even though his administration, under congressional pressure, has imposed sanctions and taken other measures to rein in Moscow. The president has at times praised the Chinese leadership, but he has also slapped tariffs on the Asian giant.

While Trump took office promising to "bomb the s--- out of" terrorists, he has made human rights and the promotion of democracy a low priority while expressing favorable views toward autocratic leaders. The report, meanwhile, stresses that it is crucial to motivate governments in fragile states to be more transparent, less corrupt and more responsive to their citizens.

Future U.S. efforts to strengthen fragile states don't have to be expensive, the report states — a possibly subtle signal to Trump, who has tried to dramatically slash U.S. spending on foreign aid only to run into resistance from Congress.

The report acknowledges that strengthening fragile states to resist extremism and improve governance is the work of many years: "We cannot solve the problem of extremism within the term of a single presidential administration."

Its conclusion, however, is that there's no time to waste.

"For a preventive strategy to succeed, it will need to outpace attempts by extremist groups to undermine fragile states," the report states. "The time to put a preventive strategy in place is now."

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Message

From: Ringel, Aaron [ringel.aaron@epa.gov]
Sent: 9/11/2018 7:27:44 PM
To: Brazauskas, Joseph [brazauskas.joseph@epa.gov]
CC: Levine, Carolyn [Levine.Carolyn@epa.gov]
Subject: FW: GKM - Follow-Up - Deliberative Process Privilege in FOIA and Discovery

Joe, see below. We have concerns regarding Ex. 5 ACP/DPP What are your thoughts?

-Aaron

From: Levine, Carolyn
Sent: Tuesday, September 11, 2018 12:18 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Subject: FW: GKM - Follow-Up - Deliberative Process Privilege in FOIA and Discovery

Fyi, I've been in discussions with OGC Ex. 5 ACP/DPP I was going to mention at a managers meeting, but in case not everyone is there, wanted to run by you. Let's discuss when convenient..thanks.

Carolyn Levine
Office of Congressional and Intergovernmental Relations
U.S. EPA
(202) 564-1859
levine.carolyn@epa.gov

From: Berg, ElizabethG
Sent: Monday, September 10, 2018 12:02 PM
To: Levine, Carolyn <Levine.Carolyn@epa.gov>; Aarons, Kyle <Aarons.Kyle@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Hammitt, Jennifer <Hammitt.Jennifer@epa.gov>; Logan, Paul <Logan.Paul@epa.gov>; Bermes, Peter <Bermes.Peter@epa.gov>
Subject: RE: GKM - Follow-Up - Deliberative Process Privilege in FOIA and Discovery

Hi all,

As we discussed on our last call, Ex. 5 ACP/DPP
Ex. 5 ACP/DPP
Ex. 5 ACP/DPP Below is some suggested language for a cover note for you to consider in advance of our meeting on Monday 9/17:

DRAFT

Ex. 5 ACP/DPP

To be clear, we understand that Ex. 5 ACP/DPP but wanted to share this language with you should your office decide to go in this direction. We can discuss further next Monday.

Thanks,
Liz

Elizabeth G. Berg
U.S. Environmental Protection Agency
Office of General Counsel
Solid Waste Emergency Response Law Office (WJC North 7013B)
(202) 564-0905, berg.elizabethg@epa.gov

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-----Original Appointment-----
From: Berg, ElizabethG
Sent: Friday, August 24, 2018 8:26 AM
To: Berg, ElizabethG; Levine, Carolyn; Aarons, Kyle; Lewis, Jen; Hammitt, Jennifer; Logan, Paul; Bermes, Peter
Subject: GKM - Follow-Up - Deliberative Process Privilege in FOIA and Discovery
When: Monday, September 17, 2018 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Call In

Follow-up from today's call.

Call in: Ex. 6
Conf. ID: Ex. 6

Hi Carolyn and Aaron,

We wanted to follow-up with you to discuss Ex. 5 Attorney Client (AC) Ex. 5 ACP/DPP Ex. 5 ACP/DPP
Ex. 5 ACP/DPP
Ex. 5 ACP/DPP

Thanks all,
Liz

Message

From: POLITICO Pro Energy [politicoemail@politicopro.com]
Sent: 9/10/2018 7:28:01 PM
To: Brazauskas, Joseph [brazauskas.joseph@epa.gov]
Subject: Afternoon Energy: California signs renewable bill, rebuking Trump — EPA drops federal haze plans — Class divide imperils December climate summit

By Garrett Ross and David Beavers | 09/10/2018 03:26 PM EDT

With help from Anthony Adragna, Alex Guillén and Daniel Lippman

CALI SIGNS RENEWABLE BILL, REBUKING TRUMP: Since President Donald Trump took office, California has squared off with him on the state and national stage. The latest installment of Sacramento vs. Washington came today, as Gov. Jerry Brown signed a bill setting the goal for the Golden State of deriving all its retail electricity from renewable sources by 2045, POLITICO's Jeremy B. White reports.

The bill "is sending a message to California and the world that we are going to meet the Paris agreement and we are going to continue down that path to transition our economy," Brown said, referencing the climate accord from which Trump withdrew last year.

Brown's signature also comes just as officials from around the world will descend on San Francisco later this week for a global climate summit. Read more here.

Welcome to Afternoon Energy! We're your hosts Garrett Ross and David Beavers. Send suggestions, news and tips to gross@politico.com, dbeavers@politico.com, mdaily@politico.com and njuliano@politico.com, and keep up with us on Twitter at @garrett_ross, @davidabeavers, @dailym1, @nickjuliano, @Morning_Energy and @POLITICOPro.

EPA TURNS TO STATES ON HAZE: EPA says it plans to drop federal plans aimed at reducing haze-forming pollutants in favor of state plans for four more states, and will open up a rulemaking on the agency's regional haze rule, which has led some coal-fired power plants to install costly new pollution controls in order to improve visibility in national parks. EPA announced a new "Regional Haze Reform Roadmap" today, although it had not provided a copy to POLITICO as of AE's deadline. The agency said the road map will include new implementation tools and guidance to "streamline the time and resources needed" to curb haze-forming pollution. EPA did not provide any other details about which parts of the haze rule will be reworked in the upcoming rulemaking, nor what the timeline is.

Federal haze plans issued by the Obama administration are a top target of EPA now, acting Administrator Andrew Wheeler said in a statement. "The heavy-handed approach of the previous administration resulted in the imposition of federal implementation plans and billions of dollars in costs that produced only minimal benefits," he said. Republicans and industry have long complained that the haze rule required significant investments in pollution control while providing limited benefits.

CLASS DIVIDE IMPERILS DECEMBER SUMMIT: The COP24 global climate talks this December in Katowice, Poland, are in danger of being derailed by a growing schism between developed and developing countries, POLITICO Europe's Paola Tamma and Kalina Oroschakoff report. "Political leaders still have a few chances to make progress before Katowice, including during the Global Climate Action summit in California this week, and at the U.N. General Assembly later this month. 'For Katowice to be successful, work needs to speed up and political will needs to be intensified,' Patricia Espinosa, the U.N.'s climate chief, warned on Sunday." Paola and Kalina break down the four key issues that are cropping up ahead of the talks here.

MEANWHILE, IN NEW YORK: New York Gov. Andrew Cuomo today directed the state's Department of Environmental Conservation to adopt regulations phasing out hydrofluorocarbons, making good on a pledge in his "State of the State" address in January, POLITICO New York's Danielle Muoio reports. The regulatory mechanism for adopting the HFC ban is a 2015 EPA rule, the Significant New Alternatives Policy, that has never gone into effect and which a federal court last year ruled was in excess of the agency's authority. In a statement, Cuomo said New York is moving forward to adopt the SNAP regulations in the absence of federal leadership, as the Trump administration has declined to appeal the court's decision.

The phase-out, which is set to begin in 2020 and continue through 2024, will join New York with California as the only states to prohibit the use of certain HFCs. Read more here.

BLAST FROM THE PAST: West Virginia Sen. Joe Manchin's buzzy new ad out this morning is all about health care, but it makes sure to remind voters of his infamous 2010 ad where the Democrat shot the Senate's cap and trade bill. "I haven't changed," he says in the ad. "I might be a few years older, but I'll still take on anyone that messes with West Virginia." Manchin faces Attorney General Patrick Morrisey in his November reelection bid.

KOCH MOVES: The influential Koch political network is launching a new super PAC, AFP Action, giving significantly more leeway to its largest group, Americans for Prosperity, to directly push lawmakers on issues, POLITICO's Maggie Severns reports. The new super PAC has been under discussion for some time, Maggie writes, and it does not affect the Koch network's already-announced plans to spend some $400 million this election cycle, according to spokesman Bill Riggs. Read more here.

MOVER, SHAKER: Conservation International named Johan Rockström as its chief scientist, beginning in October.

SWAMP WATCH: Brownstein Hyatt Farber Schreck's new tax policy practice will represent three additional clients on energy issues, on top of its lobbying for energy companies Exelon and Tenaska, which we reported last week. The law firm will lobby for Clean Affordable Reliable Electricity Coalition on tax issues impacting the electricity sector; for Hunt Consolidated Inc. , the parent company of the Hunt oil and refining operations, on the Renewable Fuel Standard and various tax issues; and for agriculture co-op CHS Inc. on the alternative fuels mixture and biodiesel tax credits and various tax issues.

QUICK HITS:

— "In Germany, Construction Has Begun On Controversial New Russian Gas Pipeline," NPR.

— "Maria Butina's Beau Snookered Investors With a Shady Oil Deal," Daily Beast.

— "Evacuations in North Carolina as hurricane Florence roars closer," Reuters.

— "Yellen Touts Carbon Tax as 'Textbook Solution' to Climate Change," Bloomberg.

— "Why Energy Data Will Unlock the Next Wave of Residential Solar," Greentech Media.

WIDE WORLD OF POLITICS:

— Sessions says he plans a 50 percent surge in immigration judges

— Dem super PACs keep getting bigger as candidates turn on PAC money

— Tinder woes, suspicious landlords and snarky bosses: Young and Russian in D.C.

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Stories from POLITICO Pro

California's Brown signs renewable energy bill in another rebuke to Trump Back

By Jeremy B. White | 09/10/2018 02:06 PM EDT

SACRAMENTO — California will aim to derive all its retail electricity from renewable sources by 2045 under a bill Gov. Jerry Brown signed into law on Monday, with backers framing the measure as the state's latest rebuke to environmental backsliding by the Trump administration.

The bill "is sending a message to California and the world that we are going to meet the Paris agreement and we are going to continue down that path to transition our economy," Brown said, referencing the climate accord from which President Donald Trump withdrew the United States last year.

Brown's signature comes in the waning months of his fourth and final term, and serves as a capstone to his efforts to make California a global leader on climate change. He timed the public signing ceremony to a global climate summit that will bring public officials from around the world to San Francisco this week.

With Sacramento and Washington engaged in a protracted policy standoff from the start of the Trump administration, much of the conflict has turned on California's ability to maintain its aggressive environmental policies.

And with both foreign dignitaries and U.S. officials with national aspirations preparing to gather in San Francisco for the climate summit, the divergence between those two power centers is on stark display: Even as the Trump administration has sought to unravel Barack Obama's climate legacy, the nation's largest state is forging ahead.

"Against the indifference of an entrenched global leadership, these delegates are demanding action now," the governor tweeted shortly before he began speaking.

Tom Steyer, the wealthy environmental activist who has plunged millions into an effort aimed at impeaching Trump, was in attendance at a Monday press conference and praised Brown's "world leadership" in making California a standard-bearer.

"From a leadership standpoint and a symbolic standpoint, what he's doing and what he's helping this entire state do is to reframe the way the world thinks about what's going on in terms of energy and climate — what's possible and what's necessary and what's just," Steyer said.

In recent years, Brown has helped shepherd through a suite of ambitious climate-change policies that include mandates to reduce carbon emissions and augment renewable energy use, and an extension of the state's pioneering cap-and-trade program.

Brown and other officials have lambasted the administration's push to relax air quality rules and potentially dissolve California's ability to set more stringent vehicle emission standards; California is leading a group of states seeking to challenge the administration and maintain the tougher rules.

Over the weekend, Brown signed a pair of bills to block new oil and gas extraction in the waters off of California's coast, a direct rejection of the Trump administration's move to reverse Obama administration policies and throw open coastal waters to energy exploration.

"Today, California's message to the Trump administration is simple: Not here, not now," Brown said in a pointed statement accompanying the weekend signing. "We will not let the federal government pillage public lands and destroy our treasured coast."

The renewable energy law could also yield a political windfall for the bill's author, former state senate leader Kevin de León, who will have another progressive accomplishment to trumpet as he seeks to unseat fellow Democrat Dianne Feinstein by energizing California's sizable liberal electorate.

"Today California sends an unmistakable message to the nation and the world: regardless of who occupies the White House, California will always lead on climate change," de León said.

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Arguments between rich and poor endanger December climate summit Back

By Paola Tamma and Kalina Oroschakoff | 09/10/2018 10:46 AM EDT

A deep divide between developed and developing countries is casting a shadow over prospects for December's COP24 global climate talks in Katowice, Poland.

The clash stalled negotiations in Bangkok that ended Sunday. The week-long talks were an addition to the climate negotiating calendar and were supposed to make progress on rules needed to implement the 2015 Paris climate agreement — something that has to be finalized in Katowice.

Instead, the Thailand talks soured the mood even further.

"The Paris agreement is on the brink," said Harjeet Singh of ActionAid, a global NGO. "If [developed countries] remain stuck in their positions and fail to loosen their purses, this treaty may collapse."

Bangkok ended with a 307-page-long draft outcome document.

Lead negotiators now have less than three months to streamline the text. They'll hand it over to national diplomats in Katowice in December, who will have only five days to continue technical negotiations before ministers step in to make the final decisions in the last days of the COP24 summit.

Political leaders still have a few chances to make progress before Katowice, including during the Global Climate Action summit in California this week, and at the U.N. General Assembly later this month.

"For Katowice to be successful, work needs to speed up and political will needs to be intensified," Patricia Espinosa, the U.N.'s climate chief, warned on Sunday.

Those political and technical talks have to tackle at least four tough subjects:

1. Rich vs. poor

Traditional disagreements between developed and developing countries over who's (more) responsible to fight climate change, once again, resurfaced in Bangkok.

"Developed countries are responsible for the vast majority of historic emissions, and many became remarkably wealthy burning fossil fuels," Amjad Abdulla, a diplomat from the Maldives and the chief negotiator for the Alliance of Small Island States, said on Sunday from Bangkok.

Espinosa called on wealthier countries to recognize the "different realities" of developing countries, and allow some flexibility to be written into the Paris rulebook.

The Paris agreement is meant to accommodate countries depending on their historical emissions and economic power. Some developing and emerging economies are keen to return to a system that clearly splits responsibilities according to a traditional rich-vs.-poor divide.

But developed countries look at increasingly wealthy and powerful developing countries like China, South Africa, Brazil and Saudi Arabia, and feel that those countries should shoulder more of the burden.

"Conversation seems to be lagging behind the real world," said Elina Bardram, head of the EU negotiating team.

2. Finance gap

Developed countries have pledged to provide $100 billion a year in climate finance to poorer countries by 2020, but that promise is coming under tough scrutiny from developing countries.

Coming up with the cash is seen as key to maintaining confidence that countries will stick to the deal — something that's been badly shaken by Donald Trump's plans to withdraw the U.S. from the Paris agreement.

Poorer countries also want greater clarity on the money they can expect in the future.

Rich countries, however, argue that domestic budget rules make it hard for them to report on finance flows long into the future.

Developed countries also want to be flexible in counting a broad range of financial flows as climate finance. A rich country grouping including the U.S., Japan and Australia proposed looser accounting rules that don't differentiate between what is "new and additional" support from already existing aid flows.

"In Bangkok, as at so many meetings before, the climate finance issue stalled progress," Abdulla said.

Looming over the issue is the U.S., which under Trump has broken with the idea of sending climate cash to poorer countries.

NGOs complain that the EU and countries like Norway and Canada have been "hiding" behind the U.S., without tabling proposals of their own. "They are letting [the U.S.] play the bad cop and not stepping up to what needs to be done," said ActionAid's Singh.

That's something EU diplomats reject. They are aware that in the absence of U.S. diplomatic and financial support, it's largely up to the bloc to deliver the cash to make the global deal work.

"It's natural that developing countries are feeling uneasy with some of the key donors being where they are now politically," said Bardram. She said the EU "has been working very hard on finding solutions" and countries "should by all accounts feel reassured at least of our willingness."

3. Transparent reporting rules

Developed and developing countries are also at loggerheads over how to report on emission cuts.

Developed countries such as EU members and the U.S. want a common set of transparency and accountability rules that ensure climate efforts can be measured and compared across countries.

China and other emerging economies are not keen on formal scrutiny and want some reporting obligations to only apply to rich nations, an idea rejected by wealthy countries, including the EU.

The EU and China are working together, but there are moments during negotiations "where some of the old oratory creeps in," said Bardram, the EU negotiator.

4. Reviewing climate commitments

In Paris, countries agreed to review — and ideally increase — their climate efforts every five years, starting in 2023. The goal is to steadily ramp up commitments in order to eventually hit the deal's goal of keeping global warming to well below 2 degrees.

Developing countries, however, also want to broaden the review exercise to boost support for countries already suffering from climate-related events such as droughts, fires and floods.

They "lack the tools and resources to cope with the devastating impacts of climate change," said Gebru Jember Endalew, the chair of the least developed countries group. "Addressing loss and damage is integral to an effective global response to climate change."

Wealthier countries, however, don't want to be liable for loss and damage claims in vulnerable countries. They worry that they'll be on the hook for billions of dollars in compensation as floods, droughts and storms become more frequent.

"We face devastating climate impacts and some of us could be lost forever to rising seas," said the Maldives' Abdulla.

This report first appeared on POLITICO.EU on Sept. 10, 2018.

To view online click here.

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POLITICO Pro New York: Cuomo directs DEC to phase out HFCs Back

By Danielle Muoio | 09/10/2018 12:40 PM EDT

Gov. Andrew Cuomo announced Monday he has directed the Department of Environmental Conservation to adopt regulations that will phase out hydrofluorocarbons, a chemical used in refrigeration and foam packaging that contributes to ozone depletion.

Cuomo first announced in January he would develop a strategy to reduce HFCs in his "State of the State" plan. On Monday, Cuomo said he is moving forward with that plan by directing the DEC to officially adopt regulations set by the Significant New Alternatives Policy — a 2015 rule by the Environmental Protection Agency that would effectively ban some of the largest and most harmful HFCs.

The EPA rule has never gone into effect. A federal court ruled last year that the EPA exceeded its authority by requiring companies to eliminate HFCs. The EPA under the Trump administration is not pursuing an appeal of the decision in the Supreme Court.

In a statement, Cuomo said New York was moving to enact the SNAP regulations in the absence of federal leadership. California is the only state to have adopted regulations that prohibit the use of certain HFCs.

"While the Trump administration denies climate change and rolls back efforts to protect our planet, New York is picking up the mantle of climate leadership and forging a path forward," Cuomo said in a statement. "We are taking action to begin the phase out of the use of hydrofluorocarbons, and I encourage other states to join with New York and California to combat dangerous HFCs.

The press statement doesn't say when the DEC will put out the regulations for public comment, only that it must finalize a rule in 2019. Cuomo's announcement of the rulemaking process was made to coincide with the Global Climate Action Summit that begins Thursday in San Francisco.

The governor's office said that the the rule would prohibit specific substances for use in new consumer products and equipment, including aerosol propellants, commercial and residential refrigeration equipment and foam-blowing agents. The phase-out will begin in 2020 and continue through 2024.

This report first appeared on POLITICO Pro New York on Sept. 10, 2018.

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Koch network launches new super PAC Back

By Maggie Severns | 09/10/2018 09:33 AM EDT

With just weeks to go before the midterm elections, the massive Koch network is adding a new super PAC to its political arsenal.

The new super PAC, AFP Action, will give the Koch network's largest arm — Americans for Prosperity — significantly more leeway to push lawmakers directly on political issues, adding another tool to AFP's arsenal at a moment when the Koch network is trying to assert its power in Washington.

Americans for Prosperity's existing organization, a 501(c)(4) nonprofit, is required by law to spend a significant amount of money on "social welfare" activities and cannot expressly urge voters to cast ballots for or against a

member of Congress. But the new AFP Action super PAC can expand that work by spending unlimited sums of money on political activities.

The new super PAC has been under discussion for some time and does not affect the Koch network's already-set plans to spend $400 million on politics and policy this election cycle, spokesman Bill Riggs said.

Americans for Prosperity spokespeople declined to say how much money the Koch network — founded by the brothers Charles and David Koch — plans to spend via the super PAC this election cycle, and offered few details about the super PAC's future activities in their announcement.

"Our mission is to help improve lives by breaking the barriers holding people back, and that requires building the policy coalitions in Washington to get it done," Riggs said. "Americans for Prosperity has been a difference-maker supporting policy champions in tight races, and AFP Action is a new tool that will allow us to expand those efforts and make an even larger impact."

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Sessions says he plans a 50 percent surge in immigration judges Back

By Hugh T. Ferguson | 09/10/2018 10:06 AM EDT

Attorney General Jeff Sessions said that he plans to increase the number of immigration judges by 50 percent by the end of the year as he welcomed a new class of such judges on Monday.

"Counting you along with existing judges, we currently have the most active immigration judges in history. This class puts us at the top, but we are not going to stop there," Sessions said in remarks to 44 judges for the Executive Office for Immigration Review.

James McHenry, director of EOIR, said the additions of 44 immigration judges and two new supervising judges make for the largest class of judges in the department's history and reiterated the attorney general's pledge, saying the department will "keep hiring until we run out of space or money."

The surge comes as the Trump administration is still recovering from the controversy stemming from its short-lived policy of separating families who illegally crossed the border. Trump officials have struggled to reunite families, blowing past court-mandated deadlines for doing so. And last week, the administration said it would forge ahead with a plan to keep detained migrant families together through the course of immigration proceedings.

On Monday, Sessions told the new judges that even with the increase in manpower, it is "critically important" for them to manage their cases.

"You have to manage your docket and staff very well cases need to be moved to conclusion," Sessions said.

Sessions also thanked the Office of Management and Budget as well as the House and Senate Appropriations committee leaders for providing the funds necessary for the new hires.

Sessions reiterated his goal of deterring illegal entry across the border to reduce the number of cases judges would have to handle and eventually allow them to spend more time on their assigned cases.

"Remember we will be asking a lot because right now this country is facing a big challenge, and you'll be out there with heavy caseloads, heavy responsibilities and I know you are up to the task," he said.

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Dem super PACs keep getting bigger as candidates turn on PAC money Back

By Maggie Severns | 09/10/2018 05:05 AM EDT

Democratic candidates are running against money in politics. But Democratic super PACs are playing a bigger role than ever in the party.

The super PACs charged with helping Democrats take back the House and Senate are raking in record sums from donors motivated by opposition to President Donald Trump, even as a rising class of candidates — like Texas Democrat Beto O'Rourke and Ayanna Pressley, who scored a primary upset over Rep. Mike Capuano in Massachusetts last week — are rejecting corporate PAC money and using campaign finance as a purity test against entrenched opponents. Meanwhile, the Democratic super PACs are using their new cash reserves to take over more and more of the party's core functions, expanding from a focus on TV advertising to run major field programs and digital campaigns.

The current system has created an ongoing, awkward dance in which Democratic candidates are calling for change while benefiting from an increasingly large flow of outside money seeking to match Republican spending. In the recent special election in Ohio's 12th District, Democrat Danny O'Connor rejected taking money from corporate PACs and pledged to change campaign finance laws if elected — as he benefited from more than a million dollars in outside spending praising him or attacking his opponent.

Democratic operatives have concluded their super PAC buildup is necessary, especially after searching for new strategies in the wake of the 2016 loss.

"For the last cycle leading into [this] election, every day is Groundhog Day, reliving a very tough election night," said J.B. Poersch, president of Senate Majority PAC, the main super PAC aligned with Senate Democratic leader Chuck Schumer. "I experienced every meeting with activists, with organizers, with donors as the same conversation. Everybody wants to know how to do it different. People are eager to succeed."

Altogether, the four biggest Democratic super PACs have disclosed raising close to $150 million so far during the election cycle — more than double the $60 million the same groups had raised at approximately this point during the last midterm elections. Affiliated nonprofits have meanwhile raised tens of millions more from secret donors riled by Trump's presidency.

Those funds are going towards a range of new strategic investments that, super PAC operators like Poersch hope, will help Democrats win back the House and Senate. Majority Forward — the 501(c)(4) nonprofit linked to Senate Majority PAC — is spending $20 million to turn out voters in traditionally red states like Tennessee ahead of the midterms this year, while Priorities USA, the formerly presidential-focused group that went dormant during the last midterm election, has a 40-person digital advertising program ahead.

"There is a lot of friendly competition to be relevant by providing more services than just carpet-bombing your opponent by television," said one Democratic consultant who works on congressional races. "It's not in vogue to say to your billionaire potential donor, 'I'm going to beat the shit out of Republicans with the money you give me.'"

No pivot was bigger than the one performed by Priorities USA, the main super PAC that supported Hillary Clinton in 2016 and former President Barack Obama in 2012. After watching Democrats be outspent 20-to-1 on digital advertising during the 2016 election, Priorities decided to become a year-round effort and focus on closing the gap, instead of following its post-2012 plan of shutting down between presidential elections.

"Unlike the other side, the left does not have a history of consistent structural PACs or (c)(4)s, outside of issue PACs and candidate PACs. ... We have not typically invested in PACs just as a part of the liberal-progressive structure," Priorities USA President Guy Cecil said during a recent interview. "Essentially, that's why we chose to exist."

Priorities USA, which in the past raised almost no money during midterm election years, plans to spend $75 million this cycle, according to Cecil. It currently employs 80 staff — quadruple the 20 individuals who worked at Priorities USA during the 2016 election — a reflection of how the organization operates more and more like a permanent party committee.

American Bridge, the Democratic opposition research hub, has also raised more money than in past years and built out new capacity by adding a team devoted to tracking governors races. The group now has more than 90 paid staff on board in September — more than the 80-plus people it employed at the height of the 2016 presidential elections.

Some Republican super PACs such as those operated by the Koch network, which includes year-round field canvassers in 36 states, have been operating with permanent super PAC structures for years.

As Priorities USA and other super PACs have put down deeper roots, progressive politicians, many of them first-time candidates for office, have begun rejecting corporate PAC money and pledging to get money out of politics en masse. To date, 111 candidates running for federal office have taken an anti-corporate PAC pledge and advanced to the general election, including more than half of the DCCC's "Red to Blue" list who are seeking to unseat congressional Republicans, according to the pro-reform PAC End Citizens United. In 2016, only three candidates on the list had taken the pledge.

The message has emerged as a central part of some candidates' platforms and even in television ads.

"Politicians like Dan Donovan sell out to corporate PACs, and we can't get anything done," says Democrat Max Rose, who is challenging New York Rep. Dan Donovan, in a recent ad. "I've got a message for the lobbyists and the corporate kingmakers: keep your damn money, because it's not you I'm working for."

Pressley, who defeated incumbent Rep. Michael Capuano (D-Mass.) in a primary challenge from the left in early September, used the issue to differentiate herself in a race between two progressive candidates.

Candidates like Pressley running strong pro-reform platforms will arrive in Washington with a mandate from their supporters to pass campaign finance reform, said Adam Bozzi, spokesperson for End Citizens United. ECU hopes that such a surge will reinvigorate longstanding interest in changing campaign finance laws in the Democratic Party and put government and ethics reform at the top of Democrats' list of priorities if the party reclaims either chamber on Election Day.

"They're not going to come to Washington to get bullied," said Bozzi. "When they get here, it's going to be easier for them to change the system because of the way they ran their campaigns."

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Tinder Woes, Suspicious Landlords and Snarky Bosses: Young and Russian in D.C. Back

By Ben Schreckinger | 09/10/2018 05:04 AM EDT

Not so long ago, the Russian émigré party scene in Washington was off the hook. Every weekend, promoters would throw Slavic night bashes at venues like Ozio on M Street and Eden on Farragut Square. Euro-pop beats pounded and vodka shots flowed. In 2013, Mari Vanna, a three-story restaurant and nightclub littered with Soviet-era kitsch, opened in DuPont Circle and became the Russian diaspora's de facto party house. Its "KGB Karaoke" nights on Wednesdays raged into the morning hours. Top Russian acts like Ivanushki International would swing through town to play gigs, and Washington Capitals stars Alexander Ovechkin and Alexander Semin would sometimes join in the revelry with students and summer workers from all over the former Soviet Union.

"Before, I would call an event and say, 'Hey we're going to have Ukrainian Independence Day,' and everybody would come," Andrey Bessarabov, better known as DJ Bezza, a Soviet-born IT worker who moonlights for Troika Party, a promoter of Eastern European club nights in the area. "It didn't matter Ukrainian, Russian. Nobody differentiated."

Then Vladimir Putin annexed Crimea, and the headlines were filled with talk of sanctions. The party scene began to fracture along political lines. The Ukrainians went their own way. Suddenly parties marking Defender of the Fatherland Day seemed in poor taste given their Russian nationalist overtones. "A lot of people felt negative about it, so I kind of stopped organizing them," Bessarabov confided over cake on a recent Friday night at Mari Vanna.

But nothing prepared the young Russians of Washington for the wintry blast of social isolation and suspicion that followed the arrest this July of an attractive young Russian apparatchik. When Maria Butina, 29, was charged with acting as an unregistered Kremlin agent from her perch as a grad student at American University, it seemed to confirm Washington's worst suspicions about them.

Now, more so than ever, the capital's young Russiantonians find themselves living in a battlefield of the new Cold War.

Their Tinder dates keep asking them if they're spies. Their landlords are interrogating them. Their résumés are getting tossed in the trash, and when they do get the job, their boss might warn them not to mention their nationality to people at the office. If that sounds bad, many of them—especially opposition figures and gay men in exile—are regarded with more suspicion by their own government back home than by their new neighbors here.

To be young and Russian in Washington is, often, to live in the gray ambiguities of a John le Carré Cold War spy novel. You're pretty sure those questions about being a spy are innocent flirtations, and your boss might be joking when he asks you to keep your birthplace to yourself, but it is not totally clear. Then there's the too-good-to-be true job offer on LinkedIn: Have you lucked out, or are you being recruited for something else?

When friends with ties to official Washington bail on plans to hang out, a calendar conflict can take on more sinister overtones. "Are they really busy? Who knows?" mused Maria Snegovaya, a young academic from St.

Petersburg who recently entered the fog of Russian expat life in D.C. "You're not hired for that job. Why is that?"

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Snegovaya has good reason to wonder.

Federal law forbids employers from discriminating against job-seekers based on their citizenship or national origin, but a Washington cybersecurity executive said private firms that do sensitive work for the U.S. government avoid hiring applicants from countries like Russia, China and Iran, describing the practice as a "very well-enforced informal policy."

The executive receives and discards so many résumés from Russian and Chinese job-seekers that he has joked with colleagues he should give them all summer internships and sequester them in a separate room so someone from the government posing as an "internship coordinator" can secretly monitor them.

Jokes aside, the practice also has drawbacks for the firms that practice it. "What sucks is D.C. is a very tough place to recruit engineers in," the executive said. "And the engineers coming out of Russia and China are supertalented." Frustrated Russian job-seekers might have better luck out West, where firms doing sensitive work tend to be more lax in their hiring, the executive said. "We are much more attuned to it than folks in Silicon Valley are."

Even young Americans in Washington who fraternize too much with Russians can face career consequences. One think-tanker with a security clearance said he recently came to trust an American underling less because the underling participates in too many Russian-sponsored cultural exchanges for his liking.

And for Russians who do get the job, office life in Washington can be awkward. Dmitry Sivaev, an urban development specialist at the World Bank, recalled his annoyance when a former boss told him not to mention to colleagues that he was Russian. Sivaev was so taken aback he could not tell whether his boss was being serious.

"He is a guy who could have been joking about it," he said, "but even joking felt very uncomfortable."

Those uncomfortable interactions can follow Russiantonians home. One Russian journalist in Washington whose first name is Natalia often goes by Natasha. Natalia, who asked that only her first name be used, told me she was perturbed when her landlady, who perhaps had been watching too much "Rocky & Bullwinkle," recently began to question her about using the nickname, as if it were some sort of spy alias. The landlady seemed satisfied when Natalia showed her a Wikipedia article explaining that "Natasha" is a standard diminutive for Natalia.

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Late on a recent Monday night, a lanky man smoking a cigarette on the sidewalk outside Blagden Alley in Shaw, loudly complained about his recent experience dating a Russian woman. His ex-girlfriend is brilliant, he explained to me, after I overheard him spilling his sorrows. She works for an international nongovernmental organization and excels at math, but she also cheated on him. And she becomes erratic when drinking. He leaned forward to show me what he said was a scar on his forehead from when she had beaned him with a full glass of vodka, though I couldn't make it out in the light of a streetlamp.

That kind of domestic combat appears to be an isolated incident. Mostly, men in Washington seem to be intrigued by Russian women, though they do keep asking if they're spies. "When you go on dates people joke

about it a lot," said Alina, a petite 21-year-old Muscovite who recently graduated from Duke, moved to Washington this summer and declined to provide her last name during a brief interview at Mari Vanna.

The questions from men about being a spy are "Mostly for flirting," said one thirty-something Russian woman on the D.C. dating scene. "At least I treat it this way."

Of course, the prospect of Russian agents using sex as a weapon of statecraft is a real one. Former counterintelligence officials say Russians are particularly fond of the honey trap, the use of attractive young people, usually women, to compromise or gain influence over intelligence targets, usually older men. Prosecutors allege that Butina, for example, used a romantic relationship with Paul Erickson, a 56-year-old Republican operative, to further her aims as she sought access to conservative political networks such as the National Rifle Association and the annual CPAC conference (Butina's lawyer claims the two were genuinely in love).

Not every use of the honey trap fits that stereotype. One former top counterintelligence official described his consternation at the recklessness of State Department officials of both sexes during the Obama years who indulged in sexual favors from in-room masseurs during their stays at the Moscow Ritz, the same hotel made infamous by the Steele dossier's unsubstantiated allegations about Donald Trump's behavior in the presidential suite.

The 30-something Russian woman, who has earned the Kremlin's ire for her writing in praise of economic sanctions, said she is on guard for a certain kind of approach. "I'm not worried of young Russians," she said. "I'm worried of young, blue-eyed, model-looking guys."

The age-old tactic has been given a new spin by dating apps, which allow would-be spies to make far more passes and do so at a safe distance, posing new challenges for U.S. counterintelligence—as well as for single Russians just trying to get a date.

"We can't go to Tinder and say, 'Give us a list of everyone with a Russian surname,'" said Frank Montoya Jr., a former FBI special agent and former director of the Office of the National Counterintelligence Directorate.

Instead, people with access to sensitive information are trained to be wary when engaging with young Russians (as well as young Chinese nationals, or even people who do not appear to be foreign at all) on dating apps and social media.

"If she has a Russian last name, that doesn't mean don't engage, especially if you're really attracted to her," Montoya advises. Instead, deep state daters should be on the lookout for red flags once they swipe right. "Are they asking specific questions about what you do? Do they persist in those questions? And when are they asking you about those things? Is it after a drink? After a lot of drinks? Is it pillow talk?"

Montoya advises a bit of common sense. "If that person is really interested in you, they're going to ask about your family, they're going to ask about your hobbies, they're going to ask you about where you want to go for drinks tomorrow night," he said. "They're not going to ask you what you do in that windowless room in the belly of the beast in Langley."

When he was working in sensitive government posts, Montoya even had to warn his three young sons that they could be targeted online by women seeking access to their father. LinkedIn may be worse than dating apps, added Montoya, who regularly received unsolicited business propositions from Russian and Chinese women on the networking site.

"Nick," a 20-something Russian-born U.S. citizen who holds a security clearance and works as a consultant for a major defense contractor described being the target of suspected phishing attempts on both platforms. The

first was the prospective offer of a cushy job in private equity, made via LinkedIn. Nick, who spoke on the condition that his real name not be used, was immediately wary because private equity firms rarely recruit consultants. When the man who initiated the discussions passed Nick on to an associate with a generic Outlook.com address, Nick bailed, figuring a legitimate offer would come from a business' email domain.

Last year, Nick who came to the U.S. as an adolescent, found his suspicions aroused again when he engaged in an extended flirtation on Tinder with a young woman he came to believe was targeting him for intelligence-gathering purposes. "I don't know if I was targeted specifically or whether I became an asset of potential interest as we started getting to know each other," he said.

"One thing that I noticed was very, very quick replies, something that is very unusual on Tinder," he recalled. "The questions would be very, very, very, very sort of like pointed."

Nick kept his responses vague, though he did mention a love for drinking tea, and eventually he worked up the nerve to ask her out. But when she declined the invitation, her reason was a little too on the nose.

"She said she was actually a tea sommelier and that she had an event this weekend," he recalled. "I was like, 'Wow that's so unusual. This is the nicest excuse you could have given me, but I also think it happens to not be true.'" Nick blocked her two days later.

Besides going online, the counterintelligence threat posed by Russians in Washington is evolving in other ways.

According to Montoya, the Russians have learned from watching the Chinese, who rely more heavily on "non-professional collection"—drawing intelligence from all sorts of nationals with access to sensitive information, rather than primarily relying on professional operatives. The Chinese model is often called "a thousand grains of sand."

As evidenced by Butina—who schmoozed relentlessly, actively sought publicity and questioned candidate Trump at a campaign event while allegedly coordinating her activities with a Russian government official—young Kremlin agents in the U.S. are also becoming more brazen.

"They don't think there are any boundaries because of what the Russians did to us in 2016," said Montoya, explaining that successful exploits in the U.S. can help young Russians break into their country's elite at a time when average citizens are suffering from economic stagnation. "That's the risk-reward of what these kids are trying to do. They're enterprising and they do it because they think the payoffs will be huge."

Meanwhile, Russians here are also often targets for recruitment by U.S. intelligence services. Sivaev, at the World Bank, mentioned a Russian friend who believed she was being groomed for recruitment by the U.S. government. Through Sivaev, she declined to speak to me.

While Russians of all ages can be potential assets, men between the ages of 45 and 55 are the riper targets than their younger comrades for U.S. government recruitment, according to Mike Rochford, a retired FBI special agent who served as espionage section chief in the bureau's counterintelligence division. "We notice that people of that age, especially in Russia, tended to have a more realistic point of view," he said. "Marriages go bad, ambitions go bad, they don't get promotions. Some people have bad situations with their superiors. Some people lose money in the stock market. Their mom and dad die."

Washington's numerous campuses are also sites of counterintelligence concern, both because university study is a common cover for foreign agents and because of the sensitive research conducted on them. Butina was enrolled as a graduate student at American University while allegedly pushing the Kremlin's agenda here.

"If there's someone coming over here from Russia, and they're getting access to universities," warned Rochford, "Then they should be looked at very, very hard, because they have conflicted loyalties."

Counterintelligence officials regularly meet with university officials all over the country to warn them of just that, with mixed results. Many administrators are loath to turn away bright students or researchers on account of vague warnings about national security. One former top counterintelligence official said that the University of Maryland and Johns Hopkins, which perform a lot of classified military research, take such concerns more seriously than the universities in the District.

Life on campus as a Russian is more or less normal, reports Alexander Naumov, a sophomore pursuing international relations and Russian studies at George Mason University in Northern Virginia.

Naumov, a tall 19-year-old with frosted tips, came to the U.S. from a small Russian town as a child. A dual citizen who wants to dedicate his career to improving U.S.-Russia relations, Naumov said he has not experienced discrimination, though friends have joked that it will be difficult for him to get a security clearance. He also told of a Russian classmate who returned to his dorm room last year to find someone had tried to set fire to his Russian flag, which had burn marks on it.

Naumov and his mother have recently reconnected with their Russian heritage through an annual march from the White House to the Mall organized to commemorate Soviet World War II veterans.

"It's been feeling like I have two families and I really want to do everything I can to bring them together," he said, and to "decrease the chance of miscalculation, which could lead to grave consequences."

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I first encountered Naumov at an August gathering at the Russian Embassy commemorating the World War II Battle of Kursk, a 1943 Soviet victory over Germany that helped turn the tide on the Eastern Front.

In an ornate second-floor ballroom, Russian Ambassador Anatoly Antonov toasted the bravery of the Soviet soldiers with vodka and repeatedly hammered home the theme that the Russian government would not tolerate any attempts to desecrate their memory (a reference to the same historical reevaluations that forced DJ Bezza to cancel his Defender of the Fatherland Day raves).

It was no karaoke night at Mari Vanna, where "KGB" has been dropped from the event name but a dedicated clutch of loyalists continues to gather each Wednesday to suck down Baltika beers and belt out Russian pop songs among antique samovars, reading the lyrics off screens that otherwise play endless loops of the Soviet cartoon "Nu, Pogodi!" But in addition to Naumov and a number of well-groomed embassy staffers, a handful of other young Russians nibbled on finger food and browsed an exhibition about the battle. The young guests, by-and-large more sympathetic to the Kremlin than critical of it, stood around a table expressing frustration that of late, all Washingtonians want to talk to them about is politics, and their opinions of Putin, a topic they would just as soon avoid.

While opposition supporters were largely game to speak for this article, those more sympathetic to the Kremlin—or tied to Butina—were not. A spokesman for the Russian Embassy did not respond to an email seeking guidance on the city's young Russians, nor did the Center for the National Interest, a pro-Kremlin D.C. think tank with ties to Butina. Elena Branson, the New York-based chair of the Kremlin-aligned Coordinating Council of Organizations of Russian Compatriots of the U.S.A., also did not respond to an email seeking guidance on young Russians in Washington who support Putin.

A lawyer for Butina suggested speaking to Anton Fedyashin, the director of the school's Carmel Institute of Russian Culture & History, in which Butina was active. Neither Fedyashin nor the press office at American

University responded to inquiries. Susan Carmel, a local philanthropist who funds the center and is a friend of former Russian Ambassador Sergei Kislyak, said through a spokeswoman that she was unavailable for an interview.

Robert Ainsley, who oversees an exchange program for young opera singers between Moscow's Bolshoi Theatre and the Washington National Opera, did take my call. He said the program, which Carmel funds, has been an unmitigated success. "At least on an artistic and a cultural level there is no problem between these nations," he said, though he noted that diplomatic tensions have made it more difficult to secure visas for Russian singers to come here.

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Of course, life for young Russiantonians is not an unending stream of side-eye glances and faux glasnost. The standard of living here is far better than in Russia, where the gross domestic product per capita is about $9,000. And for a sizable number of young Russians who came to Washington fleeing persecution, the city is a haven.

Oleg Tomilin, a gay man from the city of Voronezh in southwestern Russia came to Washington in 2014 seeking political asylum. He is middle-aged but said he knows 40 or 50 gay Russian men in the area, mostly in their 20s and 30s, who are doing the same. One of them is 29-year-old Andrew Nasonov, who previously worked in Voronezh as a journalist and activist against anti-LGBT laws. Before he fled to Washington, he was accosted there by Russian police and accused of participating in a conspiracy to murder someone in Moscow.

When he first arrived here four years ago, a gay couple provided Nasonov and his now-husband with free housing for a year in Columbia Heights and then Silver Spring, Maryland. Another gay couple provided them with free housing for another year in Falls Church, Virginia. When Nasonov, who has taken a break from activism and turned instead to making art, launched a GoFundMe to pay rent on a studio near the Takoma Metro station, Washingtonians he had never met put up the money for it.

Nasonov has no intentions of leaving the city. "For me to go back to Russia, it's like equal to death," he said. "I'm afraid of it."

That's what Karina Orlova, 32, feared when she fled Moscow for Washington three years ago. An opposition journalist, she made statements about the January 2015 Charlie Hebdo massacre and images of the prophet Muhammad that earned the ire of Chechen Muslims. Orlova was used to hearing from cranks, but after Ramzan Kadyrov, the strongman who rules Chechnya as Putin's vassal, spoke out to condemn images of Muhammad, she began receiving credible death threats from Chechens on Facebook.

In February 2015, opposition leader Boris Nemtsov was murdered outside the Kremlin, apparently by Chechens tied to Kadyrov, and Orlova decided to move to Washington. Here, she writes for Echo of Moscow, an opposition radio station, and for subscribers to her channel on the Russian messaging app Telegram, about American culture and politics.

When she divulges her occupation to people in Washington, they often respond with a knowing smile. "When you tell people you're a Russian journalist, you have to explain you're not propaganda," she said.

Overall, she is a fan of her new home.

She was heartened to find a popular anti-Putin slogan scrawled in Cyrillic on a bathroom wall at Solly's, a dive bar on U Street, and has even contributed some graffiti of her own to the D.C. streetscape. Shortly after arriving here, she came across posters advertising RT, the Kremlin-backed media outlet, on H Street—a hip section of Northeast Washington—and vandalized them with a marker, writing "Putin's motherfuckers" and "stop war in Ukraine."

That attitude does not play well back home.

After volunteering with So Others Might Eat, a D.C.-based charity for the poor, she wrote a post saying the homeless in Washington eat better than patients in Russian hospitals, where the food is notoriously lousy, provoking fierce criticism in Russia.

In Washington, though, she feels welcome. "Americans are really nice and polite people," she said. "They're better than Russians actually." Just a little more on edge these days.

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Arguments between rich and poor endanger December climate summit

By Paola Tamma and Kalina Oroschakoff

09/10/2018 10:46 AM EDT

A deep divide between developed and developing countries is casting a shadow over prospects for December's COP24 global climate talks in Katowice, Poland.

The clash stalled negotiations in Bangkok that ended Sunday. The week-long talks were an addition to the climate negotiating calendar and were supposed to make progress on rules needed to implement the 2015 Paris climate agreement — something that has to be finalized in Katowice.

Instead, the Thailand talks soured the mood even further.

"The Paris agreement is on the brink," said Harjeet Singh of ActionAid, a global NGO. "If [developed countries] remain stuck in their positions and fail to loosen their purses, this treaty may collapse."

Bangkok ended with a 307-page-long draft outcome document.

Lead negotiators now have less than three months to streamline the text. They'll hand it over to national diplomats in Katowice in December, who will have only five days to continue technical negotiations before ministers step in to make the final decisions in the last days of the COP24 summit.

Political leaders still have a few chances to make progress before Katowice, including during the Global Climate Action summit in California this week, and at the U.N. General Assembly later this month.

"For Katowice to be successful, work needs to speed up and political will needs to be intensified," Patricia Espinosa, the U.N.'s climate chief, warned on Sunday.

Those political and technical talks have to tackle at least four tough subjects:

1. Rich vs. poor

Traditional disagreements between developed and developing countries over who's (more) responsible to fight climate change, once again, resurfaced in Bangkok.

"Developed countries are responsible for the vast majority of historic emissions, and many became remarkably wealthy burning fossil fuels," Amjad Abdulla, a diplomat from the Maldives and the chief negotiator for the Alliance of Small Island States, said on Sunday from Bangkok.

Espinosa called on wealthier countries to recognize the "different realities" of developing countries, and allow some flexibility to be written into the Paris rulebook.

The Paris agreement is meant to accommodate countries depending on their historical emissions and economic power. Some developing and emerging economies are keen to return to a system that clearly splits responsibilities according to a traditional rich-vs.-poor divide.

But developed countries look at increasingly wealthy and powerful developing countries like China, South Africa, Brazil and Saudi Arabia, and feel that those countries should shoulder more of the burden.

"Conversation seems to be lagging behind the real world," said Elina Bardram, head of the EU negotiating team.

2. Finance gap

Developed countries have pledged to provide $100 billion a year in climate finance to poorer countries by 2020, but that promise is coming under tough scrutiny from developing countries.

Coming up with the cash is seen as key to maintaining confidence that countries will stick to the deal — something that's been badly shaken by Donald Trump's plans to withdraw the U.S. from the Paris agreement.

Poorer countries also want greater clarity on the money they can expect in the future.

Rich countries, however, argue that domestic budget rules make it hard for them to report on finance flows long into the future.

Developed countries also want to be flexible in counting a broad range of financial flows as climate finance. A rich country grouping including the U.S., Japan and Australia proposed looser accounting rules that don't differentiate between what is "new and additional" support from already existing aid flows.

"In Bangkok, as at so many meetings before, the climate finance issue stalled progress," Abdulla said.

Looming over the issue is the U.S., which under Trump has broken with the idea of sending climate cash to poorer countries.

NGOs complain that the EU and countries like Norway and Canada have been "hiding" behind the U.S., without tabling proposals of their own. "They are letting [the U.S.] play the bad cop and not stepping up to what needs to be done," said ActionAid's Singh.

That's something EU diplomats reject. They are aware that in the absence of U.S. diplomatic and financial support, it's largely up to the bloc to deliver the cash to make the global deal work.

"It's natural that developing countries are feeling uneasy with some of the key donors being where they are now politically," said Bardram. She said the EU "has been working very hard on finding solutions" and countries "should by all accounts feel reassured at least of our willingness."

3. Transparent reporting rules

Developed and developing countries are also at loggerheads over how to report on emission cuts.

Developed countries such as EU members and the U.S. want a common set of transparency and accountability rules that ensure climate efforts can be measured and compared across countries.

China and other emerging economies are not keen on formal scrutiny and want some reporting obligations to only apply to rich nations, an idea rejected by wealthy countries, including the EU.

The EU and China are working together, but there are moments during negotiations "where some of the old oratory creeps in," said Bardram, the EU negotiator.

4. Reviewing climate commitments

In Paris, countries agreed to review — and ideally increase — their climate efforts every five years, starting in 2023. The goal is to steadily ramp up commitments in order to eventually hit the deal's goal of keeping global warming to well below 2 degrees.

Developing countries, however, also want to broaden the review exercise to boost support for countries already suffering from climate-related events such as droughts, fires and floods.

They "lack the tools and resources to cope with the devastating impacts of climate change," said Gebru Jember Endalew, the chair of the least developed countries group. "Addressing loss and damage is integral to an effective global response to climate change."

Wealthier countries, however, don't want to be liable for loss and damage claims in vulnerable countries. They worry that they'll be on the hook for billions of dollars in compensation as floods, droughts and storms become more frequent.

"We face devastating climate impacts and some of us could be lost forever to rising seas," said the Maldives' Abdulla.

This report first appeared on POLITICO.EU on Sept. 10, 2018.

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Subject: POLITICO Playbook: Republicans in trouble in Trump states

Sep 10, 2018 View in browser

POLITICOPLAYBOOK

BY JAKE SHERMAN, ANNA PALMER AND DANIEL LIPPMAN

Presented by PhRMA

Listen to today's Audio Briefing

DRIVING THE DAY

REMEMBER WHEN WE SAID THE SENATE MIGHT BE UP FOR GRABS? ... ALEX ISENSTADT, "Inside the GOP's rescue mission for Ted Cruz: The national party wasn't expecting to have to defend a well-known senator in a conservative bastion": "With a string of polls showing GOP Sen. Ted Cruz's lead slipping, Texas Lt. Gov. Dan Patrick showed up in Washington on July 25 to deliver an urgent plea to White House officials: Send President Donald Trump. Patrick, who chaired Trump's 2016 campaign in the state, made the case that a Trump visit was needed to boost turnout for Cruz and the rest of the Texas Republican ticket.

"The lieutenant governor soon got his wish: Trump announced on Twitter late last month that he was planning a blowout October rally for Cruz, his former GOP rival. The previously unreported meeting comes as senior Republicans grow increasingly concerned about the senator's prospects in the reliably red state, with

some expressing fear that an underperformance could threaten GOP candidates running further down the ballot.

"Cruz's Democratic opponent, Rep. Beto O'Rourke, has raised barrels of cash, closed the polling gap and emerged as a cause célèbre of liberals nationwide." POLITICO

-- @KasieDC: "JUST NOW: Former Communications Director for Ted Cruz, @rickwtyler, says it is 'possible' Cruz could lose his Senate seat. 'This should be a 10 to 15 point race and it's not.'" ***Video***

ANOTHER REPUBLICAN IN TROUBLE -- "Democrats corner Scott Walker," by Natasha Korecki in Green Bay, Wisconsin: "There's every reason to believe this is the beginning of the end for Scott Walker. His presidential bid crashed and burned. He's running for a third term as governor in what figures to be a hostile midterm for the Republican Party. Polling shows that the independent voters who were so critical to Walker's wins in the 2012 recall and 2014 reelection are breaking away from him.

"After years of futility, Democrats here are convinced they finally have him cornered. 'He's stuck with a bad environment. He's stuck with a long incumbency, and he's stuck with a short general election,' said Tom Russell, a Wisconsin-based consultant with the Democratic Governors Association." POLITICO

THE GOVERNMENT SHUTS DOWN in **21 DAYS ... ELECTION DAY** is in **57 DAYS.** Congress is out until Wednesday because of Rosh Hashanah, the Jewish New Year.

-- AP'S JULIE PACE: "High stakes as 2-month sprint to Election Day begins"

AVAILABLE REAL ESTATE IN GLOVER PARK ... WSJ'S MICHAEL GORDON: "Trump Administration to Close Palestine Liberation Organization Office in Washington: National security adviser John Bolton also plans to threaten sanctions against International Criminal Court, in a Monday speech": "The Trump administration is expected to announce Monday that it will close the Palestine Liberation Organization's office in Washington, administration officials said Sunday night, widening a U.S. campaign of pressure amid stalled Middle East peace efforts. ...

"'The Trump administration will not keep the office open when the Palestinians refuse to take steps to start direct and meaningful negotiations with Israel,' [Bolton] planned to add. PLO mission officials couldn't be reached for comment late Sunday." WSJ

SIREN -- "GOP candidate for Fla. governor spoke at racially charged events," by WaPo's Beth Reinhard and Emma Brown: "Rep. Ron DeSantis (R-Fla.), a gubernatorial nominee who recently was accused of using racially tinged language, spoke four times at conferences organized by a conservative activist who has said that African Americans owe their freedom to white people and that the country's 'only serious race war' is against whites.

"DeSantis, elected to represent north-central Florida in 2012 , appeared at the David Horowitz Freedom Center conferences in Palm Beach, Fla., and Charleston, S.C., in 2013, 2015, 2016 and 2017, said Michael Finch, president of the organization.

"At the group's annual Restoration Weekend conferences, hundreds of people gather to hear right-wing provocateurs such as Stephen K. Bannon, Milo Yiannopoulos and Sebastian Gorka sound off on multiculturalism, radical Islam, free speech on college campuses and other issues. 'I just want to say what an honor it's been to be here to speak,' DeSantis said in a 27-minute speech at the 2015 event in Charleston, a video shows.

"'David has done such great work and I've been an admirer. I've been to these conferences in the past but I've been a big admirer of an organization that shoots straight, tells the American people the truth and is standing up for the right thing.'" WaPo

2020 WATCH -- "Avenatti would base his 2020 campaign in St. Louis," by Natasha Korecki: "He hasn't decided yet if he's running for president, but Michael Avenatti has already made a strategic 2020 decision. The attorney will base his national presidential campaign headquarters in St. Louis should he launch a White House bid, he told POLITICO on Sunday. ... He believes he'll be the first presidential candidate to headquarter in St. Louis since Dick Gephardt's 1988 presidential run (Gephardt's 2004 campaign was based in D.C.)." POLITICO

A message from PhRMA:

As a Medicare Part D Cliff looms for seniors, the program's successful structure is also in jeopardy. Congress can act now to protect seniors from the donut hole suddenly increasing by more than $1,200 and secure the program for the future by fixing changes that undermine its successful competitive structure.

NYT'S PETER BAKER: "Trump Claims Credit for the Economy. Not So Fast, Says Obama": "The economy is doing quite well, thank you very much, and the president would naturally like to take credit. Both of them.

"Barely a day passes without President Trump boasting about the growing economy, claiming with a mix of hyperbole and fact that it is 'booming like never before.' But former President Barack Obama finds all the Trumpian chest-thumping more than a little grating, given that the 'booming' started on his watch.

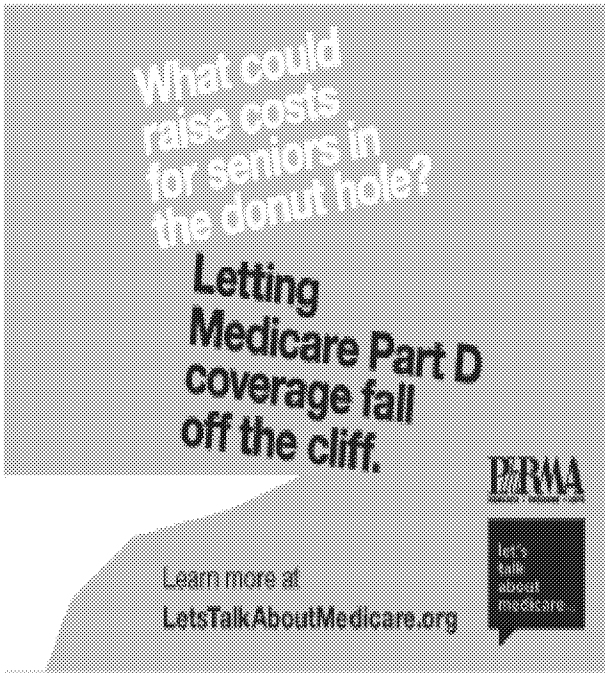
"The economic contest between the 44th and 45th presidents went public in recent days when Mr. Obama expressed his irritation and Mr. Trump fired back. At stake are more than ordinary political bragging rights. Central to Mr. Obama's historical legacy is the economy's recovery after its plummet to the brink of a new Great Depression. And central to Mr. Trump's current political standing is its further expansion." NYT

FOR YOUR RADAR -- "North Korea is still making nukes, and the Trump admin is taking a harder line," by NBC's Courtney Kube and Carol Lee with Dan De Luce: "As President Donald Trump issues a steady stream of praise for Kim Jong Un in interviews and on Twitter, a steady stream of evidence that North Korea is still making nuclear weapons has pushed his administration to take a much more aggressive stance toward Pyongyang.

"The newest intelligence shows Kim's regime has escalated efforts to conceal its nuclear activity, according to three senior U.S. officials. During the three months since the historic Singapore summit and Trump's proclamation that North Korea intends to denuclearize, North Korea has built structures to obscure the entrance to at least one warhead storage facility, according to the officials.

"The U.S. has also observed North Korean workers moving warheads out of the facility, the officials said, though they would not speculate on where the warheads went." NBC

TRUMP'S MONDAY -- The president is having lunch with VP Mike Pence.



MEDIAWATCH -- "Les Moonves is out at CBS after harassment allegations, corporate battle," by CNN's Brian Stelter: "CBS chief executive Les Moonves is exiting the company, effective immediately, amid a flurry of sexual misconduct allegations. The announcement on Sunday evening ends his 20-year tenure atop one of the country's most important media empires. ... There is widespread scrutiny about the prospect of Moonves being paid tens of millions of dollars on his way out the door.

"Moonves is one of the media world's highest paid CEOs, so his severance package would normally be generous, even gargantuan. ... With those optics in mind, CBS said Sunday night that Moonves and CBS will donate $20 million to organizations that support the #MeToo movement and other groups fighting for workplace equity for women." CNN

-- **RONAN FARROW** in The New Yorker, **"As Leslie Moonves Negotiates His Exit from CBS, Six Women Raise New Assault and Harassment Claims"**

-- **JOHN DICKERSON** will be filling in for the next few weeks of CBS' "Face the Nation." **MARGARET BRENNAN** interviewed Pence Saturday on her due date.

JOIN US SEPT. 20 for a special Playbook Elections event in Columbus, Ohio. We'll talk with Democratic gubernatorial candidate **RICHARD CORDRAY** and **REP. JIM RENACCI (R-OHIO),** the GOP nominee for Senate, about the 2018 midterm elections. ***RSVP***

PLAYBOOK READS

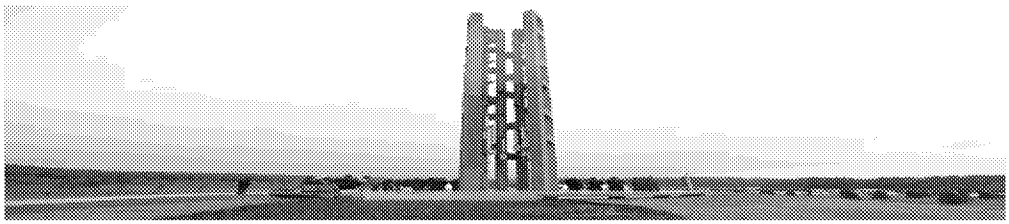


PHOTO DU JOUR: People attend the dedication Sunday of the Tower of Voices at the Flight 93 National Memorial in Shanksville, Pennsylvania, with wind chimes honoring the 40 people who died on the flight on 9/11. | Keith Srakocic, Pool/AP Photo

MAGGIE SEVERNS: "Dem super PACs keep getting bigger as candidates turn on PAC money": "Democratic candidates are running against money in politics. But Democratic super PACs are playing a bigger role than ever in the party.

"The super PACs charged with helping Democrats take back the House and Senate are raking in record sums from donors motivated by opposition to President Donald Trump, even as a rising class of candidates — like Texas Democrat Beto O'Rourke and Ayanna Pressley, who scored a primary upset over Rep. Mike Capuano in Massachusetts last week — are rejecting corporate PAC money and using campaign finance as a purity test against entrenched opponents.

"Meanwhile, the Democratic super PACs are using their new cash reserves to take over more and more of the party's core functions, expanding from a focus on TV advertising to run major field programs and digital campaigns." POLITICO

BENJAMIN WERMUND: "U.S. News revamps formula for its latest college rankings": "U.S. News and World Report is changing the formula for its widely read college rankings to reward schools that enroll and graduate more students from low-income families — a year after a POLITICO report showed that the rankings promote economic inequality on campuses.

"The new methodology is reflected in the 2019 'best colleges' edition, out Monday. It's the first update to the rankings since POLITICO reported that they create incentives for schools to favor wealthier students over less wealthy applicants. The rankings are so closely followed in the academic world that some colleges have built them into strategic plans.

"Still, the top of the U.S. News rankings don't look that much different than have in years past. The top spots among national universities are still dominated by the Ivy League and other elite private schools. Princeton and Harvard were No. 1 and No. 2. Third place was split among Columbia, MIT, University of Chicago and Yale." POLITICO ... ***The original POLITICO story***

A message from PhRMA:

As a Medicare Part D Cliff looms for seniors, the program's successful structure is also in jeopardy. Congress can act now to protect seniors from the donut hole suddenly increasing by more than $1,200 and secure the program for the future by fixing changes that undermine its successful competitive structure.

LANGLEY READ ... NYT: "C.I.A. Drone Mission, Curtailed by Obama, Is Expanded in Africa Under Trump," by Joe Penney, Eric Schmitt, Rukmini Callimachi and Christoph Koettl, with a Dikkou, Niger, dateline: "The C.I.A. is poised to conduct secret drone strikes against Qaeda and Islamic State insurgents from a newly expanded air base deep in the Sahara, making aggressive use of powers that were scaled back during the Obama administration and restored by President Trump.

"Late in his presidency, Barack Obama sought to put the military in charge of drone attacks after a backlash arose over a series of highly visible strikes, some of which killed civilians. The move was intended, in part, to bring greater transparency to attacks that the United States often refused to acknowledge its role in.

"But now the C.I.A. is broadening its drone operations, moving aircraft to northeastern Niger to hunt Islamist militants in southern Libya. The expansion adds to the agency's limited covert missions in eastern Afghanistan for strikes in Pakistan, and in southern Saudi Arabia for attacks in Yemen." NYT

KNOWING MARK ZUCKERBERG -- EVAN OSNOS in The New Yorker, **"Ghost in the Machine"** (online headline: **"Can Mark Zuckerberg Fix Facebook Before It Breaks Democracy?:** The most famous entrepreneur of his generation is facing a public reckoning with the power of Big Tech"): "Before I visited Zuckerberg for the first time, in June, members of his staff offered the kind of advice usually reserved for approaching a skittish bird: proceed gingerly, build a connection, avoid surprises. The advice, I discovered, wasn't necessary. In person, he is warmer and more direct than his public pronouncements, which resemble a politician's bland pablum, would suggest. The contrast between the public and the private Zuckerberg reminded me of Hillary Clinton. In both cases, friends complain that the popular image is divorced from the casual, funny, generous person they know.

"Yet neither Zuckerberg nor Clinton has found a way to publicly express a more genuine persona. In Zuckerberg's case, moments of self-reflection are so rare that, last spring, following a CNN interview in which he said that he wanted to build a company that 'my girls are going to grow up and be proud of me for,' the network framed the clip as a news event, with the title 'Zuckerberg in rare emotional moment.'" New Yorker

PLAYBOOKERS

OUT AND ABOUT -- WOMEN RULE hosted a "Salute to the Chiefs" live podcast taping at The Wing Sunday afternoon to kick off the Congressional Hispanic Caucus Institute and Congressional Black Caucus Foundation legislative weeks. Anna sat down with Natalie Armijo, chief of staff to Rep. Michelle Lujan Grisham

(D-N.M.), and Caren Street, chief of staff to Rep. Karen Bass (D-Calif.). ***Subscribe and listen to the Women Rule podcast***

SPOTTED: Sen. Kirsten Gillibrand (D-N.Y.), Rhonda Foxx, Keenan Austin Reed, Amena Ross, Tasia Jackson, Raven Reeder, Angela Ramirez, Bianca Ortiz Wertheim, Emily Burns, Courtney Cochran, Katherine Stewart, Kichelle Webster, Angela Franklin, Alma Acosta, Alethia Jackson, Grisella Martinez, Katie Smith, Ilia Rodriguez, Jalisa Washington, Niccara Campbell, Shadawn Reddick-Smith, Alex Phillips, Erica Bordador, A'shanti Gholar, Meaghan Lynch and Christina Henderson. ***Pic***

-- **ADRIENNE ARSHT** decked out a tent and her own home for her annual "Arcade" party with a full-on, genuine, get-on-and-ride Carousel, skee ball, whack-a-mole contests, snow cones, jugglers, magicians and more.

SPOTTED: David Rubenstein, Steve Clemons, Robert and Dr. Elena Allbritton, Kellyanne Conway, Bret and Amy Baier, Mack and Donna McLarty, Rep. Ed Royce (R-Calif.), Michael and Meryl Chertoff, Tom Bossert, Jordanian Ambassador Dina Kawar, Nina Totenberg, Rachel Pearson, Julie Kent, Brazilian Ambassador Sergio Silva do Amaral, Margaret Carlson, Luis Alberto Moreno and Maria Gabriela Sigala, Jonathan Capehart and Nick Schmit, Jason Marczak, Capricia Marshall, Marcus Brauchli, Carol Milton, Susan Molinari, Robert Pullen and Luke Frazier, Tim Shriver and Linda Potter, Jeremy and Robyn Bash and Stuart Holliday.

-- **SPOTTED** at a fall party Saturday night at the Northwest D.C. home of Garrett Marquis and Ashley Hickey Marquis: Tom and Corinne Hoare, Alex and Emily Siciliano, Kellyanne Conway, Sarah Huckabee Sanders, Raj Shah, Hogan Gidley, Andrew and Eleni Olmem, Tracey Schmitt Lintott, Jeannie Etchart, Rawson and Chip Warden, Justin and Kayla Brown, Jeanette and Joey Smith, Caroline and Rich Ward and Stuart and Ali Siciliano.

BIRTHDAY OF THE DAY: Neera Tanden, president of CAP. **What she's been reading recently:** "I'm about to read 'Fear' by Bob Woodward. Does that count? Seriously, though the best article on what's happening today in progressive politics is Theda Skocpol and Lara Putnam's article in Democracy, 'Middle America Reboots Democracy.' The article lays out how women are leading the resistance to Trump, that the ideological pigeonholing of the Resistance is wrong and that the

values underlying opposition to him are inclusion and a more unifying view of liberalism." **Playbook Plus Q&A**

BIRTHDAYS: Renee Hudson, deputy assistant to the president and Kellyanne Conway's CoS (hat tip: Katie Levinson Burke) ... Sara Bonjean (hubby tip: Ron, who says she's celebrating by "trading equities and speculating in futures") ... Jess McIntosh (h/t Jon Haber) ... Bill O'Reilly is 69 ... NYC PR exec Josh Nass ... Andrew Shapiro of Beacon Global Strategies (h/t Jeremy Bash) ... Hunter Walker, White House correspondent at Yahoo News ... Corinne Hoare, professor at AU's School of Communication (hubby tip: Tom Hoare) ... NYT's Mara Gay ... 1776 founder Donna Harris (h/ts Peter Cherukuri and Kurt Bardella) ... James Killen ... Dan Centinello ... USA Today SCOTUS reporter Richard Wolf ... POLITICO's Nahal "Halley" Toosi ... Rep. Ted Poe (R-Texas) is 7-0 ... former Rep. Cynthia Lummis (R-Wyo.) is 64 ... Quartz's Alyssa Bernstein (h/t Kam Mumtaz) ... Michael Moroney, managing supervisor at FleishmanHillard ... Emily Berret of Nancy Pelosi's office (h/t Colin Seeberger) ...

... **Trey Yingst,** who recently joined Fox News to be a foreign correspondent based in Jerusalem ... Meshal DeSantis ... Soraya Darabi ... Tyler Spires ... Deirdre Hackleman ... Brian J. Farnkoff ... Charlie Szold (h/ts Tom Szold and Shawn McCoy) ... CNN's Steve Brusk ... Molly Bordonaro ... Amanda Cowie of Bloomberg Media (h/t Ashley Bahnken) ... Paulina Mangubat ... Jocelyn Miller Zeitzoff of The Atlantic ... Jack Rivers of Goldman Sachs (h/t Kristen Askin) ... Lauren Defranco ... Rey Ramsey ... Mahen Gunaratna, comms director for New Jersey Gov. Phil Murphy ... Heather Barber ... Andy Levin ... Jane Gross ... Karen Steinberg ... Kimberly Marie Abbott ... Derrek Hofrichter ... Christina Estrada Teczar ... CNBC's Hadley Gamble (h/t Keil) ... Barbara Lippert ... Oliver Kim ... former Sen. John E. Sununu (R-N.H.) is 54 ... Justin Wiley ... Justin Mikita ... Tia Torhorst ... Reynolds Honold ... Justin Cooper (h/ts Teresa Vilmain)

A message from PhRMA:

There's lots of talk about how to change Part D to address affordability and predictability for seniors. **But there are right ways and wrong ways to do that.** The budget change passed in February was the wrong way, removing incentives experts agree are necessary to drive Part D's successful market-based structure, and potentially jeopardizing the program for the future. One right way is for Congress to address the looming Part D Cliff. In 2020, the donut hole will increase

by more than $1,200, raising out-of-pocket costs for the most vulnerable seniors with significant health care needs. Congress should act now on both of these issues to protect seniors from a sudden spike in out-of-pocket costs in Part D, while securing and strengthening the program for the long-term. Learn more.

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Sent: 9/6/2018 2:15:54 PM
To: Leopold, Matt (OGC) [Leopold.Matt@epa.gov]
Subject: FOIA Memo
Attachments: Draft FOIA Memo - 08.10.18.GLO NFO Clean to Circulate_jabedits.docx

Matt,

You asked me to review the attached FOIA memo. I have made Ex. 5 Deliberative Process (DP) edits. Happy to discuss further with you.

Thanks,
Joe

Joseph A. Brazauskas
Associate Deputy General Counsel
U.S. Environmental Protection Agency
(202) 564-5189

Draft FOIA memo for issuance by Acting Administrator

Key Messages

- **Transparency**: The EPA is committed to operating in an open and transparent manner. People have the right to access agency records, except where the information is protected from disclosure.
- **Timeliness**: We will improve the timeliness of our FOIA responses to make sure the public receives the information they need when they need it.
- **Quality:** We will improve the quality of our FOIA responses so that the public receives both clear communication about the FOIA process, and appropriately redacted records.
- **Professionalism:** We will bolster our training efforts and ensure that our FOIA professionals have the resources they need to help make EPA a flagship example of transparent, efficient and effective government.

Throughout the history of the U.S. Environmental Protection Agency (EPA), Administrators have reaffirmed a commitment to transparency in our agency's operations. The Freedom of Information Act (FOIA) is an important tool for promoting transparency and building public trust in agency actions. I reaffirm the Agency's commitment to operating in an open and transparent manner, and I encourage all Agency employees to join me to help improve the Agency's FOIA response efforts. The success of our efforts at EPA directly depends on the trust of the public we serve.

General Principles

FOIA encourages accountability through transparency. Pursuant to the FOIA, any person has the right to access agency records, except where the information is protected from disclosure. Like other federal agencies, the EPA is subject to the FOIA. The Agency is committed to conducting its business in an open and transparent manner. The Agency will work to ensure that its FOIA professionals have the support needed to satisfy the FOIA's transparency requirement in as timely and efficient a manner as possible. The EPA should also strive to proactively provide the public with access to information that is likely to be requested under the FOIA to better assist the public to participate and engage with the Agency.

Commented [BJ1]: The use of "the" before FOIA seemed inconsistent when referring to the provisions of the statute itself.

Because the EPA is a public regulatory agency, EPA staff may come into possession of information that may need to be protected from disclosure under the FOIA, including confidential business information, trade secrets, or personal privacy information. Although the Agency's business is to be conducted in an open, accountable manner, we must also ensure that sensitive information entitled to special protection is handled with the utmost care and in full compliance with all applicable laws and regulations. EPA's FOIA Regulations are available [HYPERLINK "https://www.ecfr.gov/cgi-bin/text-idx?SID=6e03f1fcf8b91fe19d5ad1d462dad85c&node=40:1.0.1.1.2&rgn=div5"] (https://www.ecfr.gov).

Important Steps Taken to Date

The Agency has taken several steps recently to improve its FOIA program. The Agency's FY 2018-2022 EPA Strategic Plan sets one of its Strategic Goals as increasing transparency and public participation. Measures for meeting this goal include eliminating the backlog of pending FOIA requests and meeting the statutory deadlines for responding to FOIA requests. As part of this improvement effort, the Agency recently created the National FOIA Office within the Office of General Counsel. The National FOIA Office sets FOIA policy and helps provide training and assistance to offices Agency-wide that are responsible for FOIA.

Last fall, the Office of General Counsel partnered with the Office of Environmental Information to host a multi-day conference for over 180 of the Agency's FOIA professionals. The conference was the first of its kind in more than a decade. The training agenda tracked the life cycle of a FOIA and addressed legal issues encountered at all stages of FOIA processing. Last fall's conference represents the first of a two-phased training program. The second phase, described below, involves specialized FOIA training for supervisors.

In February 2018, the Agency held a multi-day Lean event focused on the FOIA. That event resulted in two pilot projects that the National FOIA Office has led in conjunction with the Office of Continuous Improvement (OCI) to identify bottlenecks and help streamline the FOIA response process.

Moving Forward to Improve the FOIA Process

The Agency's leadership intends to continue to take steps to improve its FOIA process this year. In addition, I encourage organizations responsible for FOIA to undertake their own projects to improve FOIA processing. These may include centralization of FOIA review and management functions in the organization, adding tracking identification numbers to all documents released through FOIA, and providing supplemental training using existing resources, like the [HYPERLINK "https://usepa.sharepoint.com/sites/ogc_Community/NFT2017/Documents/Conference%20Materials/FOIA%20Toolkit.PDF"] (https://usepa.sharepoint.com/sites/ogc_Community/NFT2017/Documents/Conference%20Materials/FOIA%20Toolkit.PDF).

To meet the transparency and public participation Strategic Goal, EPA must work to ensure that it is not only providing responses to FOIA requests in a timely manner, but also that those responses are of the highest quality. Programs and regions should continue implementing current EPA FOIA policy and procedures to help reduce errors in their responses. For instance, all organizations should continue to have at least two knowledgeable individuals, who may be subject matter experts, and including one manager, review all documents before they are released to the public to improve accuracy and consistency in release determinations. See Freedom of Information Act Policy, [HYPERLINK "https://intranet.epa.gov/foia/docs/FOIA-Policy-August2014-09-30FINAL(with-electronic-signature).pdf"] (September 20, 2014) (available at https://intranet.epa.gov/foia/docs/FOIA-Policy-August2014-09-30FINAL(with-electronic-signature).pdf).

Further, the Agency should continue FOIA training for all staff. To that end, the Office of General Counsel is planning the second phase of the training program mentioned above. This second phase of the training program will include a training directed at supervisors, including Division Directors or the equivalent, responsible under the Agency's FOIA Policy for the review of FOIA responses. These training efforts and continued annual training of our FOIA professionals will help ensure that the Agency is responding effectively and efficiently to FOIA requests and utilizing fully available technological resources, including the Agency's Relativity document review software. Questions about whether FOIA exemptions apply to certain information or other questions about FOIA processing should be directed to the Office of General Counsel.

Federal Records Act Requirements

For the Agency to have an effective FOIA program, the Agency must also ensure that it has a robust Federal Records program. The Federal Records Act provides the foundation for transparency at EPA. Under the Federal Records Act, employees must create and maintain records that document the persons, places, things, or matters dealt with by the agency and which facilitate action by agency officials and their successors in office. Proper records management protects the financial, legal, and other rights of EPA and of persons directly affected by the EPA's actions, and permits adequate oversight of the Agency's work by Congress and the public. All EPA employees must take care to document the formulation and execution of basic policies and decisions, and the taking of necessary actions. It is particularly important that all employees understand that the Federal Records Act requirements apply to oral communications. All substantive decisions and commitments reached orally should be documented. You can learn more about the Federal Records Act at [HYPERLINK "http://intranet.epa.gov/records/"]. Should you have any questions about your Federal Records Act obligations, you should contact the Records Help Desk by calling 202-566-1494 or emailing records@epa.gov.

Conclusion

I recognize that several offices within the Agency are facing an unprecedented volume of FOIA requests. Despite this unprecedented challenge, EPA is committed to conducting its business in an open and transparent manner and will continue to take steps to improve the efficacy and efficiency of its FOIA process. I look forward to working with all of you to make EPA a flagship example of transparent, efficient and effective government.

Message

From: Brazauskas, Joseph [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BABF7B77AEEC4FFEAAD446BB35E05B24-BRAZAUSKAS,]
Sent: 9/19/2018 12:54:58 PM
To: Flores, Daniel [Daniel.Flores@mail.house.gov]
Subject: RE: test

Let's do 3:15 on the 28th

Joseph A. Brazauskas
Associate Deputy General Counsel
U.S. Environmental Protection Agency
(202) 564-5189

From: Flores, Daniel [mailto:Daniel.Flores@mail.house.gov]
Sent: Tuesday, September 18, 2018 5:00 PM
To: Brazauskas, Joseph <brazauskas.joseph@epa.gov>
Subject: RE: test

Thanks. Brittany's over to 9/28 at 2:00. I could do 1:30, 3:15 or 3:30. Any of those work for you?

All the best,

Daniel

Daniel M. Flores
Chief Counsel
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
Committee on the Judiciary
United States House of Representatives
(202) 226-8685 (ph)
Ex. 6 *(cell)*
(202) 225-3746 (fax)
Daniel.Flores@mail.house.gov

From: Brazauskas, Joseph <brazauskas.joseph@epa.gov>
Sent: Tuesday, September 18, 2018 2:28 PM
To: Flores, Daniel <Daniel.Flores@mail.house.gov>
Subject: Re: test

Yes, no problem Daniel, what are some good days and times next week?

Sent from my iPhone

On Sep 18, 2018, at 11:09 AM, Flores, Daniel <Daniel.Flores@mail.house.gov> wrote:

> Joe, fyi, Brittany has asked again to reschedule my meeting with her for another day, which will have to be sometime next week. How we about if we put our meeting over until next week as well?
>
> All the best,
>
> Daniel

Sent from my iPhone

On Sep 17, 2018, at 1:12 PM, Brazauskas, Joseph <brazauskas.joseph@epa.gov> wrote:

> test
>
> **Joseph A. Brazauskas**
> Associate Deputy General Counsel
> U.S. Environmental Protection Agency
> (202) 564-5189

Message

From: Brazauskas, Joseph [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BABF7B77AEEC4FFEAAD446BB35E05B24-BRAZAUSKAS,]
Sent: 9/11/2018 8:22:29 PM
To: Ringel, Aaron [ringel.aaron@epa.gov]
CC: Levine, Carolyn [Levine.Carolyn@epa.gov]
Subject: RE: GKM - Follow-Up - Deliberative Process Privilege in FOIA and Discovery

Not knowing all of the facts of this particular case, my suggestion Ex. 5 AC/DP. But happy to talk more about it.

From: Ringel, Aaron
Sent: Tuesday, September 11, 2018 3:28 PM
To: Brazauskas, Joseph <brazauskas.joseph@epa.gov>
Cc: Levine, Carolyn <Levine.Carolyn@epa.gov>
Subject: FW: GKM - Follow-Up - Deliberative Process Privilege in FOIA and Discovery

Joe, see below. We have concerns regarding Ex. 5 AC/DP What are your thoughts?

-Aaron

From: Levine, Carolyn
Sent: Tuesday, September 11, 2018 12:18 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Subject: FW: GKM - Follow-Up - Deliberative Process Privilege in FOIA and Discovery

Fyi, I've been in discussions with OGC Ex. 5 AC/DP I was going to mention at a managers meeting, but in case not everyone is there, wanted to run by you. Let's discuss when convenient..thanks.

Carolyn Levine
Office of Congressional and Intergovernmental Relations
U.S. EPA
(202) 564-1859
levine.carolyn@epa.gov

From: Berg, ElizabethG
Sent: Monday, September 10, 2018 12:02 PM
To: Levine, Carolyn <Levine.Carolyn@epa.gov>; Aarons, Kyle <Aarons.Kyle@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Hammitt, Jennifer <Hammitt.Jennifer@epa.gov>; Logan, Paul <Logan.Paul@epa.gov>; Bermes, Peter <Bermes.Peter@epa.gov>
Subject: RE: GKM - Follow-Up - Deliberative Process Privilege in FOIA and Discovery

Hi all,

As we discussed on our last call Ex. 5 AC/DP Ex. 5 AC/DP Ex. 5 AC/DP. Below is some suggested language for a cover note for you to consider in advance of our meeting on Monday 9/17:

DRAFT

Ex. 5 AC/DP

To be clear, Ex. 5 AC/DP

Ex. 5 AC/DP We can discuss further next Monday.

Thanks,
Liz

Elizabeth G. Berg
U.S. Environmental Protection Agency
Office of General Counsel
Solid Waste Emergency Response Law Office (WJC North 7013B)
(202) 564-0905, berg.elizabethg@epa.gov

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-----Original Appointment-----
From: Berg, ElizabethG
Sent: Friday, August 24, 2018 8:26 AM
To: Berg, ElizabethG; Levine, Carolyn; Aarons, Kyle; Lewis, Jen; Hammitt, Jennifer; Logan, Paul; Bermes, Peter
Subject: GKM - Follow-Up - Deliberative Process Privilege in FOIA and Discovery
When: Monday, September 17, 2018 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Call In

Follow-up from today's call.

Call in: Ex. 6
Conf. ID: Ex. 6

Hi Carolyn and Aaron,

We wanted to follow-up with you to discuss th Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks all,
Liz