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Congress of the United States

House of Representatives

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October 16, 2018

Dr. Peter Grevatt
Director
Office of Groundwater and Drinking Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Dr. Grevatt:

Thank you for appearing before the Subcommittee on Environment on September 6, 2018, to testify at the hearing entitled "Perfluorinated Chemicals in the Environment: An Update on the Response to Contamination and Challenges Presented."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. Also attached are Member requests made during the hearing. To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Tuesday, October 30, 2018. Your responses should be mailed to Kelly Collins, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to kelly.collins@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

John Shimkus
Chairman
Subcommittee on Environment

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment

Attachments

Attachment—Additional Questions for the Record

The Honorable John Shimkus

1. Your testimony states that there are "many PFAS chemicals."

    a. What is the correct number?

    b. Of the chemicals in the PFAS class –

        i. How many of them are well-understood?

        ii. For how many is the Agency missing health effects data?

2. EPA has very robust authority under the reforms made to title I of the Toxic Substances Control Act to require the production of new information on a chemical substance. If there is so little known about PFAS health effects data, why isn't EPA using this authority to quickly fill these information gaps?

3. How similar are the chemicals in the PFAS class to each other – in other words, do they all act the same in the environment, do they all have the same effect on the human body?

4. Your testimony mentions that "there is evidence that exposure to certain PFAS may lead to adverse health effects." This sounds scary, but you just mentioned that the majority of PFAS chemicals are not well understood.

    a. Is there a difference in certainty between "there is evidence" and "science demonstrates"?

    b. What are the "certain PFAS" that "may"?

    c. Are all PFAS toxic?

5. Your testimony talked about the health advisory level of 70 parts per trillion, individually or combined, for PFOA and PFOS. How low of a reading can existing monitors detect these contaminants?

6. Today's hearing has raised questions about EPA being able to protect vulnerable subpopulations from adverse health effects.

    a. To do that, wouldn't the Agency necessarily have to do aggregate and cumulative exposure analyses?

    b. Does the Agency have an agreed upon protocol for doing aggregate exposure assessments?

c. Does the Agency have an agreed upon protocol for doing cumulative exposure assessments?

7. For site remediation of PFAS,

   a. What are the available methods that may be deployed?

   b. What is the Federal government doing to ensure communities have sufficient information to assess the public health benefits against the cost for deploying these systems?

8. For drinking water systems,

   a. What are the available remediation methods that communities may deploy to address PFAS contamination?

   b. How affective are these?

   c. Are there other technologies being examined to address potential drinking water contamination?

9. Please explain how EPA is addressing emerging contaminants, such as PFAS, with respect to environmental cleanups?

10. When does EPA intend to have resolution on whether PFOA and PFOS are hazardous substances under Superfund?

<u>The Honorable Paul Tonko</u>

1. National Management Plan

   a. What specific EPA actions are being considered as part of the National Management Plan?

   b. Will the Plan include a decision on whether or not to designate PFOA and/or PFOS as a hazardous substance under CERCLA?

2. Dr. Grevatt, you mentioned building out capacity for labs to test for PFAS.

   a. How many labs in the United States are now capable of using Method 537 (or an EPA-approved method for testing for PFAS)?

   b. What is the approximate cost of testing for PFAS at one of these labs?

   c. While EPA is considering whether a regulatory determination should be made for PFOA and PFOS, are you also considering what financial or technical assistance

options may be available for testing and treating the water of citizens relying upon private wells, which would not be bound by a MCL?

Attachment 2—Member Requests for the Record

During the hearing, Members asked you to provide additional information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.

The Honorable Scott H. Peters

1. Studies tracking PFOS in marine organisms and ocean waters, PFOS was added to the Stockholm Convention on Persistent Organic Pollutants in 2009, and we are not party to that Convention but is EPA doing anything to monitor coastal waters for these compounds and are you working with other countries to control the spread of these contaminants?

Congress of the United States
Washington, DC 20510

October 17, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Acting Administrator Wheeler:

We write to express our support for the City of Seattle's recently submitted Letter of Interest for a federal loan through the Water Infrastructure Finance and Innovation Act (WIFIA) for the Ship Canal Water Quality Project.

The City of Seattle and King County are working together to design and build a 2.7 mile offline, underground storage tunnel to reduce the number and volume of Combined Sewer Overflows (CSOs) that discharge into the Lake Washington Ship Canal from the Ballard, Fremont, Wallingford, and Queen Anne neighborhoods. The storage tunnel would capture and temporarily hold up to 29 million gallons of stormwater and sewage during heavy rains, and after the storm passes would be processed at King County's West Point Wastewater Treatment Plant. The Ship Canal Water Quality Project would improve water quality in the Seattle area and keep over 70 million gallons of contaminated water out of Lake Washington Ship Canal, Salmon Bay, and Lake Union every year.

Each CSO event releases toxic raw sewage and roadway contaminants into the Lake Washington Ship Canal, impacting high public use areas, salmon migrating between the ocean and fresh water spawning grounds, and other aquatic organisms. The project seeks to reduce the number of CSO events at seven outfalls to no more than one overflow per outfall per year, which would significantly reduce the volume of combined sewage discharged into these waterways. It would also help address the objectives of the City of Seattle's and King County's federal and state consent decrees. The total estimated project cost is $382,598,831, and the City of Seattle is requesting $187,473,427 in WIFIA loan assistance.

We respectfully request that you give full and fair consideration to the City of Seattle's application.

Thank you for your consideration of our request.

Sincerely,

Patty Murray
United States Senator

Maria Cantwell
United States Senator

Pramila Jayapal
Member of Congress

Congress of the United States
Washington, DC 20515

October 3, 2018

Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20460

Neomi Rao
Administrator, Office of Information and Regulatory Affairs
Office of Management and Budget
New Executive Office Building, Room 9235
725 17th Street NW
Washington, DC 20503

Dear Acting Administrator Wheeler and Administrator Rao:

We write to express our concerns about the Environmental Protection Agency (EPA) Advance Notice of Proposed Rulemaking entitled "Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process," which was issued on June 7 and open for comment until August 13, 2018. This action asked for public input on how EPA should change its approach to calculating the costs and benefits of proposed environmental rules. Our constituents rely on EPA's regulations to protect their health and their environment, including the water they drink and air they breathe. In order to make rules strong enough to protect the public, EPA needs to carefully consider the many benefits these rules will have for our health, environment, and economy. We are concerned that EPA is seeking to unfairly emphasize costs to industry and ignore benefits in its rulemakings. We urge EPA and all agencies to not make such damaging changes to cost-benefit analyses.

Cost-benefit analysis has clear consequences for our constituents. If EPA changes its analyses to emphasize costs over benefits, the government may not be allowed to study how much an environmental safeguard could help people. This would make it easier to dismantle regulations on lead in water, standards for protecting against chemicals like PFAS, restrictions on toxic substances like mercury pollution in the air, and controls on asthma-causing particles like petroleum coke. It will also set a dangerous precedent for all agencies, making it very difficult to set rules that enforce our nation's laws. If an agency does not adequately weigh public benefits when making rules, it will be nearly impossible to pass good regulations that protect our health, environment, and safety.

This recent proposal is unnecessary and biased. EPA already has a clear set of principles for cost-benefit analysis, with consensus from economists on how to quantify benefits. While economic analyses only capture part of the value these rules provide, they clearly show that the benefits commonly outweigh the costs, while actual costs are frequently overestimated. A recent OMB study concluded that the net benefits of EPA safeguards have been overwhelmingly positive, with regulations over a 10-year period having as high as a 13 to 1 benefit to cost ratio.

The rationale for changing cost-benefit analysis is faulty and in contrast to existing legal requirements. In announcing the proposal, EPA echoed misleading arguments by interest groups, stating, "Many have

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complained that the previous administration inflated the benefits and underestimated the costs of its regulations through questionable cost-benefit analysis." EPA specifically criticized the practice of counting indirect benefits, or additional benefits beyond the target of an agency action. For example, EPA standards aimed at reducing levels of ozone can also indirectly reduce levels of particulate matter, reducing asthma and premature death. In contrast to EPA's assertions, measuring indirect benefits is legally required and non-controversial. OMB guidance clearly states, "analysis should look beyond the direct benefits and direct costs of rulemaking and consider any important ancillary benefits." In the extensive expert literature, there is absolutely no disagreement that counting indirect effects is necessary, and no evidence that EPA has ever double-counted indirect benefits.

This Administration's EPA has already manipulated cost-benefit analyses and ignored benefits in order to repeal key climate regulations, and now wants to make its approach permanent. For example, it has ignored indirect benefits, such as reductions of asthma-causing particulate matter, even though these reductions quantifiably increase life expectancy, cut health-related costs, and reduce lost wages. In its proposal to roll back the Clean Water Rule, EPA ignored studies of the benefits of clean water as outdated because they were a couple of decades old, but then relied on studies of costs from the same time. Instead of perpetuating its faulty approach to analysis, EPA should follow the law and properly consider all benefits of regulations. If EPA proceeds with this rulemaking, it will undermine the credibility of regulatory cost-benefit analysis by reinforcing the idea that an administration can manipulate analysis to support its policy agenda.

We urge you not to change EPA's cost-benefit analysis measures or reduce consideration of benefits. Any new scheme that deemphasizes benefits and emphasizes costs would stack the deck against public health and safety, endanger future safeguards for clean air and water, and set a dangerous precedent for all agencies. Instead of continuing this initiative, EPA should dedicate its limited resources to carrying out its mission and addressing the contaminated water and air that many of our constituents face every day.

Sincerely,

Brenda L. Lawrence

Raúl M. Grijalva

Jan Schakowsky

Debbie Wasserman Schultz

Marcy Kaptur

Emanuel Cleaver, II

Jamie Raskin

James P. McGovern

Zoe Lofgren

Colleen Hanabusa

Suzanne Bonamici

Gerald E. Connolly

Stephen F. Lynch

Henry C. "Hank" Johnson, Jr

Betty McCollum

Stacey E. Plaskett

Carolyn B. Maloney

Jerry McNerney

Nanette Diaz Barragán

Sean Patrick Maloney

Lucille Roybal-Allard

Eleanor Holmes Norton

Jared Huffman

Mark Pocan

Gwen Moore

Salud O. Carbajal

Pramila Jayapal

Alan Lowenthal

Ted W. Lieu

Donald S. Beyer Jr.

Jimmy Gomez

A. Donald McEachin

Barbara Lee

Congress of the United States
Washington, DC 20515

October 16, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

The Honorable William Wehrum
Assistant Administrator, Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks

Dear Acting Administrator Wheeler and Assistant Administrator Wehrum,

The undersigned members of Congress write to express our concern with your effort to limit cooperative federalism in your August 2, 2018, Notice of Proposed Rulemaking. The proposal impermissibly rejects the long-standing cooperative federalism embodied in the Clean Air Act, for states to set strong air pollution standards to protect air quality, improve public health, and reduce greenhouse gas emissions. It also flies in the face of the administration's express commitment to "restor[e] power to the states through cooperative federalism."[1] We ask you to withdraw your recent proposal to revoke California's waiver under the Clean Air Act, which allows both California as well as other states to incorporate strong air pollution standards that best address their local and regional needs.

As you know, the Clean Air Act allows California to set air pollution standards for new motor vehicles that are stronger than federal standards, provided that the Environmental Protection Agency grants a waiver. EPA has granted such waivers over 50 times since 1967 and has never revoked a waiver. The Act further provides that other states may adopt the stronger California standards as their own. Twelve states and the District of Columbia have all adopted California's stronger programs, with Colorado initiating the process this year.[2] Taken together, these states represent 118 million Americans, more than 35 percent of the United States population and 1 in 3 cars sold in America.

The Clean Air Act is a shining example of cooperative federalism—a sharing of air quality implementation powers and duties between the federal government and states. Under the Act the Environmental Protection Agency has worked cooperatively with states for more than 40 years with a track record of cutting dangerous pollution that has prevented hundreds of thousands of premature deaths and hundreds of millions of cases of respiratory and cardiovascular disease.[3,4]

The existing vehicle standards and federal-state cooperation have produced positive results across the country. Thanks to these high standards, many states have significantly reduced pollutants like health-threatening smog and soot, in addition to reducing greenhouse gas

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emissions to help combat climate change. Automakers and their suppliers have risen to the challenge of achieving technology-driving standards, pushing the bounds of American innovation and creating hundreds of thousands of jobs all while the economy grew, mobility increased, and more cars and trucks have been sold than ever before.

We are disappointed that the administration has chosen to replace strong federal standards based on sound science, instead proposing to flatline progress at the state and federal level for nearly a decade. This threatens not only our air, but the very foundation of cooperative federalism enshrined in the Clean Air Act. It is more important than ever that states be allowed to continue driving innovation, consumer choice, and environmental and public health improvements through strong state standards. Instead, the administration is directly undermining states' ability to protect their residents.

Under the law, states have every right to decide for themselves if they want to follow California's lead or not. We believe that states who adopt these standards to protect their residents should be allowed to keep them. You must uphold the Clean Air Act's model of federal and state cooperation that has allowed states to adopt strong air pollution standards to protect air quality, improve public health, and reduce carbon pollution.

The purpose of this letter is to convey our strong bipartisan request that you do not revoke California's waiver or in any other way undermine states' rights to protect their citizens from air pollution.

We look forward to your response.

Sincerely,

Jared Huffman
Member of Congress

Carlos Curbelo
Member of Congress

Nanette Diaz Barragán
Member of Congress

Earl Blumenauer
Member of Congress

Suzanne Bonamici
Member of Congress

Julia Brownley
Member of Congress

Salud O. Carbajal
Member of Congress

André Carson
Member of Congress

Matt Cartwright
Member of Congress

Judy Chu
Member of Congress

Jim Costa
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Katherine Clark
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Yvette D. Clarke
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J. Luis Correa
Member of Congress

Joe Courtney
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Susan A. Davis
Member of Congress

Mark DeSaulnier
Member of Congress

Lloyd Doggett
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Anna G. Eshoo
Member of Congress

Adriano Espaillat
Member of Congress

Brian Fitzpatrick
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John Garamendi
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Jimmy Gomez
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Colleen Hanabusa
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Brian Higgins
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Sheila Jackson Lee
Member of Congress

Pramila Jayapal
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Ro Khanna
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Daniel W. Lipinski
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A. Donald McEachin
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Gwen Moore
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Grace F. Napolitano
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Jimmy Panetta
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Ed Perlmutter
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Scott Peters
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Chellie Pingree
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Mark Pocan
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Mike Quigley
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Tom Reed
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Bennie G. Thompson
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Niki Tsongas
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Nydia M. Velázquez
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Peter Welch
Member of Congress

Frederica S. Wilson
Member of Congress

Karen Bass
Member of Congress

[1] EPA, "EPA Releases Administrator Pruitt's Year One Accomplishments Report," (March 5, 2018) https://www.epa.gov/newsreleases/epa-releases-administrator-pruitts-year-one-accomplishments-report .
[2] Gov. John Hickenlooper, "Gov. Hickenlooper signs executive order calling for state to adopt low emissions vehicle standards," (June 19, 2018) https://www.colorado.gov/governor/news/gov-hickenlooper-signs-executive-order-calling-state-adopt-low-emissions-vehicle-standards.
[3] EPA, "The Benefits and Costs of the Clean Air Act, 1970 to 1990," (October 1997), https://www.epa.gov/sites/production/files/2015-06/documents/contsetc.pdf.
[4] EPA, "The Benefits and Costs of the Clean Air Act from 1990 to 2020," (April 2011), https://www.epa.gov/sites/pr oduction/files/2015-07/documents/fullreport_rev_a.pdf.

DANIEL T. KILDEE
5TH DISTRICT, MICHIGAN

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October 1, 2018

Peter Grevatt
Director, Office of Ground Water and Drinking Water
Environmental Protection Agency
4101 M
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Mr. Grevatt:

I am writing to request that you visit Oscoda, Mich. during the U.S. Environmental Protection Agency's (EPA's) upcoming trip to Michigan.

It is important that you, as the EPA's representative, see first-hand how local residents are being impacted by per- and polyfluoroalkyl substances (PFAS) contamination. I am confident it will be a valuable experience for local residents as well as the EPA.

After the EPA announced that Michigan would be the second stop on its nationwide PFAS tour, I was pleased to hear at the Senate Homeland Security and Government Affairs Hearing that the EPA would be coming to Michigan in October. I am pleased this opportunity will allow Michigan residents to show the EPA how they are dealing with PFAS's impact during their daily lives.

I believe for the following reasons that Oscoda should be one of the places that you visit while in Michigan:

- Oscoda was one of the first communities in the nation to discover that there was PFAS contamination in drinking water from the use of firefighting foam at military bases. As such, the local residents have significant experience addressing the issue.

- The plume of PFAS in Oscoda is well mapped, yet still unpredictable. This causes unique challenges for environmental remediation.

- The state of Michigan has attempted to come to a cooperative agreement under Comprehensive Environmental Response, Compensation and Liability Act with the Department of Defense to clean up PFAS contamination in Oscoda. This is the only site in Michigan currently engaged in the CERCLA process for a federal facility.

- Oscoda is experiencing waterbodies that have unexplained foam appearing on its shores. Additionally, just last week the U.S. Coast Guard observed a large amount of unexplained foam near Oscoda.

Thus, it would be a failed opportunity to come to Michigan and not visit the community that has been working to address this issue for the longest time.

Please reach out to Jordan Dickinson (Jordan.Dickinson@mail.house.gov) in my office to help coordinate a visit.

Thank you for your attention to this very important matter.

Sincerely,

Daniel T. Kildee
MEMBER OF CONGRESS

JOE MANCHIN III
WEST VIRGINIA

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September 28, 2018

The Honorable Andrew Wheeler
Acting Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Re: Comments of Senator Joe Manchin III on EPA Actions to Address Per- and Polyfluoroalkyl Substances; Docket ID No. EPA-OW-2018-0270

Dear Acting Administrator Wheeler,

While I am disappointed the Environmental Protection Agency ("EPA") declined to host a public meeting in West Virginia to hear about the long-term challenges posed by contamination of certain perfluoroalkyls and polyfluoroalkyl substances (collectively "PFAS"), I support the agency's work to develop a PFAS management plan by the fall of 2018.[1] West Virginians continue to face ongoing uncertainty and harm caused by unacceptable levels of PFAS, particularly perflourooctanoic acid ("PFOA"). Therefore, as my colleagues and I noted in an April 13, 2018, letter to former Administrator Pruitt, the EPA should set a maximum contaminant limit (MCL) "for all PFAS, based on rigorous scientific evidence, as well as a cleanup number from the Office of Land and Emergency Management. This will provide states, and our local communities, with much-needed certainty to move forward on remediation activities and protection regimes for drinking water systems."[2]

Background:

PFAS is a class of manmade chemicals in need of further study and response. The two most common chemicals in the PFAS class – perfluorooctanoic acid (PFOA) and perflorooctane sulfonate (PFOS) – were widely used across numerous industries.[3] Studies have found human exposure to PFAS can have health risks.[4] The Centers for Disease Control (CDC) National Health and Nutrition Examination Survey data has found 95% of U.S. residents tested have some form of PFAS in their blood.[5] PFOA, commonly known as "C8", was used for decades in manufacturing processes in West Virginia.

All West Virginians want and deserve clean air to breath and clean water to drink. During the last Administration, West Virginia experienced the negative effects of misguided overregulation and repeated attempts by the EPA to regulate beyond its authority. I myself do not accept the false choice between the economy and the environment. It is also critical that inaction does not lead to failure to protect the public health. When it comes to PFAS, I believe the EPA can and

[1] EPA Actions to Address PFAS; Environmental Protection Agency; Available at https://www.epa.gov/pfas/epa-actions-address-pfas. Date Accessed September 17, 2018.
[2] Senate Letter to EPA re. PFAS Cleanup; Available at: https://cswab.org/wp-content/uploads/2018/04/Senate-Letter-to-EPA-re-PFAS-cleanup-4.13.18.pdf; April 13, 2018.
[3] Basic Information on PFAS; Environmental Protection Agency; Available at https://www.epa.gov/pfas/basic-information-pfas, Date Accessed: September 17, 2018.
[4] Ibid.
[5] An Overview of Perfluoroalkyl and Polyfluoroalkyl Substances and Interim Guidance for Clinicians Responding to Patient Exposure Concerns, Center for Disease Control, Available at: https://www.atsdr.cdc.gov/pfc/docs/pfas_clinician_fact_sheet_508.pdf; Revised June 7/2017.

should be doing more, based on sound science, to ensure we have a comprehensive and meaningful approach to these chemicals.

While American manufacturers have phased out production of both PFOA and PFOS, it is my understanding PFAS substances are very resilient and take a very long time to break down. Because of this, PFAS can persist in the environment. It is also important to keep in mind that new chemical substances belonging to or related to the perfluoroalkyls classification continue to be developed. Therefore, it is imperative these substances undergo rigorous scientific review so their health and environmental risks are understood.

In May 2016, the EPA established a lifetime health advisory (LHA) drinking water advisory of 70 parts per trillion (ppt) for PFOA and PFOS. This LHA was a marked decrease from the previous short-term health advisory levels of 200 ppt for PFOS and 400 ppt for PFOA.[6] The EPA Office of Water established the previous levels in 2009.[7] The May 2016 LHA required utilities to notify customers of the presence and dangers of PFOA and PFOS in their drinking water. At the time, utilities with water levels above the new LHA served as many as 5.2 million Americans, and 27,700 West Virginians.[8] Following this, the West Virginia Bureau of Public Health promptly issued a "Do Not Drink" advisory in Parkersburg, Vienna, and Martinsburg.[9]

Parkersburg and Vienna are communities adjacent to the DuPont Washington Works plant that manufactured PFOS beginning in the 1950's. Martinsburg is home to the 167th Airlift Wing, a unit of the West Virginia National Guard.[10] The contamination by PFOA in Martinsburg is linked to the Department of Defense's use of aqueous film-forming foam (AFFF) - a highly effective fire suppressant. The use of AFFF by the DoD dates back to the 1970s for safety and asset protection.[11]

In June 2018, the Agency for Toxic Substances and Disease Registry (ATSDR) released a draft report analyzing the toxicology of 14 perfluoroalkyls including PFOA and PFOS.[12] The ATSDR report also discusses the different pathways for exposure to PFAS including but not exclusively drinking water.

I believe the EPA must establish a proactive and holistic management plan with clear and consistent guidelines and standards. Addressing both the existing and future challenges from PFAS will require collaboration from numerous federal agencies, states, local communities, utilities, industry and other stakeholders.

On April 13, 2018, I joined 24 of my colleagues in a letter to then-Administrator Pruitt outlining our concerns with PFAS and encouraging the agency to take swift action to address those concerns. As discussed in the letter, the EPA has several tools in its toolbox to cement its role as a leader in solving this issue. I would like to take this opportunity to respectfully encourage the

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[6] EPA Drinking Water Health Advisories for PFOA & PFOS. Available at https://www.epa.gov/sites/production/files/2016-06/documents/drinkingwaterhealthadvisories_pfoa_pfos_updated_5.31 16.pdf. Last accessed September 17, 2018.

[7] Ibid.

[8] Environmental Working Group. "Drinking Water for 5.2 Million People Tainted by Unsafe Levels of PFCs." May 23, 2016. Available at: https //www.ewg.org/enviroblog/2016/05/drinking-water-52-million-people-tainted-unsafe-levels-pfcs# W6ATFuhKgaJ Last accessed September 17, 2018.

[9] West Virginia Department of Health and Human Resources. "Perfluorinated Compounds Drinking Water Health Advisory". Available at; https://www.wvdhhr.org/oehs/documents/BPH_pfoa%20pfos_FL.pdf. Last accessed September 17, 2018.

[10] Aqueous Film Forming Foam Report to Congress, Department of Defense. November 3, 2017. Available at https://www denix.osd.mil/derp/home/documents/aqueous-film-forming-foam-report-to-congress/. Last accessed September 20, 2018

[11] Ibid.

[12] Agency for Toxic Substances and Disease Registry (ATSDR) and the Environmental Protection Agency (EPA). "Toxicological Profile for Perfluoroalkyls Draft for Public Comment " June 2018. Available at https //www.atsdr.cdc.gov/toxprofiles/tp200.pdf. Last accessed September 20, 2018.

EPA to review and consider an enforceable national standard or maximum contaminant limit (MCL) under the Safe Drinking Water Act (SDWA)[13] as a first step.

As the former Governor of West Virginia and a lead supporter of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, I know how valuable and beneficial clear policy guidance is when addressing public health and community matters. Further research on PFAS is needed, and cleaning up and responding to contamination will be complicated and likely expensive. For the sake of future West Virginians, I urge the EPA to take action to provide regulatory certainty, resources, and additional expertise to empower and support states and local communities wishing to respond to PFAS contamination and protect public health.

I look forward to further engagement with the EPA on this issue and thank you for your consideration of my comments.

Sincerely,

Joe Manchin III
United States Senator

[13] The Safe Drinking Water Act of 1996, P.L. 104-182, §1412(B).

DANIEL LIPINSKI
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Congress of the United States
House of Representatives
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COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY
RESEARCH AND TECHNOLOGY, RANKING MEMBER

September 21, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20004

Dear Acting Administrator Wheeler:

I am writing to express concern about the potential public health threats resulting from ethylene oxide (EtO) emissions at the Sterigenics facility at 7775 S. Quincy St. and 830 Midway Drive in Willowbrook, IL (hereafter "the facility"). As you are likely aware, there has been significant public outcry following the August 21 release of a report by the U.S. Agency for Toxic Substances and Disease Registry (ATSDR) evaluating the potential health impacts of EtO emissions from the facility.

According to the ATSDR report, which was based on U.S. Environmental Protection Agency (USEPA) air sampling data collected in May of this year, the estimated increased cancer risk due to EtO exposure in the residential areas surrounding the facility is 6.4 cases per 1,000 people. The estimated increased cancer risk to workers in close proximity to the facility is 2.1 cases per 1,000 people. While these estimates are based on limited data and the full extent of the public health threat is not yet clear, potentially serious consequences warrant decisive action.

Our understanding of the carcinogenicity of EtO has advanced significantly in recent years, and as a result, in 2016, the USEPA increased its estimated cancer risk for EtO by a factor of 30 over its previous estimate from 1985. However, the facility's most recent operating permit (Illinois Environmental Protection Agency Clean Air Act Permit Program Permit Number 95120085) was issued on June 8, 2015, prior to the release of the most recent carcinogenicity estimate, and therefore does not take the updated risk assessment into account. Although all available evidence suggests that the facility is fully in compliance with its permit, I am concerned that the permit conditions do not guarantee an adequate level of public health protection.

While the facility voluntarily made improvements to its pollution control system in July of this year, a step which is likely to reduce ambient air concentrations of EtO in the surrounding area, the results of this change are not yet known. Testing of the upgraded system taking place on September 20-21, 2018, will yield more information on emissions from the facility but may not be sufficient to demonstrate that nearby communities are no longer at risk. In order to more

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OAK LAWN, IL 60453
(708) 424–0853
(708) 424–1855 FAX

222 EAST 9TH STREET #109
LOCKPORT, IL 60441
(815) 838–1990
(815) 838–1993 FAX

14700 SOUTH RAVINIA AVENUE
ORLAND PARK, IL 60462
(708) 403–4379
(708) 403–5963 FAX

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conclusively assess the current exposure risk to the residents of Willowbrook, I urge you to move swiftly to conduct another round of ambient air testing, similar to what was done in May of this year. It is reasonable for the community to expect that the EPA does this type of testing to protect their health.

In absence of conclusive data showing that EtO emissions from the facility no longer pose a public health threat, I request that you take immediate legal action to halt operations at the facility as you are empowered to do under Section 303 of the Clean Air Act. That section allows you to take action to stop the emission of air pollutants at a source "presenting an imminent and substantial endangerment to public health or welfare, or the environment." Following such action, I request that your Agency, in coordination with the Illinois Environmental Protection Agency, review and revise the facility's permit in light of USEPA's most recent Integrated Risk Information System assessments of the health risks posed by EtO. I further request that the facility not be allowed to resume operations until and unless it is possible to do so without posing a substantial public health threat to the surrounding area. In the interest of rebuilding public confidence in the environmental health and safety of the facility, I encourage you to consider requiring regular monitoring of airborne EtO concentrations at the facility's fenceline and the timely public release of monitoring results to the public.

Please inform me as to how you plan to proceed on this issue by contacting Joel Creswell in my office at 202-225-5701 or joel.creswell@mail.house.gov.

Sincerely,

Daniel W. Lipinski
Member of Congress

Congress of the United States
Washington, DC 20510

October 3, 2018

The Honorable Andrew Wheeler
Acting Administrator
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20004

Dear Acting Administrator Wheeler:

We write regarding the Environmental Protection Agency's (EPA) proposed Renewables Enhancement and Growth Support (REGS) rule and urge you to resolve any outstanding issues impeding EPA's ability to process biomass and waste-to-energy fuel pathways submitted under the Renewable Fuel Standard (RFS) program. Approving and registering biomass-derived electricity for the RFS is important to New Hampshire and consistent with EPA's approach toward biomass.

Biomass is an important energy source for New Hampshire and critical component of our region's forest-based economy. New Hampshire is home to seven biomass power facilities that support jobs, contribute to the state and local economies and supply renewable power to hundreds of thousands of homes and businesses across New England. Moreover, these biomass power facilities provide a source of revenue for landowners to maintain healthy forests that are vital for wildlife protection and climate change mitigation. Despite their ability to contribute to clean energy and rural economic stability, biomass power facilities in our state are on the verge of closing because of challenging power markets. Urgent action is needed to address the obstacles limiting biomass power generation and the forest-based industries it supports.

In 2014, EPA approved a pathway for renewable electricity used for transportation fuel made from certain biomass sources to qualify for Renewable Identification Numbers (RINs) under the RFS program if electricity from these sources were used to power electric vehicles. Expanding the RFS program in such a way would spur the growth of the U.S. electric vehicle market and incentivize renewable biomass power generation while simultaneously reducing pollution and greenhouse gas emissions from the transportation sector. In 2016, EPA issued the proposed REGS rule in an effort to gather additional information about the potential configurations of this new renewable electricity pathway. However, to date, EPA has yet to finalize the REGS rule or issue an approved renewable fuel pathway for biomass, waste-to-energy and several other fuel sources.

EPA's inaction has created a multi-year backlog of applications from power producers seeking registration as RIN producers for biomass-based electricity and discouraged investment in new and innovative technologies that are ready to use this approved pathway. While we understand the need to carefully review changes to the RFS program, we are concerned that delaying the inclusion

of biomass and waste-to-energy electricity producers inadvertently favors certain types of agricultural feedstock and fuel types.

Expanding the RFS program to include biomass-derived electricity would help the U.S. achieve its clean energy goals and provide a much-needed boost to the biomass industry in New Hampshire. We urge you to immediately address all outstanding RIN registration requests and finalize a regulatory structure for biomass and waste-to-energy fuel pathways under the RFS program.

Sincerely,

Jeanne Shaheen
United States Senator

Margaret Wood Hassan
United States Senator

Carol Shea-Porter
Member of Congress

Ann McLane Kuster
Member of Congress

CC: William Wehrum, Assistant Administrator, Office of Air and Radiation

Congress of the United States
Washington, DC 20515

October 4, 2018

The Honorable Andrew Wheeler
Acting Administrator
Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Acting Administrator Wheeler:

As members of the Safe Climate Caucus, we write to you with serious concerns regarding the EPA's proposed rule to replace the Clean Power Plan, the so-called Affordable Clean Energy rule. An abundance of scientific evidence, including your agency's own analysis, indicates that the proposed rule will increase emissions of dangerous pollutants, including those that contribute to global climate change, and have negative effects on public health, causing up to 1,630 more deaths per year. With the dangers it presents to the environment and public health, we urge you to pull the rulemaking.

As directed by the Supreme Court in *Massachusetts v. EPA*, EPA analyzed and found that greenhouse gas emissions endangered the public health and welfare of current and future generations. Required to mitigate that finding, EPA consequently finalized the Clean Power Plan in 2015 to set the first ever national limits on carbon pollution from power plants, which, at the time, were the nation's largest source of emissions. That plan would have resulted in a 32 percent reduction in greenhouse gas emissions by 2030. It was designed to regulate power plant emissions on a sector-wide and state-wide basis, which would help incentivize a shift away from dirty energy sources and toward lower-emitting sources while maintaining flexibility for states to choose the most cost-effective methods for power generation.

Conversely, the Affordable Clean Energy rule would do almost nothing to curb carbon emissions from the power sector. It could lead to increases rather than reductions of carbon dioxide emissions by requiring heat rate improvements to increase the efficiency of individual power plants. States can set weak standards, or even require no emissions reductions at all. The rule also modifies the protections afforded by the New Source Review (NSR) program, ensuring that the dirtiest power plants could run for more hours per day, more months per year, and could extend the life of these plants by, potentially, decades, rather than replacing them with cleaner, safer, more modern energy choices. Further, there are several additional "within the fence line" emission reduction strategies mentioned in the rule—such as co-firing with natural gas or using carbon capture, utilization and storage—which are barely elaborated upon. As written, this approach fails to uphold the EPA's legal requirement under the Clean Air Act to set limits for pollution reduction achievable through the "best system of emission reduction."

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Beyond a failure to address greenhouse gas emissions, the anticipated public health consequences of the Affordable Clean Energy Rule are striking. The rule would result in increased pollution from nitrogen oxide, sulfur dioxide, mercury, and other harmful pollutants, creating health burdens that would fall disproportionately on low-income communities and communities of color. The health impacts of the proposal extend deep into the power sector. The proposal's NSR exemptions for coal fired power plants extend to other facilities – even for projects at older fossil power plants that are extending their facility life for reasons unrelated to ACE compliance. The EPA's own analysis estimates that the rule could lead to as many as 1,630 premature deaths annually by 2030 due to an increase in the particulate matter and ozone, not to mention the non-fatal problems such as up to 15,000 new cases of upper respiratory problems, and ten thousand missed school days. By comparison, the existing rule could *prevent* between 1,500 and 3,600 premature deaths per year by 2030.

At a time when the world is facing record heat waves and droughts, wildfires and hurricanes of unprecedented size and frequency, rising sea levels, and a surge in other extreme weather patterns, it is unthinkable that the Administration would propose regulations which will exacerbate the impacts of climate change and risk the welfare of the American people. The Clean Power Plan was a crucial step toward reducing the deadly climate-changing pollution produced by power plants. We urge you to side with the 70 percent of Americans who support strict limits on carbon pollution of existing power plants, and abandon plans to replace the Clean Power Plan with a plan that worsens the American public's health and welfare. If you will not rescind the Affordable Clean Energy Rule, we request that at the very minimum you allow for additional public hearings and time for the public to comment.

Sincerely,

ALAN LOWENTHAL
Member of Congress

DONALD S. BEYER JR.
Member of Congress

DEBBIE WASSERMAN SCHULTZ
Member of Congress

DANIEL W. LIPINSKI
Member of Congress

PETER DEFAZIO
Member of Congress

BOBBY L. RUSH
Member of Congress

JERRY MCNERNEY
Member of Congress

MIKE QUIGLEY
Member of Congress

JAMIE RASKIN
Member of Congress

JAN SCHAKOWSKY
Member of Congress

LLOYD DOGGETT
Member of Congress

NANETTE DIAZ BARRAGÁN
Member of Congress

DIANA DEGETTE
Member of Congress

NIKI TSONGAS
Member of Congress

JARED HUFFMAN
Member of Congress

BEN RAY LUJÁN
Member of Congress

PETER WELCH
Member of Congress

DORIS MATSUI
Member of Congress

DANIEL T. KILDEE
Member of Congress

MARK DESAULNIER
Member of Congress

SCOTT H. PETERS
Member of Congress

ADAM SCHIFF
Member of Congress

ELIOT L. ENGEL
Member of Congress

BARBARA LEE
Member of Congress

MATT CARTWRIGHT
Member of Congress

TED W. LIEU
Member of Congress

CAROLYN B. MALONEY
Member of Congress

STEVE COHEN
Member of Congress

EARL BLUMENAUER
Member of Congress

KEITH ELLISON
Member of Congress

SUSAN A. DAVIS
Member of Congress

SUZANNE BONAMICI
Member of Congress

TULSI GABBARD
Member of Congress

PAUL D. TONKO
Member of Congress

JUDY CHU
Member of Congress

TED DEUTCH
Member of Congress

EMANUEL CLEAVER, II
Member of Congress

KATHY CASTOR
Member of Congress

MARK POCAN
Member of Congress

HENRY C. "HANK" JOHNSON, JR
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ZOE LOFGREN
Member of Congress

JOHN GARAMENDI
Member of Congress

RAÚL M. GRIJALVA
Member of Congress

ALMA S. ADAMS, PH.D.
Member of Congress

DARREN SOTO
Member of Congress

Congress of the United States
Washington, DC 20515

September 28, 2018

The Honorable Andrew Wheeler
Acting Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Mr. Wheeler,

We write to express our support for the WIFIA loan application, submitted by the City of Wichita, Kansas, to construct a new 120 MGD firm capacity water treatment facility that will provide high quality and reliable water service to the region for many generations to come.

The City of Wichita is the largest regional drinking water provider in the State of Kansas, providing drinking water to more than 500,000 people. The Wichita service area includes not only the citizens of the City of Wichita but numerous wholesale, commercial and industrial customers, including major aviation manufacturers Spirit AeroSystems and Textron Aviation, McConnell Air Force Base, and multiple advanced medical facilities. The Kansas economy is dependent on a strong and vibrant Wichita with robust and reliable water utility.

The Northwest Water Treatment Facility (NWWTF) project will address the significant risk to the community associated with Wichita's aging water treatment infrastructure. Water treatment is accomplished at a single Main Water Treatment Plant in the heart of Wichita and is the only water treatment plant currently serving the City of Wichita and surrounding communities. A significant portion of the water treatment plant is more than 75 years old. A recently completed condition assessment rated a vast majority of existing plant assets as being in Poor or Very Poor condition. The single water treatment plant and the overall poor condition of this facility constitutes an unacceptable level of risk to the City of Wichita and the region. The Kansas Department of Health and Environment has identified this situation as "critical".

WIFIA financing is critical to timely reduction of risks associated with the age and condition of Wichita's existing water treatment infrastructure. The combined impact of this project and the continuation of ongoing resource management practices will secure the future of the City of Wichita and the region for generations to come.

Thank you in advance for your careful consideration of this loan application and the great opportunity it represents for the residents of Kansas.

Sincerely,

Jerry Moran

Senator Jerry Moran

Pat Roberts

Senator Pat Roberts

Ron Estes

Congressman Ron Estes

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United States Senate

WASHINGTON, DC 20510

October 2, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington D.C. 20460

Acting Administrator Wheeler,

This letter is to convey our support of the petition to move the material commonly referred to as chitosan (CAS # 9012-76-4) to the Environmental Protection Agency's (EPA) Minimum Risk Pesticide List in order to minimize regulatory burdens on the EPA as well as businesses and consumers who produce and use chitosan in America.

The state level regulation of chitosan which already exists and will remain intact is adequate without additional federal regulation. Chitosan is used in industries ranging from agriculture, water treatment, cosmetics, textiles, and medical applications—just to name a few. Chitosan is also used widely by the U.S. Government, including multiple products commonly found in military First Aid Kits. Currently, almost all chitosan used in America is imported, and this change will greatly increase opportunity for domestic chitosan production. Domestic chitosan production also offers a great opportunity to American seafood producers to increase full utilization of their catch, and reduce waste.

This change will reduce economic and regulatory burdens on industries nationwide, reduce government spending, increase societies' access to safer chemistry, stimulate innovation, and advance development of the U.S. economy.

We appreciate your swift action in this matter, and ask that you consider it consistent with the policies and procedures of your agency

Sincerely,

Dan Sullivan
United States Senator

Lisa Murkowski
United States Senator

Congress of the United States
Washington, DC 20515

October 5, 2018

The Honorable Susan Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Mail Code 2201A
Washington, DC 20460

Dear Assistant Administrator Bodine:

The attached letter was sent to us by Mr. Michael Eisenfeld of the San Juan Citizens Alliance in Farmington, New Mexico. In his letter, Mr. Eisenfeld expresses concern about the impact on the environment of oil and gas recompletion in the San Juan Basin of New Mexico. The alliance's letter also poses a number of important questions regarding the Environmental Protection Agency's (EPA) responsibility to assure compliance with federal air quality rules in the San Juan Basin and the status of EPA's enforcement in northwestern New Mexico.

Given the significant public interest in these matters, we respectfully ask that you carefully review Mr. Eisenfeld's letter and respond fully to each of the issues and questions. The State of New Mexico is set to rule on issues related to these matters by November 19, 2018. Therefore, a response is requested as soon as possible, but no later than November 1, 2018.

Sincerely,

TOM UDALL
United States Senator

MARTIN HEINRICH
United States Senator

BEN RAY LUJÁN
Member of Congress

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PO Box 6655
Farmington, NM 87499
505.325.6724
sanjuancitizens.org

October 1, 2018

The Honorable Martin Heinrich, United States Senate
303 Hart Senate Office Building
Washington, D.C. 20510
(202) 224-5521

The Honorable Tom Udall, United States Senate
531 Hart Senate Office Building
Washington DC, 20510
(202) 224-6621

The Honorable Ben Ray Luján, United States House of Representatives
2231 Rayburn HOB
Washington, D.C, 20515
(202) 225-6190

Re: (CFR) 40, 60, 0000/New Mexico

Dear Senators and Representative Luján,

Oil and gas companies in San Juan and Rio Arriba counties in Northwestern New Mexico have recently applied to double the number of natural gas wells in the Blanco-Mesaverde formation in both counties. Doubling the number of wells in the area could significantly impact the air quality of the Four Corners region, already the subject of national and international studies relating to what is known as the "Four Corners Methane Hotpsot". Indeed, the 60+ year old San Juan Basin natural gas field has been determined to be the leakiest gas field in the United States (Cassady 2016).

Extensive and ongoing peer-reviewed research shows that oil and gas emissions are the major contributor to this unusual accumulation of methane (Kort et al, 2014; Frankenberg et al, 2016). Natural gas emissions contain toxic and cancer causing chemicals such as benzene, toluene, xylene and others in addition to methane. As VOCs and agents for the formation of NOX, natural gas pollutants have been shown to be particularly damaging to the health of children, the disabled, and the elderly (McMullin, 2018).

At a September 13, 2018 hearing before the New Mexico Oil Conservation Commission (NMOCC), Texas-based Hilcorp Energy Company made an application to double the number of Blanco-Mesaverde wells from the current limit of 8 wells per section to 16 wells per section in San Juan and Rio Arriba counties. This could result in approximately 7,500 new natural gas wells in a region that already has approximately 40,000 active and abandoned wells. The hearing has been continued to November 19, 2018.

The purpose of this letter is to review EPA rule 0000 and 0000a as they apply to natural gas development in the San Juan Basin and elsewhere in New Mexico. We seek to determine if energy companies are in compliance with EPA rules regarding air quality as related to drilling and recompletion.

In light of industry's pending application before NMOCC to double the number of gas wells in the majority of the San Juan Basin, it is essential that we know the status of federal rule compliance and enforcement designed to protect New Mexico citizens from health and environmental threats arising from federal mineral development on both tribal and public lands. We ask that EPA meet its responsibilities under existing rules and regulations, and answer in a timely manner the questions and concerns we list below:

- EPA records for all well in San Juan and Rio Arriba counties, showing notification by operator two days prior to beginning hydraulic fracturing procedures;

- Annual reports to EPA from operators detailing well site completions, certified as accurate and truthful by a senior official of the owner or operator;

- Listing of specification by operator of deviations to CFR 40, 60, 0000 regulations experienced during completion and reported to EPA;

- Listing of exceptions granted by EPA to operator for hydraulically fractured low-pressure wells, including all "Determinations of Technical Infeasibility."

Additionally, we ask that EPA determine and report the number of Reduced Emission Completion units available to San Juan Basin operators at this time.

We also ask that EPA include how the information requested above is to be made available to the public and how EPA's oversight and enforcement are compatible with the existing plans and policies of adjacent local, state, federal, and tribal agencies. We ask that EPA show whether and how current oversight is consistent with the purposes, policies, and programs of federal law and regulations applicable to federal minerals on both tribal and federal public lands.

New Mexico citizens are entitled to the federal health and environmental safeguards that the Environmental Protection Agency was established to provide. If EPA is unable to answer the requests for information listed above in advance of the November 19, 2018 NMOCC hearing on doubling well density in San Juan and Rio Arriba counties, we believe it would be appropriate for EPA to request a further continuance of the hearing until a thorough understanding of whether or not energy companies are in compliance with CFR 40, 60, 0000 in New Mexico, what EPA enforcement actions regarding CFR 40, 60, 0000 are, and how this information may be made public so that a transparent process may take place.

Please reply in writing by November 1, 2018.

Sincerely,

Michael Eisenfeld

Michael Eisenfeld
Energy and Climate Program Manager
office: 505.325.6724
mobile: 505.360.8994
sanjuancitizens.org

FRED UPTON
6TH DISTRICT, MICHIGAN

COMMITTEE ON
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Congress of the United States
House of Representatives

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http://upton.house.gov

October 10, 2018

Andrew Wheeler
Acting Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Administrator Wheeler:

I write to express my support of the proposal "*Development of an Integrated Framework for PFAS Plume Characterization, Monitoring and Forensics: Airborne and Conventional Geophysical Methods, Phytosampling, and Transport Modeling*" developed by Drs. Dogan and Reeves from Western Michigan University and Dr. Hyndman from Michigan State University.

The research outlined in this proposal will be used to develop an integrated methodology to generate data on the distribution of PFAS in vegetation, unsaturated and saturated zones, subsurface geology and heterogeneity, characterization of PFAS source releases, and predictions of PFAS migration.

These data are critical for improving our current understanding of PFAS fate and transport and will enhance assessments of PFAS risks to human health. The field locations selected for study are among the highest profile PFAS contaminated sites in Michigan, and this research is intended to alleviate some of the major data and knowledge gaps for these sites.

PFAS contamination has been an ongoing problem in my district, gaining national attention with the incident in Parchment, Michigan last July as well as revelations of levels thousands of times the EPA-recommended limit found at the Battle Creek National Guard Base. The research being done at Western Michigan University and Michigan State University is vital to our understanding of understanding of plumes of contaminants and how they affect residents around them.

Thank you for your consideration. Please let my office know if you have any questions or concerns.

Sincerely,

Fred Upton
Member of Congress

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SHELLEY MOORE CAPITO, WEST VIRGINIA
JOHN BOOZMAN, ARKANSAS
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RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
MARY FRANCES REPKO, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

October 9, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1301 Constitution Ave. NW
Washington, DC 20460

Dear Acting Administrator Wheeler:

We write to urge you to stay firm to your commitment to "restoring the rule of law" at EPA.[1] Former EPA Administrator Scott Pruitt's reign at EPA included a profound disregard for the mandates of statutory law, as well as attempts to obstruct the public's ability to hold EPA accountable for fulfilling the laws' requirements. Under former Administrator Pruitt's direction, EPA improperly delayed the effective date of rules, delayed its responses to FOIA requests, failed to properly document rule proposals, and ignored administrative procedure.

The courts have also taken note of these deficiencies:

- On July 18, 2018, the 9th Circuit issued an emergency stay of Mr. Pruitt's July 6, 2018 decision[2] not to enforce a rule imposing emission limits on certain super-polluting diesel freight trucks (or 'gliders'"). Following the court's decision, you wisely withdrew Mr. Pruitt's memo.[3]
- On August 9, 2018, the 9th Circuit ordered EPA to finalize a ban of the remaining uses of chlorpyrifos within 60 days,[4] rejecting Mr. Pruitt's decision to overturn the Obama Administration's proposed ban. The Court found that EPA was "acting against its own science findings" with "no justification," and chastised "EPA's continued failure to respond to the pressing health concerns presented by chlorpyrifos."[5]
- On August 16, 2018, a federal district court in South Carolina held that EPA had violated the Administrative Procedure Act by failing to provide a meaningful opportunity for

[1] https://www.washingtonpost.com/news/energy-environment/wp/2018/07/06/incoming-epa-chief-this-is-the-right-job-for-me/?utm_term=.c3cbed390a8d
[2] https://www.washingtonpost.com/national/health-science/epa-reverses-course-says-it-will-enforce-stricter-pollution-limits-for-glider-trucks/2018/07/26/705ff4ee-9144-11e8-8322-b5482bf5e0f5_story.html?utm_term=.1c9fb066ccad
[3] https://www.epa.gov/sites/production/files/2018-07/documents/memo_re_withdrawal_of_conditional_naa_regarding_small_manufacturers_of_glider_vehicles_07-26-2018.pdf
[4] https://www.nytimes.com/2018/08/09/us/politics/chlorpyrifos-pesticide-ban-epa-court.html
[5] https://int.nyt.com/data/documenthelper/149-ninth-circuit-opinion-on-pesti/cc426d5eaf5ecfd14272/optimized/full.pdf#page=1 (citations and internal quotations omitted)

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public input on its two-year delay of the Clean Water Rule.[6] The court noted that "an illusory opportunity to comment is no opportunity at all,"[7] and accordingly enjoined the delay, effectively reinstating the rule's protections in 26 states.[8]

- On August 17, 2018, the D.C. Circuit found that EPA had made "a mockery" of the law when it delayed until February 2019[9] the effective date of the Obama Administration's Risk Management Program (RMP) rule—also known as the "Chemical Disaster Rule"—designed to reduce risks associated with hazardous chemicals.[10] The court rejected EPA's argument that the agency needed the delay in order to avoid confusion as it determined how to revise the rule: "[T]his 'confusion,'" the judges wrote, "stems solely from the confusion EPA has caused by the almost two-years' reconsideration it desires in order to decide what it wants to do. . . . [T]hat is not a basis for delaying protections."[11] Accordingly, on September 21, 2018, the judges struck down the delay and thereby reinstated the Chemical Disaster Rule.[12]
- Federal courts have similarly rejected EPA's delay of a rule to tighten training requirements for farmworkers applying toxic pesticides because it violated the Administrative Procedure Act;[13] EPA's failure to respond to Connecticut's petition requesting that EPA address pollution from a Pennsylvania power plant;[14] and EPA's failure to meet its deadline to designate areas that do not meet its new National Ambient Air Quality Standard for ozone.[15]
- As of October 1, 2018, citizens have filed nearly 80 lawsuits alleging that the Trump Administration EPA has illegally failed to produce documents under the Freedom of Information Act (FOIA). While most of those cases are still in litigation, courts have ordered EPA to turn over documents in at least 20 cases, and the agency itself has turned over documents in at least 10 more cases under litigation pressure. By contrast, the agency appears to have won only two FOIA cases — on procedural, not substantive, grounds.

There are several examples of pending proposed rules crafted under former Administrator Pruitt's tenure that are also clearly at risk of being soundly dismissed in court.

For example, earlier this year, EPA invited public comment on its 'secret science' proposal,[16] which would limit the scientific information used in rulemaking. This rule, if finalized, could cause the agency to ignore statutory mandates to use the "best available science" when making

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[6] https://www.americanbar.org/content/dam/aba/administrative/environment_energy_resources/resources/wotus/wotus/document_gw_05.authcheckdam.pdf

[7] https://www.americanbar.org/content/dam/aba/administrative/environment_energy_resources/resources/wotus/wotus/document_gw_05.authcheckdam.pdf

[8] https://www.americanbar.org/groups/environment_energy_resources/resources/wotus/wotus-rule.html

[9] https://www.epa.gov/newsreleases/epa-extends-rmp-effective-date-2019

[10] https://newrepublic.com/minutes/144655/arkema-crisis-unfolding-epa-chemical-plant-safety-rule-hold

[11] https://conmaciel.files.wordpress.com/2018/08/air-alliance-dc-circuit.pdf

[12] https://insideepa.com/daily-news/dc-circuit-again-grants-bid-quickly-implement-epa-facility-safety-rule

[13] https://earthjustice.org/sites/default/files/files/cparRuling.pdf

[14] https://docs.justia.com/cases/federal/district-courts/connecticut/ctdce/3:2017cv00796/117590/52

[15] https://www.biologicaldiversity.org/programs/environmental_health/pdfs/72_Order-Summary-Judgment-03-12-2018.pdf

[16] https://www.epa.gov/newsreleases/epa-administrator-pruitt-proposes-rule-strengthen-science-used-epa-regulations

rules, such as under the Toxic Substances Control Act[17] and Safe Drinking Water Act,[18] and would also run afoul of the Administrative Procedure Act if important scientific studies are submitted to the rulemaking record and EPA ignores them because its new rule required their exclusion.

The same is true for the recently reformed and bipartisan Toxic Substances Control Act, which tasked EPA with writing 'framework' rules for how the agency will evaluate the safety of existing chemicals and included new requirements for how the agency should evaluate the safety of new chemicals. All of these efforts are subject to litigation,[19] in large part because of EPA's failure to follow the statutory direction Congress gave the agency to evaluate the risk from all uses of a chemical.[20] Similarly, the rule exempting super-polluting glider trucks from emissions limits remains pending (despite a federal court's stay of Mr. Pruitt's "no action assurance" memo promising that industry that it would not be subject to EPA enforcement, and your subsequent revocation of that memo).[21]

We ask that you return the rule of law at EPA, as you committed to doing in your first address to the agency,[22] by withdrawing pending proposed rules or revising final rules and practices that either are unsupported by the best available evidence and expertise, conflict with existing statutory authority, or both.

The failure to quickly correct course will not only unduly and further delay the implementation of vital environmental protections and create an extended period of regulatory uncertainty for industry. In fact, continuing down this unwise path will also cost taxpayers money, since the federal government spends time and money defending these unsound rules in court. We therefore additionally request information about the amount of taxpayer funds that have been expended defending actions taken by former Administrator Pruitt. Please provide the following information by close of business on November 2, 2018:

1. From January 20, 2017 to the present, a list of all deadline lawsuits in which EPA was a party, the amount of government-paid attorney's fees and costs to the opposing party, and whether EPA settled or litigated the case;
2. From January 20, 2017 to the present, a list of all Freedom of Information Act lawsuits in which EPA was a party, the amount of government-paid attorney's fees and costs to the opposing party, and whether EPA settled or litigated the case; and
3. From January 20, 2017 to the present, a list of all non-deadline and non-FOIA lawsuits in which EPA was a party, the amount of government-paid attorney's fees and costs to the opposing party, and whether EPA settled or litigated the case.
4. For each lawsuit identified in your responses to questions 1 and 2, please state whether the lawsuit was subject to EPA's "Directive Promoting Transparency and Public

[17] 15 U.S.C. 2625(h)
[18] 42 U.S.C. § 300g-1(b)(3)(A)
[19] https://www.edf.org/media/edf-files-lawsuits-defend-reforms-chemical-safety-law?_ga=2.46289198.8299115-46.1534955811-2036426178.1532455459
[20] 15 U.S.C. §§ 2602-2603
[21] https://www.regulations.gov/document?D=EPA-HQ-OAR-2014-0827-2368
[22] https://www.washingtonexaminer.com/policy/energy/andrew-wheeler-promises-to-value-epa-staff-as-he-pursues-trumps-deregulatory-agenda

Participation in Consent Decrees and Settlement Agreements." If the lawsuit was subject to the Directive, please state whether the parties settled or attempted to settle the matter, and whether non-parties were consulted on any potential settlement.

Thank you very much for your attention to this important matter. If you have any questions or concerns, please ask the appropriate members of your staff to contact Michal Freedhoff, of the Environment and Public Works Committee staff, at 202-224-8832.

Sincerely,

Tom Carper
Ranking Member

Benjamin L. Cardin
United States Senator

Bernard Sanders
United States Senator

Sheldon Whitehouse
United States Senator

Jeffery A. Merkley
United States Senator

Kirsten Gillibrand
United States Senator

Cory A. Booker
United States Senator

Edward J. Markey
United States Senator

Tammy Duckworth
United States Senator

Chris Van Hollen
United States Senator

October 10, 2018

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

The Honorable Andrew Wheeler
Acting Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Secretary DeVos and Acting Administrator Wheeler:

We write to urge the U.S. Department of Education (ED) and the Environmental Protection Agency (EPA) to take immediate action to protect students from lead in school drinking water. A recent Government Accountability Office (GAO) report found that an estimated 41 percent of public school districts, serving 12 million students, did not test for lead in school drinking water.[1] Furthermore, GAO found that where school districts tested for lead, more than a third of school districts found elevated lead levels. Given that lead exposure can result in a variety of health impacts, especially for young children, we urge you to swiftly implement GAO's recommendations to encourage more school districts to test for lead and take immediate action to combat lead in school drinking water.

As you know, lead is a neurotoxin, and any amount of exposure in a child can slow growth and development, damage hearing and speech, and cause learning disabilities. The Flint water crisis, which was caused by a series of unconscionable and short-sighted decisions, renewed national awareness about the dangers that lead exposure poses to children and public health. The crisis also underscored that even the most basic resource within our communities, safe drinking water, cannot be taken for granted – a reality confronting schools across the country.

- In Michigan, the Detroit public school system shut off drinking water at all of the city's public schools after finding elevated lead or copper levels in multiple public schools.
- In Wisconsin, 169 buildings in the Milwaukee Public School System were found to have at least one fixture that supplied water with elevated lead levels.
- In Indiana, 61% of 915 schools tested in recent months found at least one fixture with elevated lead.
- Schools in Colorado, Florida, New York, Maryland, Ohio, Pennsylvania, Oregon, and many other states are also confronting lead in their drinking water.

The GAO report made clear that ED and EPA must accelerate actions to address this problem. While both of your agencies provide guidance and other resources to states and school districts regarding testing and remediating lead in drinking water, GAO found that some EPA regional offices have not communicated the importance of testing for, and remediating lead in, school drinking water to school district personnel. Furthermore, GAO found that ED and EPA do not regularly collaborate to support state and school district efforts to address lead in drinking water,

[1] https://www.gao.gov/assets/700/692979.pdf

despite agreeing to do so in a 2005 memorandum of understanding. In total, GAO offered ED and EPA seven recommendations that will encourage school districts to test for lead and ensure testing and remediation efforts are aligned with best practices.

In addition to the GAO's recommendations, ED and EPA should outline proactive steps that protect students from lead in school drinking water. Such steps may include evaluating how existing ED and EPA programs can be updated to better support lead testing and remediation.

It is critical that you implement these common-sense recommendations immediately, and we ask that you provide us with a timeline for completing all seven of GAO's recommendations. We stand ready to work with you to ensure that all schools are fulfilling their duty to provide students with clean drinking water that keeps all children safe and healthy.

Sincerely,

Debbie Stabenow
United States Senator

Tammy Baldwin
United States Senator

Jeanne Shaheen
United States Senator

Elizabeth Warren
United States Senator

Chris Van Hollen
United States Senator

Sheldon Whitehouse
United States Senator

Patty Murray
United States Senator

Kirsten Gillibrand
United States Senator

Joe Donnelly
United States Senator

Benjamin L. Cardin
United States Senator

Michael F. Bennet
United States Senator

Brian Schatz
United States Senator

Gary C. Peters
United States Senator

Kamala D. Harris
United States Senator

Cory A. Booker
United States Senator

Robert P. Casey, Jr
United States Senator

Dianne Feinstein
United States Senator

Edward J. Markey
United States Senator

Richard Blumenthal
United States Senator

Margaret Wood Hassan
United States Senator

Maria Cantwell
United States Senator

Thomas R. Carper
United States Senator

Ron Wyden
United States Senator

Bill Nelson
United States Senator

Richard J. Durbin
United States Senator

Tim Kaine
United States Senator

Charles E. Schumer
United States Senator

Bernard Sanders
United States Senator

Jack Reed
United States Senator

Robert Menendez
United States Senator

Sherrod Brown
United States Senator

Amy Klobuchar
United States Senator

Tammy Duckworth
United States Senator

Jeffrey A. Merkley
United States Senator

Tina Smith
United States Senator

Congress of the United States
Washington, DC 20515

October 10, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: Compliance Extension to extend the effective date for regulations relating to glider vehicles, glider engines, and glider kits set forth in 81 Fed. Reg. 73,478 (Oct. 25, 2016) .

Dear Acting Administrator Wheeler:

We are writing to request the U.S. Environmental Protection Agency (EPA) issue a compliance extension to extend the effective date of the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase II rule, 81 Fed. Reg. 73,478 (Oct. 25, 2016) as it relates to glider vehicles, glider engines, and glider kits. This extension will provide much needed relief to the glider industry.

The glider kit and truck industry are facing financial ruin due to the annual arbitrary production cap under 40 C.F.R. § 1037.635. According to the glider industry, hundreds of American workers in the industry have been laid off in the last three months. The glider kit and truck industry will cease to exist in short order without meaningful relief.

In a statement, the EPA "will continue to work expeditiously to finalize a solution that provides regulatory relief and prevents any inadvertent economic harm to the glider industry while maintaining important air quality protections."[1] However, it has been over four months since this statement from EPA, and the glider industry is facing financial ruin due to the punitive and arbitrary rule as finalized under the previous Administration.

President Donald Trump has made the resolution of gliders an Administration priority, instructing EPA to resolve the issue last spring. However, the EPA has not provided relief to remedy this arbitrary and punitive rule.

The compliance extension will provide for a five-year delay on the glider kit cap and ban rule. This compliance extension will provide the industry with the appropriate time necessary to manage the new rule. It also provides EPA with additional time to begin thoughtful and appropriate rulemaking for the industry.

[1] *See* https://www.ccjdigital.com/epa-again-reverses-course-on-gliders-enforcement-will-now-enforce-annual-300-truck-cap/

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EPA has the authority to extend the effective date under Section 705 of the Administrative Procedure Act (APA).[2] Such an action would be consistent with *Sierra Club v. Jackson*, in which the court confirmed EPA's authority to use Section 705 of the APA.[3] In *Sierra Club*, the court was "unwilling to infer a congressional policy that would deprive both an agency and the federal courts of their traditional authority to stay rules pending judicial review as codified in Section 705 of the APA."[4]

Again, we urge the EPA to issue a compliance extension to extend the effective date of the Phase II rule as it relates to glider vehicles, glider engines, and glider kits. If you have questions, please contact Rick Podliska, Senior Policy Advisor, for Rep. Bill Posey. Thank you for your service and consideration of our request. We look forward to your response.

Sincerely,

Bill Posey
Member of Congress

Ralph Abraham, M.D.
Member of Congress

Steve King
Member of Congress

James Comer
Member of Congress

Randy Weber
Member of Congress

Brian Babin
Member of Congress

Andy Biggs
Member of Congress

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[2] *See Sierra Club v. Jackson*, 833 F. Supp. 2d 26 (D.D.C. 2012).
[3] *Id.*
[4] *Id.*

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General *Washington, D.C. 20530*

The Honorable Bill Posey
U.S. House of Representatives
Washington, DC 20515

SEP 0 6 2010

Dear Congressman Posey:

This responds to your letter to the Attorney General dated July 27, 2018, regarding an Environmental Protection Agency (EPA) rule entitled "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2," and how it applies to glider vehicles, glider engines, and glider kits. We appreciate your interest in this important issue and have ensured that the materials you referenced have been shared with the relevant components of the Department of Justice (Department), including the Environment and Natural Resources Division, which represents the United States in litigation matters that relate to this rule. However, pursuant to longstanding policy, the Department does not provide non-public information related to matters in active litigation.

We also have forwarded a copy of your letter to the EPA for their information. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Stephen E. Boyd
Assistant Attorney General

United States Senate

WASHINGTON, DC 20510

October 9, 2018

Acting Administrator Andrew Wheeler
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Acting Administrator Wheeler,

We are writing to request that you extend the comment period by at least 60 days and increase the number of public hearings to at least four in order to allow for thorough public consideration and input for the proposed rule, *Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Regulations to New Source Review Program*, 83 Fed. Reg. 44,746—(Aug. 31, 2018)—informally known as the Affordable Clean Energy (ACE) rule.

Before finalizing the Clean Power Plan, the Environmental Protection Agency (EPA) conducted an unprecedented two-year outreach and engagement process with states, tribes and stakeholders. EPA's outreach process included four public hearings, talking to over 3,000 stakeholders including companies, nonprofits, and states, and an open public comment period for 167 days. Only after this outreach and after receiving and considering 4.3 million comments did EPA finalize the Clean Power Plan.

Our constituents should be given an equal opportunity to evaluate and weigh in on a proposed replacement. Currently, the public comment period for the proposed rule will only be 61 days, and only one public hearing will be held, in Chicago in the EPA's Region 5, on October 1.[1] These opportunities for public input are woefully inadequate given the serious legal, environmental, and human health concerns raised by the proposed rule. In fact, the ACE rule is effectively comprised of three rules in one—the revised determination of the "best system of emissions reduction" under the Clean Air Act, the delegation of additional authority to states to regulate carbon pollution, and revisions to the New Source Review program that potentially enables coal-fired power plants to evade upgrading pollution controls[2]—each of which could individually justify its own extensive period of public input.

The Clean Power Plan was approved in 2015 to address the overwhelming scientific consensus that humans are the dominant cause of climate change and provide a path forward to reducing such impacts. While the Clean Power Plan provided a concrete—and realistic—goal of achieving

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[1] Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Regulations to New Source Review Program, 83 Fed. Reg. 45,588 (Sep. 10, 2018) (to be codified at 40 C.F.R. pts. 51, 52, and 60).

[2] Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Regulations to New Source Review Program, 83 Fed. Reg. 44,746 (Aug. 31, 2018) (to be codified at 40 C.F.R. pts. 51, 52, and 60).

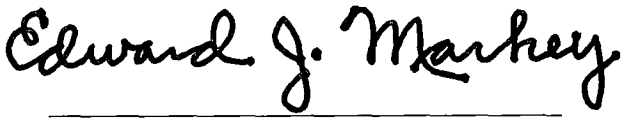
a 32 percent reduction in energy sector emissions by 2030,[3] the ACE rule provides no such limit and thus hinders the ability of the EPA to regulate carbon emissions—a violation of the Clean Air Act. Numerous other complex legal issues with the proposed rule will take additional time to be carefully reviewed.

Even according to the EPA's own analysis, the ACE rule will result in the release of at least 12 times more carbon emissions from the energy sector over the next decade, along with increased emissions of pollutants such as sulfur dioxide, nitrogen oxide, and mercury, compared to the Clean Power Plan.[4] Health effects stemming from these pollutants could include up to 1,400 additional premature deaths, 140,000 school absences, and 120,000 cases of exacerbated asthma annually by 2030, again compared to the Clean Power Plan.[5] Given these extremely harmful potential consequences, the public needs additional time to assess EPA's modeling methodology for determining the health and environmental impacts of the proposed rule.

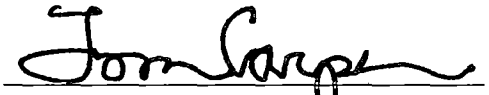
Due to these concerns, we request that you extend the comment period through December 31, 2018, and that you hold at least three additional public hearings to discuss the proposed rule—including in areas that stand to be most affected by the impacts of climate change, such as coastal flooding, drought, and wildfires. A 120-day public comment period, subsequently extended by 45 days, followed the publication of the proposed Clean Power Plan.[6] The duration of the comment period for the ACE proposed rule should be similar.

As we continue to hear from our constituents and local and state officials on this matter, we will likely have additional comments for you in the future on this issue. We will be closely following your progress on this critical matter. Should you have any questions about this request, please contact Lindsey Griffith at 202-224-2742.

Sincerely,



Edward J. Markey
United States Senator



Tom Carper
United States Senator

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[3] Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 FR 64,461 (Oct. 23, 2015) (to be codified at 40 C.F.R. pt. 60).
[4] U.S., Environmental Protection Agency, *Regulatory Impact Analysis for the Proposed Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program*, Publication No. EPA-452/R-18-006, Aug. 2018, https://www.epa.gov/sites/production/files/2018-08/documents/utilities_ria_proposed_ace_2018-08.pdf.
[5] U.S., Environmental Protection Agency, *Regulatory Impact Analysis for the Proposed Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program*, Publication No. EPA-452/R-18-006, Aug. 2018, https://www.epa.gov/sites/production/files/2018-08/documents/utilities_ria_proposed_ace_2018-08.pdf.
[6] Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 FR 64,461 (Oct. 23, 2015) (to be codified at 40 C.F.R. pt. 60).

Ron Wyden
United States Senator

Richard J. Durbin
United States Senator

Jeanne Shaheen
United States Senator

Chris Van Hollen
United States Senator

Tina Smith
United States Senator

Jeffrey A. Merkley
United States Senator

Kirsten Gillibrand
United States Senator

Margaret Wood Hassan
United States Senator

Benjamin J. Cardin
United States Senator

Richard Blumenthal
United States Senator

Michael F. Bennet
United States Senator

Tom Udall
United States Senator

Tammy Duckworth
United States Senator

Sheldon Whitehouse
United States Senator

Mazie K. Hirono
United States Senator

Kamala D. Harris
United States Senator

Robert Menendez
United States Senator

Jack Reed
United States Senator

Cory A. Booker
United States Senator

Bernard Sanders
United States Senator

Dianne Feinstein
United States Senator

Congress of the United States

Washington, DC 20510

October 12, 2018

VIA ELECTRONIC DELIVERY

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, DC 20004

Dear Acting Administrator Wheeler:

We write in response to a letter we received from Assistant Administrator Bill Wehrum from the U.S. Environmental Protection Agency's (EPA) Office of Air and Radiation dated September 27, 2018.

The Trump Administration has characterized EPA's mission as returning to a "back-to-basics" agenda, which includes achieving clean air. For the residents of Willowbrook, Illinois, who have among the highest cancer risk in the country, reducing exposure to ethylene oxide through fugitive air emissions is critical to this goal.

That is why in addition to the monitoring and testing we called for in our initial note, we request that you direct funds Congress dedicated to help communities identify cancer clusters to DuPage County. Specifically, Congress approved $1 million to fund "Trevor's Law," a provision passed in the *Frank R. Lautenberg Chemical Safety for the 21st Century Act*, to help communities determine whether they are a cancer cluster.

We also request that you provide medical monitoring for community members. In a report that was published earlier this year by the Agency for Toxic Substances and Disease Registry (ATSDR) it was noted that workers in sterilization facilities have an increased risk for breast cancer and lymphohematopoietic cancers. In addition to these cancers, we request EPA launch a health assessment that reviews community cancer rates. EPA should also consider the feasibility of monitoring for potential pre-cancerous or non-cancer impacts such as hemoglobin adducts, DNA damage effects, and hematological effects.

While our first priority remains ensuring DuPage County's public health is safeguarded, we understand EPA is under court-order to update regulations on ethylene oxide and that, in the meantime, communities across the country may be vulnerable. As you work to update this rule, we urge you to ensure the rule protects the health of the most vulnerable—including children and the elderly, directs industry to use the best available technology to control their emissions, and is based on science that is peer-reviewed.

Furthermore, we request that EPA conduct field hearings in communities that are being impacted by ethylene oxide, including in DuPage County, as part of its rulemaking. Field hearings will ensure robust and rigorous public participation. They will also allay fears that EPA is engaging in a regulatory process dominated by industry interests.

We also specifically ask you to:

1. Give our offices a clear timeline of EPA's expected deadlines and next steps as it relates to this rulemaking. We are concerned that EPA is not motivated to work swiftly, and urgently, on updating its National Emission Standards for Hazardous Air Pollutants for ethylene oxide commercial sterilization and fumigation operations. EPA determined at the end of the Obama Administration that ethylene oxide is a known carcinogen, however, since then, EPA has not sought to strengthen the public health standard regulating the gas.

2. Prioritize air monitoring at and around facilities that use ethylene oxide and alert the community when ambient ethylene oxide concentrations are higher than EPA's new safety standard. In EPA's response to us, EPA indicated that it is gathering additional information from facilities using ethylene oxide. We reiterate our request that EPA prioritize monitoring and testing for ethylene oxide, specifically, as part of this effort. This data must be publicly accessible. In addition to public data, communities must be alerted via email or their mobile devices when a monitor detects a leak, or the averaged ambient concentrations are higher than EPA's new safety standard.

   Furthermore, ATSDR's report indicates that, from a comparison of short-term samples to 12 hour samples collected by EPA, there is daily variability in which there are higher emissions from the facility at certain hours. Continuous monitoring is required as the facility is a 24 hour operation, and near-surface concentrations are higher during nighttime than the daytime due to meteorology. Continuous monitoring is the only way to ensure that the emission reductions from pollution controls are effective and long-lasting.

3. Require an inventory of potential exposures for communities adjacent to ethylene oxide sterilization sites. We need to understand which communities are at risk from exposure of ethylene oxide. An inventory of all communities that lie within or are adjacent to facilities that use ethylene oxide will ensure we understand where the hazards exist. This should include an area of at least five miles from the facility in question. This inventory should include all industries that release significant amounts of ethylene oxide, like chemical plants

that make ethylene oxide or have ethylene oxide emissions as a byproduct (*i.e.* facilities that ethyoxylate chemicals).

4. Ensure that staff who will be engaged in the writing of the updated regulation are free from conflicts of interests and commit to using rigors peer-reviewed science. As you know, there are a number of staff at EPA who have previously represented the chemical industry and have worked on ethylene oxide issues, specifically. We request that you direct these staff to sign recusals to ensure that the regulatory process is free of any conflict of interest that would otherwise exist.

Last week EPA published a document titled *A Working Approach for Identifying Potential Candidate Chemicals for Prioritization under the Toxic Substances Control Act (TSCA)*. Our staff are reviewing this document and we will follow up with recommendations on how EPA should consider ethylene oxide under TSCA.

Thank you for your consideration of this request.

Sincerely,

Tammy Duckworth	Richard J. Durbin	Bill Foster
United States Senator	United States Senator	United States Representative

cc. Ms. Cathy Stepp, Region 5 Administrator, U.S. Environmental Protection Agency
cc. The Honorable William Wehrum, Assistant Administrator, Office of Air and Radiation, U.S. Environmental Protection Agency

TAMMY DUCKWORTH
ILLINOIS

COMMITTEES
ENVIRONMENT AND PUBLIC WORKS
ENERGY AND NATURAL RESOURCES
COMMERCE, SCIENCE, AND TRANSPORTATION
SMALL BUSINESS AND ENTREPRENEURSHIP

United States Senate

October 22, 2018

VIA ELECTRONIC DELIVERY

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, DC 20004

Dear Acting Administrator Wheeler:

As we begin observing National Lead Poisoning Prevention Week and following troubling reports that the Director of the U.S. Environmental Protection Agency (EPA) Office of Children's Health, a non-political career official, was abruptly put on paid administrative leave with little explanation, I write to reiterate my request that EPA release the Administration's lead strategy for public comment and peer-review.

As Acting Administrator, you must also provide transparency as to why EPA pushed out a renowned leader in children's environmental health. This highly-respected pediatrician and epidemiologist is exactly the type of non-partisan career official that Americans deserve on the job working to protect their public health. Failure to provide a detailed and credible explanation lends credence to reasonable suspicions that your personnel action was designed to undermine the mission of EPA's Office of Children's Health Protection.

Public health experts at EPA, the Centers for Disease Control and Prevention, the American Association of Pediatrics and many others have found that there is no safe level of lead exposure. For vulnerable populations like young children, pregnant mothers and the elderly, exposure to lead can be extremely dangerous and permanently life altering.

Any successful strategy to eliminate lead exposure must include a systematic approach to identifying the presence of lead-service-lines (LSL), a plan to prioritize replacement of LSLs in areas with vulnerable populations like schools and daycares, and an urgently needed comprehensive modernization of the outdated and ineffective Lead and Copper Rule. It must also include a request for the financial resources necessary to ensure that the lead exposure crisis that persists in both rural and urban areas will be tackled once and for all.

The Administration held a "lead summit" and created a task force focused on developing a strategy to address this crisis. More than a year later, we have not yet received an update from the Administration on its efforts to address this urgent public health crisis. In fact, the only meaningful action EPA appears to have taken is forcing the Children's Health Director, who should be part of the Agency's efforts to reduce lead exposure and implement a lead strategy, to indefinitely leave work while receiving full pay and benefits. To better understand the status of

SUITE 524
HART BUILDING
WASHINGTON, DC 20510
(202) 224-2854

SUITE 3900
KLUCZYNSKI FEDERAL BUILDING
230 S. DEARBORN STREET
CHICAGO, IL 60604
(312) 886-3506

8 SOUTH OLD STATE CAPITOL PLAZA
SPRINGFIELD, IL 62701
(217) 528-6124

EURMA C. HAYES CENTER
441 EAST WILLOW STREET
CARBONDALE, IL 62901
(618) 677-7000

SUITE 2
1823 2ND AVENUE
ROCK ISLAND, IL 61201
(309) 606-7060

SUITE 460
23 PUBLIC SQUARE
BELLEVILLE, IL 62220
(618) 722-7070

EPA's effort to address the national lead poisoning crisis, please provide detailed responses to the following:

1. Provide a detailed timeline of when the Administration plans to release its long-delayed lead strategy plan;
2. Explain your decision to abruptly place a key, highly experienced career official on administrative leave, even though that highly respected individual leads the team that should be implementing a strategy to protect families from lead and other environmental threats to their health;
3. Explain how this personnel action was not an attempt at intimidating or punishing a career civil servant by cleverly using an administratively authorized absence to humiliate a Federal employee;
4. Clarify whether this personnel action was intended to be a disciplinary action and if this was intended to be a disciplinary action, explain why EPA chose to use Administrative Leave rather than an adverse personnel action in response to an alleged prohibited personnel practice; and
5. If it is determined that the personnel action was actually an attempt to retaliate or otherwise harm the civil servant, please describe what specific actions you will take to restore confidence in career EPA personnel that they will be protected from arbitrary and capricious personnel actions by political appointees.

Reducing lead exposure and protecting families is a major priority for me and my constituents. The Administration is long overdue in upholding its promise to address this crisis. A critical step in the right direction would be to release the lead strategy for public comment and peer-review without further delay. Thank you for your consideration of this request.

Sincerely,

Tammy Duckworth

Tammy Duckworth
United States Senator

ROBERT C. "BOBBY" SCOTT
3RD DISTRICT, VIRGINIA

COMMITTEE ON
EDUCATION AND THE WORKFORCE
RANKING MEMBER

WASHINGTON:
1201 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–4603
(202) 225–8351

DISTRICT OFFICE:
2600 WASHINGTON AVENUE
SUITE 1010
NEWPORT NEWS, VA 23607–4333
(757) 380–1000

WWW.BOBBYSCOTT.HOUSE.GOV

Congress of the United States
House of Representatives
Washington, DC 20515–4603

October 15, 2018

Mr. Troy Lyons
Associate Administrator for Congressional and Intergovernmental Relations
Environmental Protection Agency
200 Pennsylvania Avenue, NW, Room 3426 WJC North
Washington, DC 20460-0001

Dear Mr. Lyons,

Enclosed is correspondence from my constituent, (b) (6) [redacted]

Ms. Bradstock has asked for my assistance regarding a development in the City of Suffolk that she believes is negatively impacting the surrounding ecosystem.

I would appreciate your looking into this matter and responding to my Legislative Assistant Demontre' Boone at 2600 Washington Ave. Ste. 1010 Newport News, VA 23607.

Thank you for your attention to this matter.

Very Truly Yours,

Robert C. "Bobby" Scott
Member of Congress

RCS/DB

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3RD DISTRICT, VIRGINIA

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Congress of the United States
House of Representatives
Washington, DC 20515–4603

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Constituent Consent and Information Form

(b) (6) [redacted] licable fields)

Name: [redacted]

Social Security Number (Leave blank for USCIS inquiries): [redacted]

USCIS Identification Number (A#, receipt number, tracking number, etc.): _____

Home Address: (b) (6) [redacted]

Home of Record: (b) (6) [redacted]

Home Telephone: (b) (6) [redacted] *Work/Cell Telephone Phone:* (b) (6) [redacted]

Date of Birth: (b) (6) [redacted] *Place of Birth:* (b) (6) [redacted]

Agency Involved: (b) (6) [redacted]

Do You Have An Attorney? No X *Yes* ___

If Yes, Please indicate your Attorney's Name & Telephone Number Below:
N/A

[redacted] (b [redacted] certify under penalty of perjury, that I authorize Congressman Robert C. "Bobby" Scott,
(please print)
Representative of the 3rd District of Virginia, and/or his staff to request any relevant information in order to assist in responding to my inquiry, in accordance with the provisions of the law. All information provided to Congressman Scott is complete, true and correct.

Signature: (b) (6) [redacted] *Date:* 9/21/18

Request of the Congressman (Please provide a brief summary): re:
Development in the village of Eclipse in Suffolk, VA - is impacting ecosystem because of antiquated building practices (Builder was grandfathered in). Please see email for detailed summary of concerns.

United States Senate

WASHINGTON, DC 20510

October 23, 2018

The Honorable Elaine Chao
Secretary
U.S. Department of Transportation
1200 New Jersey Ave SE
Washington, DC 20590

Mr. Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20004

Dear Secretary Chao and Acting Administrator Wheeler:

We write in support of the existing coordinated national program of strong standards for fuel economy and vehicle greenhouse gas (GHG) emissions, which benefits both the automotive industry and the American public. These standards are maintained not only by the Environmental Protection Agency (EPA) and the Department of Transportation (DOT), but also by the states that we represent. The changes you have proposed to this carefully negotiated program are not supported by federal law and will only result in higher costs for the American consumer and years of litigation and investment uncertainty for the auto industry—all while endangering public health and welfare. We urge you to abandon the confrontational and counterproductive approach you have proposed, and instead work to preserve the coordinated national program by seeking consensus with the states.

Under the *Clean Air Act*, both the EPA and the state of California have authority to regulate GHG emissions from the tailpipe. Under Section 177 of this act, states can choose, as twelve have done and Colorado is in the process of finalizing, to adopt California's standards in lieu of federal requirements. Today, these standards are collectively implemented as a single national program under a 2012 agreement between DOT, EPA, and the California Air Resources Board. If the federal agencies diverge from the standards that were set together under this agreement through Model Year 2025, there will no longer be a single national program.

We believe it would be a grave error to cast aside this national consensus approach. Rather than negotiate, you have chosen to challenge the authority of our states to regulate emissions from vehicles in order to force a nationwide rollback of fuel economy and vehicle emission standards. This action would be without precedent in the fifty-five year history of the *Clean Air Act*. The legal justifications offered in the Safer Affordable Fuel-Efficient Vehicles Proposed Rule for Model Years (MY) 2021-2026, as detailed below, are plainly contradicted by the historical record of legislative intent, are not supported by statutory text, and have already been rejected by the courts.

1. Section 209 of the *Clean Air Act* recognizes that the California Air Resources Board's regulations on mobile sources predate federal standards. It mandates that the EPA Administrator shall grant a waiver from federal preemption for any new California clean air regulation that is at least as protective of public health and welfare as federal standards. The statute creates no mechanism to revoke such a waiver, and no EPA

Administrator has ever attempted to revoke any of the more than 150 waivers granted over the last five decades. Nonetheless, the Administration now proposes to revoke the waiver granted in 2013 for California's tailpipe emission standards for Model Years 2022 to 2025, which have been adopted by twelve states under Section 177 of the *Clean Air Act*. This is unprecedented and not supported by the statutory text.

2. The Administration argues that California's waiver is invalid because the state does not face "compelling and extraordinary conditions" as required by statute. This boldly ignores the historic drought that California recently experienced and the exceptionally intense wildfires now burning throughout the state – both compelling and extraordinary conditions that have been exacerbated by climate change and are only expected to grow worse. It also disregards the inescapable conclusion that California's clean air programs as a whole are necessary to address local air quality problems that put eight of its cities in the top ten cities in the nation most polluted by smog. Indeed, higher temperatures caused by greenhouse gases will exacerbate smog formation and wildfire smoke. The administration instead argues that the waiver is invalid unless California's experience of climate change and contribution to atmospheric carbon dioxide is "unique," an argument that has no basis in statute and is contrary to the analysis conducted for every other waiver previously granted. This is a particularly absurd interpretation given that Section 177 of the *Clean Air Act* allows any other state to adopt standards put forward by California in recognition of the fact that all states face similar pollution challenges.

3. The Administration further argues that California's waiver is invalid because the standards are "technologically infeasible" in spite of the fact that they are currently part of a program that was promulgated jointly with the federal agencies. The 1,200 page joint technical analysis of these standards, completed in 2016 by EPA, NHTSA, and the California Air Resources Board, found that the standards are technologically feasible and cost-effective, and that there are now more technologies available to meet the standards than originally anticipated.

4. The Administration goes on to assert that the original *Energy Policy Conservation Act* of 1975—which created the fuel economy standards and was later strengthened by the *Ten-in-Ten Fuel Economy Act,* passed as part of the *Energy Independence and Security Act of 2007*—interferes with the separate authority conferred to California and other states by the *Clean Air Act*. Two federal courts in 2007 already considered and rejected the same arguments now resuscitated in the Administration's proposal. This case law was an important factor in our enactment of the *Ten-in-Ten Fuel Economy Act*, as evidenced by statements on the floor of the House and Senate at the time of its passage. Indeed, the very first section of this bill makes clear that the fuel economy law does not interfere with the authorities conferred by the *Clean Air Act*. The argument put forward in this rule not only ignores judicial precedent, but also contravenes clear legislative intent.

5. The Administration additionally asserts that the *Energy Policy Conservation Act* preempts not only state tailpipe emissions standards for gasoline-powered vehicles,

but also a mandate for zero-emission vehicles, which has been authorized by the *Clean Air Act* waiver and adopted by nine additional states. This policy does not govern how many miles a gasoline-powered vehicle can drive per gallon of fuel; it requires manufacturers to produce some number of battery electric vehicles or hydrogen fuel cell vehicles, which do not use petroleum fuel at all. It is illogical for DOT now to argue that the zero-emission programs relate to the mileage of gasoline-powered vehicles in order to broadly claim preemption.

These claims to preemption are not faithful interpretations of statutory law. The Administration's justification knowingly disregards both legislative intent and case law. The surest way to maintain one national program is to collaborate with the states to preserve the agreement that is working right now for a coordinated program of federal and state standards. We urge you to abandon this confrontational and misguided proposal.

Sincerely,

Dianne Feinstein
United States Senator

Kamala D. Harris
United States Senator

Charles E. Schumer
United States Senator

Tom Carper
United States Senator

Edward J. Markey
United States Senator

Chris Van Hollen
United States Senator

Richard Blumenthal
United States Senator

Sheldon Whitehouse
United States Senator

Ron Wyden
United States Senator

Elizabeth Warren
United States Senator

Jeffrey A. Merkley
United States Senator

Michael F. Bennet
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Jack Reed
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Bernard Sanders
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Benjamin L. Cardin
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Kirsten Gillibrand
United States Senator

Patrick Leahy
United States Senator

Maria Cantwell
United States Senator

Robert P. Casey, Jr.
United States Senator

Christopher S. Murphy
United States Senator

Margaret Wood Hassan
United States Senator

Patty Murray
United States Senator

Christopher A. Coons
United States Senator

Congress of the United States
Washington, DC 20510

October 17, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Acting Administrator Wheeler:

We write to express our support for the City of Seattle's recently submitted Letter of Interest for a federal loan through the Water Infrastructure Finance and Innovation Act (WIFIA) for the Ship Canal Water Quality Project.

The City of Seattle and King County are working together to design and build a 2.7 mile offline, underground storage tunnel to reduce the number and volume of Combined Sewer Overflows (CSOs) that discharge into the Lake Washington Ship Canal from the Ballard, Fremont, Wallingford, and Queen Anne neighborhoods. The storage tunnel would capture and temporarily hold up to 29 million gallons of stormwater and sewage during heavy rains, and after the storm passes would be processed at King County's West Point Wastewater Treatment Plant. The Ship Canal Water Quality Project would improve water quality in the Seattle area and keep over 70 million gallons of contaminated water out of Lake Washington Ship Canal, Salmon Bay, and Lake Union every year.

Each CSO event releases toxic raw sewage and roadway contaminants into the Lake Washington Ship Canal, impacting high public use areas, salmon migrating between the ocean and fresh water spawning grounds, and other aquatic organisms. The project seeks to reduce the number of CSO events at seven outfalls to no more than one overflow per outfall per year, which would significantly reduce the volume of combined sewage discharged into these waterways. It would also help address the objectives of the City of Seattle's and King County's federal and state consent decrees. The total estimated project cost is $382,598,831, and the City of Seattle is requesting $187,473,427 in WIFIA loan assistance.

We respectfully request that you give full and fair consideration to the City of Seattle's application.

Thank you for your consideration of our request.

Sincerely,

Patty Murray
United States Senator

Maria Cantwell
United States Senator

Pramila Jayapal
Member of Congress

JANICE D. SCHAKOWSKY
9TH DISTRICT, ILLINOIS

COMMITTEE ON ENERGY AND COMMERCE
Ranking Member, Digital Commerce and Consumer Protection
Health
Oversight and Investigations

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October 17, 2018

The Honorable Andrew R. Wheeler
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Acting Administrator Wheeler,

We write to urge the Environmental Protection Agency (EPA) to extend the comment period for an additional 60 days beyond the current period for the proposed rulemaking and Draft Environmental Impact Statement (Docket No. NHTSA-2017-0069) on the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks (Docket No. EPA-HQ-OAR-2018-0283).

Any proposed rule change must include sufficient time to gather input from concerned and affected parties. It is egregious that such a significant rule change is constrained by too limited of a time and opportunity for stakeholder analysis and thorough public comment.

Considering the strong response from scientists and environmental groups after the rule change was officially proposed, a comment period of 60 days does not allow for meaningful engagement from stakeholders. The Natural Resources Defense Council (NRDC) issued a statement opposing the proposal on the grounds that it will increase pollution and oil consumption, cost consumers $170 billion at the pump, and stop all progress toward environmentally-friendly transportation. Additionally, both Environment America and the Union of Concerned Scientists have stated that the proposal would dismantle one of the country's most successful climate initiatives to date. What is most shocking is that, by the agencies' own admission, the automotive industry will lose $200-$250 billion in revenue, cut investments in technology by $40 billion, and cut jobs by 60,000 in 2025. This is in addition to the loss of hundreds of thousands of jobs that would be created under the existing standards as fuel-saving innovations put more money in consumers' wallets and local economies.

The EPA has the vital mission of protecting human health and the environment. Yet this rule change profoundly diverges from that mission. The rollback will not only lead to Americans paying higher costs for fuel and increase oil consumption, but it will also raise pollution and put American lives at risk. The latest data from the National Highway Traffic Safety Administration confirms this. With this mission in mind, any significant rule changes that puts jobs, the environment, public health, and human lives at risk should be afforded a thorough discussion and a robust comment period.

We ask that you give the American public and interested stakeholders a chance to engage in the process by extending the comment period by at least 60 days beyond the current comment period scheduled to close on October 26, 2018.

Thank you,

Jan Schakowsky
Ranking Member,
Digital Commerce and Consumer Protection Subcommittee

Paul D. Tonko
Ranking Member,
Environment Subcommittee

Mark DeSaulnier
Member of Congress

Grace F. Napolitano
Member of Congress

Barbara Lee
Member of Congress

Debbie Wasserman Schultz
Member of Congress

Alan Lowenthal
Member of Congress

Sheila Jackson Lee
Member of Congress

Peter Welch
Member of Congress

Nydia M. Velazquez
Member of Congress

Bobby L. Rush
Member of Congress

Mark Takano
Member of Congress

Salud Carbajal
Member of Congress

Daniel W. Lipinski
Member of Congress

Scott Peters
Member of Congress

Chellie Pingree
Member of Congress

Eddie Bernice Johnson
Member of Congress

Betty McCollum
Member of Congress

Steve Cohen
Member of Congress

Brian Fitzpatrick
Member of Congress

Jerry McNerney
Member of Congress

Jamie Raskin
Member of Congress

Zoe Lofgren
Member of Congress

Henry C. "Hank" Johnson
Member of Congress

Peter DeFazio
Member of Congress

Jared Huffman
Member of Congress

Rick Larsen
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Raul M. Grijalva
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Brian Higgins
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Rosa L. DeLauro
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A. Donald McEachin
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Julia Brownley
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Pramila Jayapal
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Mike Thompson
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Darren Soto
Member of Congress

André Carson
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Nanette Barragán
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Doris Matsui
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Lucille Roybal-Allard
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Earl Blumenauer
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Albio Sires
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Adam Smith
Member of Congress

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Member of Congress

Tulsi Gabbard
Tulsi Gabbard
Member of Congress

John Garamendi
John Garamendi
Member of Congress

DANIEL T. KILDEE
5TH DISTRICT, MICHIGAN

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October 23, 2018

Alex M. Azar II
Secretary
Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Nick Lyon
Director
Michigan Department of Health and Human Services
333 S. Grand Ave
P.O. Box 30195
Lansing, Michigan 48909

Andrew Wheeler
Acting Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Heidi Grether
Director
Michigan Department of Environmental Quality
525 W. Allegan Street
P.O. Box 30473
Lansing, MI 48909-7973

Secretary Azar, Acting Administrator Wheeler, Director Lyon and Director Grether:

Today, it came to my attention that there are extremely high levels of per- and polyfluoroalkyl substances (PFAS) at a former General Motors Company (GM) factory site in Flint, Mich. I ask that both the state and federal government act immediately to ensure that the public is not harmed by these dangerous chemicals.

According to information provided to me by the Revitalizing Auto Communities Environmental Response (RACER) Trust, who is responsible for remediating and repurposing properties owned by the former General Motors Corporation, extremely high levels of PFAS were recently discovered at the "Buick City" site as high as 15,000 parts per trillion (ppt). Exposure to PFAS has been linked to many health issues such as cancer, high cholesterol, weakened immune system and hypertension during pregnancy.

The U.S. Environmental Protect Agency (EPA) has set a health advisory level for two types of PFAS, PFOA and PFOS, in drinking water at a combined 70 ppt. The results of the latest test results at Buick City shows PFAS contamination at levels hundreds of times higher than EPA's current health advisory level. Thus, due to such high levels of PFAS recently found at Buick City, both the state and federal government should work with the RACER Trust to clean up contamination and ensure the public is not exposed to dangerous PFAS chemicals.

Buick City sits along the banks of the Flint River, which was used as a drinking water source for the city of Flint from April 2014 until October 2016. Earlier this year, there were reports of PFAS being found in the Flint River. According to the state, this PFAS contamination did not impact the portion of the river that was used as an intake for drinking water. In light of the new test results at Buick City, the state and federal government should determine if at any time Flint residents were exposed to PFAS while the Flint River was used as a drinking water source.

To ensure the public is not exposed to PFAS, we must clean up contamination as quickly as possible, at this and other sites across Michigan. I encourage the state and federal governments to work with the RACER Trust to expediently clean up toxic PFAS at Buick City.

We owe the public full transparency about the levels of PFAS contamination and how communities have been impacted. I encourage the state and federal government to work with RACER Trust to determine the scope of the contamination at Buick City and if there are additional sites with potential contamination. Seeing as how the state has already identified more than 11,000 sites with possible PFAS contamination and Buick City is only one potential site, all levels of government must work together and move quickly to address this contamination.

I appreciate your attention to this very important matter and I look forward to continuing to work with you on this issue.

Sincerely,

Daniel T. Kildee

Daniel T. Kildee
MEMBER OF CONGRESS

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RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
MARY FRANCES REPKO, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

October 16, 2018

The Honorable Elaine L. Chao
Secretary
U.S. Department of Transportation
1200 New Jersey Ave. SE
Washington, DC 20530

The Honorable Andrew Wheeler
Acting Administrator
Environmental Protection Agency
1301 Constitution Ave. NW
Washington, DC 20460

Dear Secretary Chao and Acting Administrator Wheeler:

I write to strongly urge you to reverse course on your August, 2018 proposal to dramatically weaken future vehicle fuel economy and greenhouse gas tailpipe standards. The proposal, which is currently out for public comment, also seeks to remove California's authority to set and enforce its own greenhouse gas tailpipe standards (as well as the authority of the 12 additional states, including Delaware, which have adopted them). The proposal wrongly asserts that California's authority is preempted by law.

As I noted in my May, 2018 correspondence[1] regarding an earlier version of the draft rule that my office received, your proposal, if finalized, would harm U.S. national and economic security. It would also undermine efforts to combat global warming pollution, create regulatory and manufacturing uncertainty for the automobile industry and unnecessary litigation, and increase the amount of gasoline consumers would have to buy.

In past months, I have urged you both repeatedly to work to negotiate a 'win-win' solution on federal fuel economy and greenhouse gas tailpipe standards that can be supported by both the automobile industry and the State of California. President Trump[2], the automobile industry[3] and the State of California[4] have also indicated that they support such an approach.

Regrettably, your proposed vehicle standards do not seem to reflect the almost universally-shared view that a consensus approach is within reach and should be pursued. Moreover, the pending proposal is rife with seemingly unlawful assertions and erroneous assumptions. Specifically, the proposal makes the inaccurate assertion that the 'maximum feasible' fuel economy and tailpipe standards can legally be frozen for the better part of a decade, bases its

[1] https://www.carper.senate.gov/public/index.cfm/2018/5/carper-calls-on-chao-pruitt-to-abandon-draft-proposal-to-weaken-fuel-economy-and-tailpipe-emissions-standards
[2] https://www.cbsnews.com/news/trump-hopes-to-negotiate-with-california-on-fuel-standards/
[3] https://www.reuters.com/article/us-autos-emissions/major-automakers-urge-trump-not-to-freeze-fuel-economy-targets-idUSKBN1I821P
[4] https://www.reuters.com/article/us-autos-emissions/california-regulator-sees-window-for-deal-on-fuel-economy-rules-idUSKBN1JZ2TS

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safety analysis on a model that in no way reflects real-world driving or consumer behavior, artificially inflates the costs and minimizes the benefits of fuel-efficient technologies that are currently being used by automobile manufacturers, and fails to follow statutorily mandated requirements and procedures.

In fact, in comments submitted to the Department of Transportation and the White House Office of Management and Budget (OMB), EPA observed[5] that "EPA analysis to date shows significant and fundamental flaws in CAFE model…These flaws make the CAFE model unusable in current form for policy analysis and for assessing the appropriate level of the CAFE or GHG standards."

I have attached a non-exhaustive list of some of the most significant deficiencies in your Agencies' proposal. As you work to evaluate public comments, I want to underscore the consequences that could result if these deficiencies are not addressed in a final rule – which include precisely the sort of litigation and regulatory uncertainty the automobile industry wishes to avoid. Moreover, a likely outcome of that litigation is that courts will overturn NHTSA's proposed model year 2021-26 fuel economy standards, leaving no fuel economy standards whatsoever in place starting in model year 2022, and will additionally overturn EPA's proposed modifications to its existing model year 2021-26 tailpipe standards, leaving the current, more stringent EPA tailpipe standards in place. This appears to be the opposite of the outcome this Administration has said it wants.

I have spent considerable time over the past year talking frequently and extensively with automobile manufacturers, suppliers, officials representing the State of California, and other stakeholders. I remain convinced that an agreement is well within reach that would provide near-term flexibility and predictability for the auto industry, more rigorous standards going forward, and continued compliance flexibilities and incentives to develop electric and other advanced technology automobiles, all while avoiding years of unnecessary litigation with California and others. I urge you to abandon your current approach and do all that you can to support efforts to identify and finalize a 'win-win', consensus approach.

Thank you very much for your attention to this important matter. If you have any questions or concerns, please contact me directly or have your staff contact Michal Freedhoff of the Environment and Public Works Committee staff, at 202-224-8832.

With best personal regards, I am,

Sincerely yours,

Tom Carper

Tom Carper
Ranking Member

[5] See the June 18, 2018 email from William Charmley which can be accessed at https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-0453

Attachment 1

A non-exhaustive list of significant deficiencies in the proposed rules that, if finalized, could leave the rules vulnerable to legal challenge.

1. **Freezes the standards for almost a decade:** The Energy Policy and Conservation Act, as modified by the Energy Independence and Security Act, requires NHTSA to set the 'maximum feasible' fuel economy standard each year[6]. The Trump Administration's 'preferred alternative' freezes the stringency of the fuel economy standards in place from model years (MYs) 2020-26. Historic data (Attachment 2) shows that the fuel economy of the fleet has increased by 2-2.5 percent per year since the Bush Administration began increasing fuel economy standards for light duty trucks in 2005. It is simply implausible that the 'maximum feasible' fuel economy standard required under NHTSA's statute could legally be left unchanged for seven model years. Moreover, because the Notice of Proposed Rulemaking (NPRM) seeks to eliminate EPA's compliance credits for automakers that switch to less polluting air-conditioning refrigerants, the proposal effectively freezes the stringency of EPA's standards for almost nine model years[7].

2. **Ignores the statutory requirement to consider the need to conserve energy:** The law[8] states that when setting fuel economy standards, the Secretary of Transportation is required to consider "the need of the United States to conserve energy." This is a core tenet of the Energy Policy and Conservation Act, as modified by the Energy Independence and Security Act. Despite this explicit mandate, NHTSA proposes to abandon or minimize this consideration, stating that: "Given the discussion above, NHTSA tentatively concludes that the need of the U.S. to conserve energy may no longer function as assumed in previous considerations of what CAFE standards would be maximum feasible.....The world has changed, and the need of the U.S. to conserve energy, at least in the context of the CAFE program, has also changed." Contrary to NHTSA's statutory fuel conservation mandate, the proposed rule would increase fuel consumption by about half a million barrels per day.[9]

3. **Relies on modeling of driver habits that contains documented errors and yields conclusions which defy common sense, distorts projections of regulatory impact, and lacks credibility.** NHTSA is required by law to consider economic practicability when it is setting fuel economy standards.[10] As part of this analysis, NHTSA developed a new and not-yet-peer-reviewed module for predicting consumer behavior. The module essentially assumes stronger fuel economy standards depress new car sales and keep more old cars on the road. Despite repeated corrections by EPA that are recorded in the docket, the NHTSA module projects that each new vehicle sale that is deferred results in many more old cars staying on the road, driving billions more miles than the new

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[6] 49 U.S.C. 32902(a)

[7] See Table I-3 of the NPRM, which shows that the tailpipe standard for MYs 2021-26 is proposed to be approximately the same as that for MY 2018.

[8] https://www.law.cornell.edu/uscode/text/49/32902

[9] NPRM, p. 42986

[10] 49 U.S.C. 32902(f) (2007) (discussed in NPRM, p. 42306)

vehicles themselves otherwise would have – a pattern that defies common sense. Because additional vehicle miles traveled (VMT) correlate to both emissions increases and roadway fatalities, these implausible modeling results distort the regulatory impact analysis and render its results virtually meaningless as a basis for the statutorily required economic analysis. Indeed, the NPRM concludes that leaving the more stringent standards in place would lead to 12,700 additional deaths by MY 2029,[11] 6,180 of them attributable to this new module. However, materials in the rulemaking docket[12] indicate that EPA believes this NHTSA module is fundamentally flawed, cannot be relied upon to justify the proposed rollback, and that EPA repeatedly brought these deficiencies to NHTSA's attention. Specifically:

- According to EPA's analysis, NHTSA's module predicts that if the current standards are left unchanged, there will be a 15-20% increase in registered vehicles because so many old cars will stay on the road – a conclusion that cannot be explained by any real-world policy or projection.
- According to EPA's analysis, NHTSA's module predicts that the current, more fuel-efficient, standards would result in 8,000 *new* vehicles that consumers would not purchase each year (because they would be too costly), and also result in an additional 512,000 *used* vehicles remaining on the road each year, a phenomenon that appears to be a fictitious creation of the module that has no real-world explanation.
- According to EPA's analysis, NHTSA's module predicts an unexplained 10-15% increase in vehicle miles traveled (VMT) if the standards remain unchanged. Specifically, the module predicts people will drive an extra almost 700 billion miles in model years 1977-2029 vehicles, with no real-world explanation for why that would be[13].
- The exaggerated estimates of vehicle miles traveled are magnified by a factor called the 'rebound effect,' to which NHTSA attributes 6,340 of the 12,700 additional deaths that would result if the current standards are left unchanged. This factor assumes that because fuel-efficient cars are cheaper to use, people will drive more. The NPRM assigns a value of 20 percent to the 'rebound effect' (meaning 20 percent more driving by consumers in more fuel-efficient vehicles) – twice the value that both EPA and NHTSA have determined to be appropriate since 2010, and absent any justification for departing from its past practice.[14] EPA also found flaws in the application of the rebound factor, noting[15] that NHTSA's model wrongly predicts *less* driving associated with more stringent standards when the rebound effect was set to 20 percent than when it was kept to 0 percent, which is the opposite of what would be expected in the real world. This

[11] Table II-73 of the NPRM
[12] See for example the June 18, 2018 email from William Charmley which can be accessed at https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-0453
[13] Table VI-88 of the NPRM,
[14] See for example the June 18, 2018 email from William Charmley which can be accessed at https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-0453
[15] See for example the June 18, 2018 email from William Charmley which can be accessed at https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-0453

once again undermines the credibility of NHTSA's modeling results as a basis for legally justifying a regulatory decision.

4. **Ignores industry data on automobile safety**: Safety analysis has always been an important component of the balance that NHTSA seeks to achieve when setting fuel economy standards. Of the 12,700 additional deaths the NPRM states will occur if the currents standards are left unchanged,[16] 160 of them are attributed to 'mass changes'. This means that as vehicles are light-weighted to comply with more stringent standards, NHTSA believes that more people will die as a result of traffic accidents that occur in these lighter vehicles. Although the proposal notes that reducing the mass of light trucks generally improves the fleet's overall safety, it does not note that a recent study disproves[17] the argument that fuel economy standards result in more traffic fatalities in the first place. The proposal additionally fails to incorporate other industry[18] analysis[19] that shows that most of the mass reductions the industry is undertaking to improve fuel economy is being planned to occur in light trucks (which therefore, even by NHTSA's own flawed argument, should be projected to result in an overall *reduction* in traffic fatalities).

5. **The NPRM ignores premature deaths due to increased air pollution that are presented within their own environmental study:** Even NHTSA's contorted modeling shows that freezing fuel economy standards would increase air pollution, since vehicles that use more gasoline also emit more toxic air pollutants. Table 4.2.3.1 of the Draft Environmental Impact Statement[20] on the proposed rule shows that there will be as many as 299 premature deaths associated with freezing the standards from MYs 2020-26 by 2050. These additional deaths relative to the current standards are not factored into the total fatalities contained in Table 11-27 of the NPRM, and do not appear to be included in the analysis used to justify freezing the standards.

6. **Uses inaccurate and/or disputed cost, technology and compliance data that undermine the statutorily mandated analysis of 'technological feasibility'**: Another factor that NHTSA is required to consider when setting standards under the law is "technological feasibility."[21] Two years ago, NHTSA claimed there would be nearly $100 billon of net societal benefits[22] associated with maintaining the current standards, while now it claims that keeping these rules will lead to about $200 billion of net societal costs[23]. In its extensive comments[24] to NHTSA and OMB prior to the release of the proposed rule, EPA repeatedly highlighted examples of problematic cost, technology and

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[16] Table II-73 of the NPRM

[17] https://www.washingtonpost.com/news/energy-environment/wp/2017/05/03/scientists-just-debunked-one-of-the-biggest-arguments-against-fuel-economy-standards-for-cars/?noredirect=on&utm_term=.b872ce952443

[18] http://www.drivealuminum.org/wp-content/uploads/2018/08/Mass-Reduction-Chart.pdf

[19] http://www.drivealuminum.org/wp-content/uploads/2017/10/Ducker-Public_FINAL.pdf

[20] https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/ld_cafe_my2021-26_deis_0.pdf

[21] NPRM, 42306

[22] https://nepis.epa.gov/Exe/ZyPDF.cgi/P100OXEO.PDF?Dockey=P100OXEO.PDF page 13-103

[23] Table I-4 of the NPRM

[24] See for example the June 18, 2018 email from William Charmley which can be accessed at https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-0453

compliance assumptions made by NHTSA, most, if not all of which, do not seem to have been remedied in the proposed rule. All of these assumptions result in an over-estimation of the current, more fuel-efficient standards' costs, and an under-estimation of their benefits. If these assumptions are not remedied in the final rule, litigation could be filed on the grounds that each or all of them are arbitrary and capricious. Some examples of these flaws include:

- EPA observed that NHTSA over-estimated the costs of some fuel-efficient technologies compared to their current, real-world costs and use. For example, EPA noted that NHTSA assigned a cost of Dynamic Cylinder Deactivation that "is 2-4 times higher than industry quoted costs for the version of the technology which is going into production in MY2019," observing that the high costs lead to a prediction that this technology will not be implemented *at all* under its 'preferred alternative,' even though GM is offering the technology in the MY 2019 Silverado which will be available for sale in late 2018. EPA believes that existing plans to use this technology will likely result in its inclusion in "well past 4.4%" of the new vehicles sold in the MY2019-2022 timeframe. In another example, EPA notes that NHTSA assumes that the cost of batteries for hybrid and plug-in vehicles is in most cases 20-40% more expensive than would be expected using Department of Energy projections.
- EPA told NHTSA and the White House Office of Management and Budget that the NHTSA model uses the most expensive technology packages available to meet the standards, which overestimates the most cost-effective ways to do so by $1-2,000 per vehicle. For example, NHTSA's assumptions about which types of hybrid technology to include in its model results in "strong hybrid packages that are significantly higher costs [sic] and less effective than the vast majority of real-world implementations."
- EPA identified NHTSA's omission of the benefits of some fuel-efficient technologies entirely, along with errors in the values NHTSA assigned to others. For example, 'start/stop' technology, which causes engines to automatically shut off while vehicles are stopped in traffic (and thus use no fuel), was estimated by NHTSA to have a negative effect on fuel-efficiency in some scenarios, which is simply not plausible. In another instance, EPA observed that the most advanced eight-speed transmission technologies are assigned unrealistically low fuel-efficiency effectiveness values for some vehicle types. EPA also noted that the more expensive version of an engine technology (TURBO2), which would be expected to be more fuel-efficient, was instead assigned a negative fuel-efficiency value for some types of vehicles in NHTSA's model. Additionally, an existing engine technology called cooled exhaust gas recirculation (CEGR1), which has been demonstrated in the market to significantly reduce carbon dioxide emissions, was assigned a fuel-efficiency effectiveness of at or near zero for nearly all of the options modeled by NHTSA.
- EPA also called out NHTSA's decisions to omit the existence of technologies that provide a significant improvement to fuel economy that are currently deployed in the marketplace, such as the Atkinson engine. EPA observed that with "Mazda applying the technology to the majority of their current vehicles, and Toyota

announcing its plan for at least 60 percent application (by volume) by 2021," it was unrealistic that the NHTSA model does not even project the inclusion of this technology in *future* compliance modeling scenarios of the companies that use the technology *today*.

- EPA also noted that NHTSA did not appear to recognize that the Clean Air Act allows trading of compliance credits between a company's car and truck fleets, which most companies currently and regularly engage in. This failure had the effect of driving compliance costs up since it assumes that a company would need to purchase credits from other companies rather than transfer credits from (for example) its over-compliant car fleet to its under-compliant truck fleet. According to EPA, the model also "inappropriately applies the credit cap (10g/mi) separately to each manufacturer's car and truck fleets" rather than the combined fleet as allowed for in the regulations.

7. **Relying on preemption analysis that has been rejected by courts**: The NPRM states that "States may not adopt or enforce tailpipe greenhouse gas emissions standards when such standards relate to fuel economy standards and are therefore preempted under EPCA [Energy Policy and Conservation Act], regardless of whether EPA granted any waivers under the Clean Air Act (CAA)." It additionally concludes that "the California ZEV [zero-emissions vehicle] mandate is expressly and impliedly preempted by EPCA." These assertions are starkly contradicted by the body of case law interpreting the interplay between EPCA, CAA[25], State waivers under the CAA, and the legislative history of both acts. That history affirms that EPCA's preemption provisions simply do not apply to pollution standards applicable to new motor vehicles, including greenhouse gas pollution standards, set by EPA or by California acting pursuant to a Clean Air Act waiver. The document also does not cite the clear Congressional intent on this point expressed by three of the principal[26] authors[27] of the fuel economy provisions of EPCA during their December, 2007 consideration on the House and Senate Floors that also refute the preemption proposal's premise.

8. **Unprecedented attempt to revoke California's waiver to set standards:** The NPRM also proposes to revoke the waiver California received under section 209 of the Clean Air Act to enforce its own light duty vehicle and zero-emissions vehicle standards, although EPA has never before revoked any of the more than 100 such waivers that have been granted.[28] The NPRM invokes all three statutory criteria that could be used to deny a waiver, namely that "EPA finds that California's determination that its standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal

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[25] See for example *Massachusetts v. E.P.A.*, 549 U.S. 497, 532 (2007), which stated that the two statutory directives "may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency", and *Central Valley Chrysler-Jeep, Inc. v. Goldstene*, 529 F. Supp. 2d 1151, 1177 (E.D. Cal. 2007); *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F. Supp. 2d 295 (D. Vt. 2007), which both held that EPCA does not preempt California's standards.

[26] https://www.gpo.gov/fdsys/pkg/CREC-2007-12-06/pdf/CREC-2007-12-06-pt1-PgH14434-2.pdf. See page 10 for the remarks of then-Congressman Edward. J. Markey

[27] https://www.gpo.gov/fdsys/pkg/CREC-2007-12-13/pdf/CREC-2007-12-13-pt1-PgS15385.pdf. See page 2 for the remarks of Senator Feinstein and the late Senator Inouye.

[28] https://www.nrdc.org/experts/irene-gutierrez/baseless-threats-californias-clean-car-waiver.

standards, is arbitrary and capricious; that California does not need its own standards to meet compelling or extraordinary conditions; or that such California standards and accompanying enforcement procedures are not consistent with Section 202(a) of the CAA." Since the NPRM proposes to freeze federal standards between MYs 2020-26, it is difficult to understand how a determination that California's stronger standards would be more protective of public health and welfare could be arbitrary and capricious. No scientific or other evidence was provided to refute EPA's 2009 approval[29] of California's waiver application, which acknowledged the "adverse impact that climate change may have on local ozone conditions" as well as "the evidence submitted concerning the observed and projected impacts of global climate change in California and other states" when it determined that the conditions the California standards were intended to meet constituted compelling and extraordinary conditions. Finally, as noted in the above section, several court decisions have informed the question of whether fuel economy standards, EPA tailpipe standards and California's separate standards can co-exist free of conflict, as they have since 2009.

9. **EPA did not draft its own proposed rule, which may be unlawful:** Numerous reports have indicated that EPA provided almost no input into this proposal, which was written largely by NHTSA. One recently retired EPA official stated that "EPA staff had basically nothing to do with that entire document and analysis,[30]" and another current EPA official asked[31] that EPA's logo be removed from the document to reflect that fact. Not only is this a dramatic departure from past inter-agency processes, it is also likely illegal, as courts[32] have[33] repeatedly[34] ruled that agencies can use external input and advice when writing regulations under their own statutory authorities, but must write the regulations themselves.

10. **NHTSA failed to include a reasonable range of regulatory alternatives as mandated by the National Environmental Policy Act:** The range of alternative standards that were analyzed in NHTSA's Draft Environmental Impact Statement depart from past practice, because they do not appear to include a reasonable range of alternative rulemaking options. In fact, none of the alternatives analyzed are more stringent than the current (augural) standards. This also poses a legal vulnerability. In 1981, the Council on Environmental Quality published in a memorandum to agencies that addressed how alternatives should be selected,[35] saying that the range examined should include "the full spectrum of alternatives". It uses as an example a proposal to designate wilderness areas within a National Forest from 0 to 100 percent of the forest and states that "An appropriate series of alternatives might include dedicating 1, 10, 30, 50, 70, 90 or 100

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[29] https://www.gpo.gov/fdsys/pkg/FR-2009-07-08/pdf/E9-15943.pdf
[30] https://www.eenews.net/stories/1060091981
[31] https://www.washingtonpost.com/energy-environment/2018/08/15/trump-administration-said-weaker-fuel-standards-would-save-lives-epa-experts-disagree/?utm_term=.21f0b9849f67
[32] *U.S. Telecomm v. FCC*, 359 F. 3d 554, 567-68 (D.C. Cir. 2004)
[33] See the illustrative discussion in *Coalition for Responsible Regulation v. EPA* regarding EPA's use of the IPCC reports in crafting the endangerment finding at 684 f 3d at 120
[34] Ergon-West Virginia, Inc. v. EPA, No. 17-1839 (4th Cir. 2018)
[35] https://www.energy.gov/sites/prod/files/G-CEQ-40Questions.pdf

percent." The document goes on to explain that reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant. Several[36] court[37] decisions[38] have opined on this 'reasonableness' test and required a broader range of alternatives to be required for consideration by agencies that were found to have unlawfully constrained them.

[36] Sierra Club v Marsh, 714 F. Sup. 539 (1989)
[37] Calvert Cliffs' Coordinated Committee v. Atomic Energy Commission, 449 F.2d 1109 (D.C. Cir. 1971), cert. denied, 404 U.S. 942 (1972)
[38] Natural Resources Defense Council v. Morton, 458 F.2d 827 (D.C. Cir. 1972)

Attachment 2 – Historic Tailpipe Performance of Cars and Trucks (not including advanced technology vehicle, air conditioning off-cycle or other compliance flexibilities)

Tailpipe efficiency improvement for cars and trucks combined			
Year	EPA Unadj., Lab (MPG)	NHTSA CAFE (MPG)	Actual tailpipe improvement over prior year
1975	15.3	N/A	
1976	16.7	N/A	9.15%
1977	17.7	N/A	5.99%
1978	18.6	19.9	5.08%
1979	18.7	20.1	0.54%
1980	22.5	23.1	20.32%
1981	24.1	24.6	7.11%
1982	24.7	25.1	2.49%
1983	24.6	24.8	-0.40%
1984	24.6	25.0	0.00%
1985	25.0	25.4	1.63%
1986	25.7	25.9	2.80%
1987	25.9	26.2	0.78%
1988	25.9	26.0	0.00%
1989	25.4	25.6	-1.93%
1990	25.2	25.4	-0.79%
1991	25.4	25.6	0.79%
1992	24.9	25.1	-1.97%
1993	25.1	25.2	0.80%
1994	24.6	24.7	-1.99%
1995	24.7	24.9	0.41%
1996	24.8	24.9	0.40%
1997	24.5	24.6	-1.21%
1998	24.5	24.7	0.00%
1999	24.1	24.5	-1.63%
2000	24.3	24.8	0.83%
2001	24.2	24.5	-0.41%
2002	24.1	24.7	-0.41%
2003	24.3	25.1	0.83%
2004	24.0	24.6	-1.23%
2005	24.8	25.4	3.33%
2006	25.2	25.8	1.61%
2007	25.8	26.6	2.38%
2008	26.3	27.1	1.94%
2009	28.2	29.0	7.22%
2010	28.4	29.3	0.71%
2011	28.1	29.0	-1.06%
2012	29.9	30.8	6.41%
2013	30.7	31.6	2.68%
2014	30.7	31.7	0.00%
2015	31.4	32.2	2.28%
2016	31.6		0.64%
2017 (prelim)	*32.3*		2.22%
Average, 2005-2016			2.35%
Average, 2012-2016			2.40%

Source: EPA's Fuel Trends, Table 9.1

Congress of the United States
Washington, DC 20510

October 25, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington D.C. 20004

Dear Acting Administrator Andrew Wheeler:

We write to request the U.S. Environmental Protection Agency (EPA) perform an in-depth investigation of ethylene oxide (EtO) emissions at two facilities in Lake County, Illinois—Medline Industries, Inc. in Waukegan and Vantage Specialty Chemicals, Inc. in Gurnee.

The National Air Toxics Assessment (NATA) is a critical public health tool that EPA and other agencies use to identify sources of pollution and potential risks to public health. Since the release of the 2014 NATA, EPA has worked to address public concern about increased cancer risks in DuPage County due to EtO emissions from the Sterigenics facility in Willowbrook. The same assessment identified EtO emissions from the Medline and Vantage facilities as possibly leading to increased cancer risk in the Lake County area. Given this discovery, we request the EPA work with the Illinois Environmental Protection Agency to:

- Conduct ambient air monitoring and stack tests to identify any emissions from the Medline and Vantage facilities and determine whether these facilities are in compliance with existing Clean Air Act (CAA) regulations.
- Guarantee both companies are taking the necessary steps to limit EtO emissions using any available pollution control technologies, as the Sterigenics facility did;
- Make all test data publicly available and hold a public meeting to assure residents that steps are being taken to mitigate the EtO exposure in Lake County; and
- Publish the threshold public health standard EPA will use to determine if the fugitive EtO emissions from Vantage Specialty Chemicals, Inc. or Medline Industries, Inc. exceed levels that science deems safe.

In addition, we urge EPA to publish a timeline for when it will revise the current CAA EtO standards to limit future emission are limited to a level deemed safe by the 2016 Agency for Toxic Substances and Disease Registry and 2014 NATA reports. These recent reports have shown that the existing standards need to be lowered to protect public health in communities across the county.

Thank you for considering our requests, and we look forward to your response.

Sincerely

RICHARD J. DURBIN	TAMMY DUCKWORTH	BRADLEY S. SCHNEIDER
United States Senator	United States Senator	United States Representative

United States Senate

WASHINGTON, DC 20510

October 26, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20460

The Honorable Elaine Chao
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Acting Administrator Wheeler and Secretary Chao,

We are writing to express our strong opposition to the recently proposed Safer Affordable Fuel-Efficient (SAFE) Vehicles Proposed Rule for Model Years (MY) 2021-2026 released by the Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) on August 2, 2018. The preferred option in the SAFE Vehicles Proposed Rule would freeze NHTSA's light-duty fuel economy standards at MY 2020 levels, with no year-over-year improvement through 2026. When considered together with an additional proposal to eliminate the hydrofluorocarbon compliance credits, the stringency of EPA's vehicle greenhouse gas emissions standards would actually be frozen from 2018 through 2026. This preferred alternative would result in an estimated light-duty fleet fuel economy of around 37 miles per gallon[1] and a carbon dioxide emission standard of around 240 grams per mile.[2] Under the current standards, light-duty fleet carbon dioxide emissions are projected to be limited to 173 grams per mile, with an equivalent fuel economy rating of more than 50 miles per gallon by 2025.[3]

The fuel economy and vehicle greenhouse gas emissions standards on the books save consumers money on gasoline, reduce oil consumption, promote jobs in manufacturing and fuel efficient technology, and help our automakers compete in a fast-changing global market. They also cut down on carbon emissions and other dangerous air pollutants.

The standards help stretch consumers' budgets by getting them further on each gallon of gasoline. The Union of Concerned Scientists has estimated that the standards have saved American drivers more than $67 billion so far[4] and that the rollback would increase consumer

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[1] This is the measurement on the test cycle. Consumers would see a real-world fuel economy of 30 mpg.

[2] *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks* [NHTSA–2018–0067; EPA–HQ OAR–2018–0283; FRL–9981–74–OAR] https://www.govinfo.gov/content/pkg/FR-2018-08-24/pdf/2018-16820.pdf.

[3] *Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation* [EPA-420-R-17-001], https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100QQ9L.pdf at p. 5.

[4] *Fuel Economy Ticker*, Union of Concerned Scientists, https://www.ucsusa.org/clean-vehicles/fuel-economy-ticker.

spending by $20 billion in 2025 and almost $50 billion by 2035.[5] A June 2018 EPA review of the proposed rule found that consumer savings would cancel out any increase in up-front cost within 3.5 years—eight years faster than the NHTSA model claimed.[6] Over the entire lifetime of a car or truck, the savings will accrue even further. One recent study concluded that owners of MY2025 cars would save up to $5,000 over the lifetime of their vehicle under the current standard, compared to owners of MY2020 cars.[7]

Freezing the standards at 2020 levels, as the Trump administration proposes in this rule, would increase domestic oil consumption by 500,000 barrels of oil per day.[8] Some external estimates are far higher—that this freeze could lead to as much as 881,000 more barrels of oil used per day by 2035.[9] Additionally, if we freeze the fuel economy and vehicle emissions standards at 2020 levels, we will emit an additional 2.2 billion metric tons of global warming pollution—as much as would be emitted by 55 coal-fired power plants, running for ten straight years.[10]

These standards are also helping to create jobs in the domestic auto industry. Since 2012—the year the current fuel economy standards were established following an agreement between the auto industry, the California Air Resources Board, and the federal government—motor vehicle parts manufacturing jobs grew by more than 19 percent, representing the largest sector of manufacturing jobs in the country.[11] A May 2017 report found that more than 288,000 workers are currently employed in jobs connected to vehicle fuel efficiency, jobs that would be threatened if the freeze on innovation in the preferred option is instituted.[12] The auto assembly workforce has likewise boomed, with seven straight years of growth and a 40 percent overall increase from 2010 to 2016.[13] Under the administration's own analysis, however, their proposal to freeze the fuel economy and vehicle emissions standards would result in 60,000 lost jobs in the American auto industry alone in 2030.[14]

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[5] Don Anair, *Auto Standards Rollback: Oil Companies Win, Everyone Else Loses*, Union of Concerned Scientists (July 27, 2018), https://blog.ucsusa.org/don-anair/auto-standards-rollback-oil-companies-win-everyone-else-loses.
[6] *Email 5 - Email from William Charmley to Chandana Achanta - June 18, 2018* [EPA-HQ-OAR-2018-0283], https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-0453.
[7] *Clean Car Roll-back*, M. J. Bradley & Associates LLC (July 20, 2018), https://www.edf.org/sites/default/files/MJ_Bradley_Clean_Cars_rollback_report.pdf
[8] NHTSA–2018–0067; EPA–HQ–OAR–2018– 0283; FRL–9981–74–OAR
[9] Kate Larsen, Trevor Houser, and Shashank Mohan, *Sizing Up a Potential Fuel Economy Standards Freeze*, Rhodium Group (May 3, 2018), https://rhg.com/research/sizing-up-a-potential-fuel-economy-standards-freeze/.
[10] Dave Cooke, *New EPA Administrator, Same Bad Idea—Car Standard Rollbacks Would be Awful*, Union of Concerned Scientists (Jul. 20, 2018), https://blog.ucsusa.org/dave-cooke/new-epa-administrator-same-bad-idea-car-standard-rollbacks-would-be-awful.
[11] *Driving the Future*, Motor & Equipment Manufacturers Association (January 26, 2017), https://www.mema.org/sites/default/files/MEMA_ImpactBook.pdf
[12] *Supplying Ingenuity II*, NRDC and BlueGreen Alliance (May 2017), https://www.bluegreenalliance.org/wp-content/uploads/2017/05/Supplying-Ingenuity-vFINAL-low-res.pdf.
[13] *Automotive Industry: Employment, Earnings, and Hours*, Bureau of Labor Statistics, https://www.bls.gov/iag/tgs/iagauto.htm.
[14] NHTSA–2018–0067; EPA–HQ–OAR–2018 0283; FRL 9981 74 OAR (Table VII-5).

Countries around the world are moving toward more fuel efficient and lower-emitting vehicles. If the United States chooses to push oil over innovation, we are leaving our auto companies at risk of years of uncertainty and making it more likely that companies will lose out in the global marketplace. This worldwide trend toward strong standards is only accelerating. On October 3, 2018, the European Union voted in favor of new rules that would require the transport sector to cut its carbon dioxide emissions by 40 percent by 2030, compared with 2021 levels, with a penalty for automakers who fail to meet the benchmarks.[15]

The Trump administration's proposal to freeze the fuel economy and vehicle greenhouse gas emissions standards is wrong on its merits. It is also being coupled with an attack on the Clean Air Act waiver that California, 12 other states, and the District of Columbia use to implement strong state-level standards—a direct assault on clean air, states' rights, and certainty for the auto industry. This move to preempt the waiver directly contradicts legislative intent, statutory text, and past court decisions, and out of the more than 100 waivers granted over the past 50 years, none has ever been revoked.

For these reasons, we ask that you reject the preferred alternative of freezing the fuel economy emissions standards at 2020 levels, and instead adopt strong standards that all stakeholders, including California, can support. If strong standards that maximize fuel savings are maintained, consumers will save money on gas, jobs in auto manufacturing and fuel-efficient technology will continue to increase, the American auto industry will be able to compete internationally, and innovation will continue to thrive.

Sincerely,

Edward J. Markey
United States Senator

Tom Carper
United States Senator

Dianne Feinstein
United States Senator

Charles E. Schumer
United States Senator

[15] Gilbert Reilhac, Alissa de Carbonnel, and Daphne Psaledakis, *EU Lawmakers Back 40 Percent CO2 Cut for Cars, Vans by 2030*, Reuters (Oct. 3, 2018), https://www.reuters.com/article/us-eu-auto-emissions/eu-lawmakers-to-vote-on-co2-cut-for-cars-vans-idUSKCN1MD0RC.

Maria Cantwell
United States Senator

Catherine Cortez Masto
United States Senator

Robert Menendez
United States Senator

Kamala D. Harris
United States Senator

Richard Blumenthal
United States Senator

Tammy Baldwin
United States Senator

Ron Wyden
United States Senator

Richard J. Durbin
United States Senator

Tina Smith
United States Senator

Sheldon Whitehouse
United States Senator

Chris Van Hollen
United States Senator

Brian Schatz
United States Senator

Amy Klobuchar
United States Senator

Patrick Leahy
United States Senator

Michael F. Bennet
United States Senator

Kirsten Gillibrand
United States Senator

Jack Reed
United States Senator

Robert P. Casey, Jr.
United States Senator

Benjamin L. Cardin
United States Senator

Bernard Sanders
United States Senator

Jeffrey A. Merkley
United States Senator

Margaret Wood Hassan
United States Senator

Jeanne Shaheen
United States Senator

Mazie K. Hirono
United States Senator

Patty Murray
United States Senator

Christopher A. Coons
United States Senator

Bill Nelson
United States Senator

Elizabeth Warren
United States Senator

Klasen, Matthew

From: Kielceski, Kate (HSGAC) <Kate_Kielceski@hsgac.senate.gov>
Sent: Thursday, October 18, 2018 11:08 AM
To: Grevatt, Peter
Cc: Kielceski, Kate (HSGAC); Klasen, Matthew
Subject: TRANSCRIPT REVIEW AND QFRs FOR GREVATT
Attachments: 2018-09-26 Grevatt Transcript Edits Cover Letter.pdf; 09-26-18 Grevatt Hearing Transcript.pdf; 180926.Hassan_September_26_PFAS_QFR_1of3.docx; PFAS Hearing 9-26-18 Peters QFRs - Grevatt.docx

Good morning,

Attached is your transcript for the September 26, 2018 FSO hearing "The Federal Role in the Toxic PFAS Chemical Crisis." These hearing transcript pages are furnished to you so that you may review the testimony and make necessary typographical and grammatical corrections. Other minor clarifying changes are acceptable provided that they do not change the context of the original testimony. Changes in substance are not permitted and excessive editing will be ignored.

Please print out, mark your corrections in red or blue ink, and return the cover letter and just the pages on which you have made corrections. If you have no edits, please note that on the cover letter. For instructions on how to return edits, please see the attached cover letter.

Also attached to this email are Questions for the Record submitted to you by members of the Federal Spending Oversight and Emergency Management Subcommittee. Per subcommittee rules, the witness' responses to these questions must be returned within 35 days.

Transcript edits and Questions for the Record are due to me by Thursday, November 22, 2018.

If you have any questions, please let me know.

Best wishes,
Kate Kielceski

Kate Kielceski
Subcommittee Clerk
Committee on Homeland Security and Governmental Affairs
U.S. Senate
Washington, D.C. 20510
202-224-9868

Post-Hearing Questions for the Record
Submitted to Peter C. Grevatt, Ph.D.
Office of Ground Water and Drinking Water
Office of Water
U.S. Environmental Protection Agency
Senate Committee on Homeland Security and Governmental Affairs
Subcommittee on Federal Spending Oversight and Emergency Management
"The Federal Role in the Toxic PFAS Chemical Crisis" – September 26, 2018

The Honorable Gary C. Peters

1. What steps is EPA taking to establish the methods for measuring PFAS in soil and groundwater? What is the expected timeframe for these methods to be established and agreed upon nationally?

2. As recently as five years ago, EPA had to rely upon industry provided records to understand what PFAS chemicals were manufactured or utilized. The Agency's Significant New Use Rule authority provided by the recent TSCA reauthorization was intended to help the agency better understand what chemicals are being produced or used here in the United States. Can you elaborate on EPA's use of the "Significant New Use Rule" authority to potentially understand new uses of PFAS chemicals before they are commercialized? Specifically, will the Significant New Use Rule help EPA better understand the implications of PFAS chemicals as a class, or does EPA interpret the authority provided by Congress to be more narrowly tailored to assess the two specific chemicals, PFOA and PFOS?

The Honorable Margaret Wood Hassan

1. How many Americans are known or expected to have been exposed to PFAS in their drinking water? Is this estimate your provide for people on public water supplies or does it include people on private drinking water wells?

2. How many Americans have been exposed to levels of PFOA and PFOS that exceed the EPA drinking water guideline?

3. When did the EPA begin developing its drinking water guideline for PFOA and PFOS?

4. When were the guidelines publicly available?

5. When were the data documenting the presence of PFAS under the Safe Drinking Water Act's Unregulated Contaminant Monitoring Rule analyzed? When were they made publicly available?

6. How many years have passed since the EPA has known that PFAS – including PFOA and PFOS are present in public drinking water supplies?

7. What is the difference between a guideline and a standard?

8. If an EPA standard is developed, are all states required to meet the standard?

9. If an EPA standard is developed, are DoD facilities required to meet the very same standard(s)? Why or why not?

10. The Centers for Disease Control Agency for Toxic Substances and Disease Registry released its Toxicity Profile for PFAS this summer. The ATSDR guidelines for PFOA and PFOS are almost 10 times less than the EPA drinking water guidelines. Why is this?

11. In your opinion, do the EPA guidelines meaningfully reduce risk to human health?

12. Based on the scientific evidence, do you think that the EPA guidelines set for PFOA and PFOS are health protective? Are they specifically protecting infants who are bottle fed with water from their contaminated home source or those who are breast fed where moms are drinking contaminated water?

13. Do you think that the EPA drinking water guidelines should be developed for the suite of chemicals measured in the UCMR and not just for PFOA and PFOS?

14. The last drinking water standard EPA developed was way back in the 1990s and in fact was only a lowering of the arsenic standard. Does EPA have the person power and technical abilities to develop PFAS federal drinking water standards?

15. If so, how long would it take to develop and promulgate a standard?

16. How many people's health will be harmed in the time it takes to develop a national standard?

17. When we know that very small amounts of PFAS can negatively affect health, why is EPA treating results below the UCMR minimum reporting levels (MRLs) [20 ppt PFOA; 40 ppt PFOS] as "zero"? Are they zero or are they levels that we need to be concerned about?

18. The PFASs have been in commerce for tens of years. Can the Lautenberg Amendment to the Toxics Substances Control Act be used to require pre-market testing of all of the PFASs? What is preventing this from happening?

19. Filtration is the currently feasible technology to remove PFAS from water. The filters that contain the PFAS are then disposed of. Where are they disposed of? Are these toxic? Does this mean that PFAS should be listed as Superfund chemicals and disposed of in hazardous waste facilities?

20. PFASs are measured in waste water and in sewage sludge. Does this mean that PFASs are now in our rivers, streams and lakes? Are our fish contaminated? If yes, why is EPA not regulating discharge to waterways?

21. What is EPA's plan to further engage with the community in NH and get direct input from Granite Staters about PFAS contamination in their waters?

PETER T. KING
Member of Congress
Second District, New York

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PERMANENT SELECT COMMITTEE ON INTELLIGENCE
CHAIRMAN, SUBCOMMITTEE ON EMERGING THREATS

FINANCIAL SERVICES COMMITTEE
SUBCOMMITTEE ON CAPITAL MARKETS, SECURITIES & INVESTMENTS
SUBCOMMITTEE ON OVERSIGHT & INVESTIGATIONS

October 5, 2018

Mr. David P. Ross
Assistant Administrator
USEPA - Office of Water
WJC Building
1200 Pennsylvania Avenue NW
Washington DC, 20460

Subject: CP-8108 Suffolk County Sewer District #3 – Bergen Point WWTP - Outfall Replacement – AIS Waiver Request for Duplex Stainless-Steel Pipe

Dear Mr. Ross:

Suffolk County Department of Public Works (SCDPW) is replacing a 14,000- foot deteriorated section of the existing Bergen Point Wastewater Treatment Plant (WWTP) outfall, located in West Babylon, New York. This project is receiving federal and state funding and is subject to the American iron and Steel requirement. The section of the outfall pipe being replaced passes beneath the bottom of the Great South Bay, which has been designated by New York State as part of the South Shore Estuary Reserve. The shallow waters of Great South Bay are a highly productive and regionally significant habitat for marine finfish, shellfish and wildlife. This productivity is due to the many salt marshes and mud flats fringing both the mainland and the barrier islands, to the estuarine habitats around stream and river outlets on the mainland and to the sandy shoals and eel grass beds which characterize open-water areas of the bay. As a result, Great South Bay provides a commercial and recreational fishery of regional importance, affording essential habitat to many economically valuable finfish species that are estuarine-dependent during at least one stage in their life histories. In addition, the wetlands and sea grass beds act as wave and storm surge buffers which provide a significant barrier against storms. The tidal wetlands can protect coastal communities from storm damage by reducing wave energy and amplitude, slowing water velocity and stabilizing the shoreline through sediment deposition.

The existing outfall pipe is comprised of precast concrete cylinder pipe (PCCP) which realizes it strength from the prestressed wire that is wrapped around its inner core. It has been documented through previous investigations that the prestressed wires are breaking, and the pipe has a reduced pressure rating which limits the operating pressure. If the outfall pipe were to fail prior to the completion of the outfall replacement project, there could be a major environmental impact to both the health and economy of the Great South Bay as well as detrimental effect to the wetlands and eel grass. The replacement of this outfall pipe in a timely manner is critical to protecting the Great South Bay.

The outfall pipe is being replaced by a tunnel located approximately 90 feet below the bottom of the Great South Bay. The piping connecting the existing final effluent pump station to the new tunnel and the tunnel to the remaining 18,000-feet of outfall pipe that discharges out in the Atlantic Ocean must be manufactured of material that will not corrode from the effects of the salt/brackish water that it will be

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exposed to. The pipe material selected was Super Duplex 2507 stainless steel. The raw material for this pipe is not manufactured in the quantities required for this project for the pipe to meet the AIS requirements. Therefore, it has to be obtained from overseas and this is why the AIS Waiver Request was submitted on June 26, 2018.

EPA has reviewed the Waiver Request and has stated that they found the specifications acceptable with no concerns. They conducted their own independent market research and did not find any alternative domestic products that met the project specifications. They also stated that they received no substantial comments during the 15-day public comment period and have forwarded their draft recommendation to EPA management for a final decision.

At this time, we strongly encourage EPA to approve the AIS Waiver Request for this project to allow the project to move forward on schedule. Any delay to the project extends the time period for a potential failure of the existing outfall pipe under the Great South Bay which would result in negative environmental and economic impacts. Delay in the issuance of the AIS Waiver Request approval may also result in delay claims by the Contractor which could result in millions of dollars in additional cost to the project.

I appreciate EPA's consideration of this request to allow this significant environmental project to move forward.

Sincerely,

PETER T. KING
Member of Congress

PTK/pg

Congress of the United States
Washington, DC 20515

October 18, 2018

The Honorable Andrew Wheeler
Acting Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Mr. Wheeler:

We are aware of your intent to dissolve the Office of the Science Advisor at the Environmental Protection Agency (EPA) and merge its staff with the Office of Science Policy, and we write to express our strong opposition. This unnecessary and counterproductive consolidation will undermine scientific integrity, jeopardize bedrock public health and environmental standards, and endanger the EPA's ability to fulfill its mission of protecting human health and the environment.

As a cornerstone of its regulatory process, the EPA relies on the integration of the best available, independent science to inform federal policy. In 1992, a four member EPA panel that included two members of the National Academy of Sciences recommended that the EPA Administrator appoint a science advisor to "ensure that credible scientific information for EPA guidance and decisions is available from both EPA scientists and the broader scientific community."[1] The creation of the Office of the Science Advisor (OSA), independent of the EPA's program offices, was a vital step in recognizing the value of independent scientific analysis. Since that time, the office has provided essential, direct advice to the Administrator and led numerous agency-wide initiatives to improve the use of science.

Eliminating the OSA will jeopardize the EPA's work to standardize and improve scientific practices. The move disregards the importance of autonomy for the OSA and will make it more difficult to investigate allegations of inappropriate political interference or bias in science, particularly within the EPA's Office of Research and Development (ORD). Perhaps most significantly, dissolving the OSA imperils your access to informed, objective advice both in the development of rulemaking and the EPA's role in responding to disasters.

Additionally, the EPA's proposed changes to the OSA appear to be yet another attempt to diminish and dismiss the role of scientists. The Agency has proposed rulemaking to block access to good science by limiting the scope of research that the EPA can consider in making decisions. The proposed "Strengthening Transparency in Regulatory Science" rule would force the EPA to ignore valuable information discovered during their research because it contains confidential privacy-related health information. Former Administrator Scott Pruitt stacked the Science Advisory Board, which is charged with reviewing the quality and relevance of the scientific and

[1] "Safeguarding the Future: Credible Science, Credible Decisions," U.S. Environmental Protection Agency (EPA), March 1992. https://nepis.epa.gov/Exe/ZyPDF.cgi/30001ZWJ.PDF?Dockey=30001ZWJ.PDF

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technical information being used by the EPA, with industry representatives in lieu of scientists and independent academics.[2]

Furthermore, the Administration's budget request for Fiscal Year 2018 proposed eliminating the Office of Environmental Justice, which addresses the disparate environmental burdens on low-income, minority, and indigenous communities.[3] Fortunately Congress restored funding for the office, but there is no doubt that the proposed changes would have resulted in disproportionate effects on our most vulnerable communities. The EPA should be taking steps to safeguard children from exposure to environmental hazards during Children's Health Month. Instead, the Office of Children's Health Protection lacks a director and reports indicate that the office may soon be dismantled.[4] Most recently, the EPA hired David Dunlap, a former Koch Industries lobbyist, to serve as the Deputy Assistant Administrator for Research and Development and the liaison between the ORD and your office.

The continued efforts to eliminate the role of science at the EPA will have chilling consequences for every person who benefits from clean air and clean water, particularly and disproportionately young children, seniors, and the health-impaired.

Earlier this month, the *Washington Post* reported that the OSA was excluded in the development of the EPA's proposed "Strengthening Transparency in Regulatory Science" rule.[5] Emails from OSA Director Tom Sinks indicate that his staff first learned of the proposal from the media. Given these reports, we are extremely concerned that attempts to move OSA are not intended to elevate its position within the EPA, as some Agency officials have suggested, but rather to weaken its influence.

The EPA's ability to meet its mandate to protect public health and the environment is dependent on the foundation of science that is independently verifiable and free from political interference or bias from ideology or conflicts of interest. At a time when the world is facing the consequences of climate change and extreme weather patterns and toxic substances continue to challenge access to clean air and water, it is striking that the EPA would even consider shying away from the use of robust science. During your first formal address to EPA employees in July 2018, you pledged to defend the work of the Agency's staff. Rather than sidelining science from the policymaking process, we urge you to uphold your commitment to include Agency scientists in the EPA's work, recognize the value of scientific integrity, and maintain an autonomous Office of the Science Advisor.

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[2] Sean Reilly and Kevin Bogardus, "EPA unveils new industry-friendlier science advisory boards," *Science Magazine*, November 3, 2017. http://www.sciencemag.org/news/2017/11/epa-unveils-new-industry-friendlier-science-advisory-boards

[3] United States Environmental Protection Agency. "FY 2018 EPA Budget in Brief," May 2017. https://www.epa.gov/sites/production/files/2017-05/documents/fy-2018-budget-in-brief.pdf

[4] Coral Davenport and Roni Caryn Rabin, "E.P.A. Places the Head of Its Office of Children's Health on Leave," *The New York Times*, September 26, 2018. https://www.nytimes.com/2018/09/26/climate/epa-etzel-children-health-program.html

[5] Steven Mufson and Chris Mooney, "EPA excluded its own top science officials when it rewrote rules on using scientific studies," *Washington Post*, October 3, 2018. https://www.washingtonpost.com/energy-environment/2018/10/03/epa-excluded-its-own-top-science-officials-when-it-rewrote-rules-using-scientific-studies/?utm_term=.407824f59d93

Sincerely,

Suzanne Bonamici
Member of Congress

Donald S. Beyer Jr.
Member of Congress

Eddie Bernice Johnson
Member of Congress

Zoe Lofgren
Member of Congress

Elizabeth H. Esty
Member of Congress

Marc Veasey
Member of Congress

Jerry McNerney
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Bill Foster
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Henry C. "Hank" Johnson, Jr.
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Lucille Roybal-Allard
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Mike Quigley
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Rick Larsen
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Gwen Moore
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Alan Lowenthal
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Jerrold Nadler
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Mike Doyle
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Daniel T. Kildee
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Pramila Jayapal
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Jimmy Panetta
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Denny Heck
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Kathy Castor
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Ben Ray Luján
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Diana DeGette
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Congress of the United States
Washington, DC 20515

October 16, 2018

Mr. Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Mr. Wehrum,

We are writing to you on behalf of Kern Oil & Refining Co. located in Bakersfield, California. Kern Oil plays a very important role in the economy of the Central Valley as a transportation fuel supplier and an employer in a historically high unemployment area. The company is the only producer of gasoline and diesel between San Francisco and Los Angeles and is vital to supplying the local farmers, transport companies, energy producers, and the general public with the transportation fuel they need.

As you know, under the Clean Air Act (CAA) and the Renewable Fuel Standard (RFS) program, transportation fuel is required to contain a minimum volume of renewable fuel. The CAA includes a temporary exemption from renewable fuel volume obligations for small refineries who file a petition with the EPA seeking an exemption. If the EPA determines that compliance with the Required Volume Obligation (RVO) would cause the refinery to suffer disproportionate economic hardship in the year for which exemption is requested, the EPA will grant the exemption.

Kern Oil submitted a request to the EPA for an exemption for their 2017 RFS compliance on July 19, 2018. The company's application detailed the significant challenges the small, land-locked California refinery experienced in 2017, and the disproportionate economic costs associated with RFS compliance. Lacking a retail presence, any crude oil production or other lines of business puts Kern at a severe disadvantage to the large international refiners with whom they compete in California. Over the last thirty years market economics and compliance costs associated with state and federal regulations have reduced the number of active California refineries from thirty four to seventeen, most of which were the smallest refineries in the state.

The delay in receiving a favorable response from the EPA is actually increasing the economic hardship related to the 2017 RFS. The current value of the Renewable Identification Numbers (RIN) continues to decline as the 2017 RINs approach expiration, with the values declining over 30% since Kern submitted its request for an exemption. Any delay in the decision has severe economic impacts on their business, which the exemption process has identified as disproportionately economically impacted by the RFS.

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We understand that Kern met with you on September 6, 2018 in Washington D.C. to discuss the pending request for an exemption for the 2017 RFS. Kern discussed the economic hardships associated with being a small, single location refinery in California with you and several EPA employees in Ann Arbor, Michigan via video-conference. We further understand that the Department of Energy (DOE) has completed their review of the exemption request and the application is now pending at the EPA for final decision.

We request that the EPA expedite the decision on Kern's request due to the pending expiration of the 2017 RINs and declining economic benefit of the exemption. We further request that we be kept apprised of the status of the EPA's decision on Kern's exemption petition for the 2017 RFS.

Respectfully,

David G. Valadao
Member of Congress

Kevin McCarthy
Member of Congress

Devin Nunes
Member of Congress

Jim Costa
Member of Congress

JAMES M. INHOFE
OKLAHOMA

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ENVIRONMENT AND PUBLIC WORKS

COMMERCE, SCIENCE, AND TRANSPORTATION

SMALL BUSINESS AND ENTREPRENEURSHIP

INTELLIGENCE
EX OFFICIO

October 26, 2018

Honorable Andrew Wheeler
Acting Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Honorable Elaine Chao
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Ave., SE
Washington, DC 20590

Dear Acting Administrator Wheeler and Secretary Chao:

As the Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) develop rules to amend the fuel economy and emissions standards for model year 2022-2025 light-duty passenger vehicles (also commonly known as the CAFE standards), we urge you to ensure that there is parity in the rules for natural gas vehicles (NGVs) with those already provided to electric vehicles (EVs). This could offer automakers a low cost, low risk alternative pathway for compliance with regulations, preserve consumer choice in an environment of light-duty truck proliferation, offer consumers an affordable vehicle option that takes advantage of a domestic, more stable-priced fuel, and enhance our country's economy and energy independence.

Current fuel economy and emissions rules provide a number of incentives for automakers to produce and sell EVs, such as EV emissions treated as zero grams per mile, despite significant upstream lifecycle emissions. These rules do not similarly incentivize the production and sale of NGVs, putting these vehicles at an unfair disadvantage.

Since the current rules were adopted, market conditions have changed and new technologies have been developed to warrant the establishment of new incentives for NGVs comparable to incentives already available for EVs. Consumer preferences have shifted materially from smaller passenger vehicles toward pickup trucks, SUVs and crossovers, vehicles for which electrification remains commercially impractical due to size, weight and utility. Further, both America's shale gas resources and its renewable natural gas production (RNG), also known as biogas or biomethane, have increased dramatically.

Providing automakers with an alternative NGV compliance opportunity could benefit automakers and consumers. There are approximately 26 million NGVs operating worldwide, but North America only has about 175,000. This disparity can partially be attributed to regulatory roadblocks that regulatory parity between NGVs and EVs would remove. A number of stakeholders have submitted comments to the EPA commenting on the Mid-Term Evaluation (MTE) and the Notice of Proposed Rulemaking (NPRM) espousing the need for regulatory parity between NGVs and EVs.

We add our voices to those asking the EPA and NHTSA for regulatory parity between NGVs and EVs. Thank you for considering this request as you move forward in the rulemaking process.

Sincerely,

James M. Inhofe
United States Senator

Bill Cassidy, M.D.
United States Senator

Tim Scott
United States Senator

SHELDON WHITEHOUSE
RHODE ISLAND

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October 10, 2018

The Honorable Andrew Wheeler
Acting Administrator
The Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20004

Dear Mr. Wheeler:

I write to you concerning Environmental Protection Agency (EPA) Assistant Administrator for the Office of Air and Radiation Bill Wehrum. President Trump nominated Mr. Wehrum on September 7, 2017, and he was confirmed by the Senate on November 9, 2017.

As is the case for other executive branch appointees, Mr. Wehrum is subject to President Trump's ethics pledge, which states, in relevant part:

> "I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts."[1]

The Trump ethics pledge defines "particular matter involving specific parties" as having:

> "the same meaning as set forth in section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any meeting or other communication relating to the performance of one's official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties."[2]

As interpreted by the Office of Government Ethics (OGE), the phrase "open to all interested parties" does not require that a meeting be open to every comer. Recognizing the difficulty of organizing meetings that are truly open to everyone, OGE's interpretation simply prohibits executive branch appointees from attending meetings with former employers or clients unless at least four additional parties who are not former employers or clients are present.[3]

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[1] E.O. 13770, available at https://www.whitehouse.gov/presidential-actions/executive-order-ethics-commitments-executive-branch-appointees/
[2] *Id.*
[3] OGE DO 09-11, available at https://www.oge.gov/Web/OGE.nsf/0/1231E7FF31E2E54985257E96005FBB7E/SFILE/DO-09-011.pdf

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Despite multiple inquiries by my office, Mr. Wehrum did not provide a signed recusal letter listing the former employers and clients with whom he would be prohibited from meeting under the Trump ethics pledge. Indeed, Mr. Wehrum told *The New York Times* that he refused to sign a recusal letter because he claimed that he had received conflicting advice from ethics officials.[4]

It remains unclear what that conflicting advice may have been. EPA's now-former designated agency ethics official Kevin Minoli explained in a September 29, 2018 letter to me that Mr. Wehrum was advised pursuant to OGE legal advisories that apply to all members of the Trump administration. Mr. Wehrum also was advised about the "importance of signing a recusal statement" but nevertheless he "*chose to use other tools that he deemed effective* in helping him comply with the ethics requirements…."[5]

To address Mr. Wehrum's refusal to sign a recusal letter, I filed an amendment to the Blocking Regulatory Interference from Closing Kilns Act of 2018 (BRICK Act), legislation that would delay national emissions standards for hazardous air pollutants from brick kilns. Since Mr. Wehrum represented the Brick Industry Association prior to becoming Assistant Administrator and since he continued to lobby EPA on behalf on the Brick Industry Association even after he knew he was to be nominated, it seemed appropriate to amend this bill to compel Mr. Wehrum to sign and produce his long-missing recusal letter.

I filed my amendment on Friday, September 14, 2018, and just two business days later (and an hour before a scheduled markup of the BRICK Act by the Environment and Public Works Committee), I finally received a recusal letter signed by Mr. Wehrum on September 17, 2018.

Mr. Wehrum's recusal letter lists the former clients with whom he is prohibited from meeting under the Trump ethics pledge, and the list reads like a who's who of the fossil fuel industry: ExxonMobil, Koch Industries, Chevron, the American Petroleum Institute (API), the American Fuel & Petrochemical Manufacturers, Phillips 66, Kinder Morgan, Duke Energy, and the Utility Air Regulatory Group (UARG), among others. It also includes the Brick Industry Association. As I said at the markup of the BRICK Act, Mr. Wehrum is a walking conflict of interest.

More troubling still is evidence that Mr. Wehrum has flouted the terms of the Trump ethics pledge on multiple occasions. A review of Mr. Wehrum's calendars disclosed as a result of Freedom of Information Act (FOIA) requests shows that on several occasions, he met with former clients and/or employers in one-on-one or small group settings, which the Trump ethics pledge prohibits. Any "other tools" that Mr. Wehrum may have employed to ensure he complied with federal ethics requirements appear to have been ineffective. For example:

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[4] Eric Lipton, "As Trump Dismantles Clean Air Rules, and Industry Lawyer Delivers for Ex-Clients," *The New York Times* (Aug. 19, 2018), https://www.nytimes.com/2018/08/19/us/politics/epa-coal-emissions-standards-william-wehrum.html

[5] Letter from Kevin Minoli to Senator Sheldon Whitehouse, Sept. 29, 2018. (Emphasis added).

- On December 7, 2017, Mr. Wehrum spoke at his old employer, Hunton & Williams, to American Electric Power (AEP), Southern Company, Duke Energy, Dominion Energy, and UARG. Duke Energy, Dominion Energy subsidiary Dominion Resources Services, and UARG are all former clients on Mr. Wehrum's recusal list. As such, this would qualify as a meeting with four former employers or clients and only two parties that are not former employers or clients[6] and therefore would be prohibited under the Trump ethics pledge.

- On January 23, 2018, Mr. Wehrum met with General Electric, a former client on his recusal list. Although he also met with representatives of Boeing at this same meeting, this meeting would also be prohibited under the Trump ethics pledge.

- On January 26, 2018, Mr. Wehrum met with Ann Klee and Roger Martella of General Electric. This meeting would also be prohibited under the Trump ethics pledge.

- On February 12, 2018, a meeting with former clients Duke Energy and UARG and former employer Hunton & Williams as well as AEP, Tri-State Generation, and Southern Company[7] appears in Mr. Wehrum's calendar. While this calendar entry indicates that the meeting was delegated to Mandy Gunasekara, the Principal Deputy Assistant Administrator for EPA's Office of Air and Radiation, it also indicates that Mr. Wehrum was one of the attendees. Should Mr. Wehrum have participated in this meeting, it would also have been prohibited under the Trump ethics pledge.

- On February 16, 2018, a meeting with former clients Duke Energy and UARG and former employer Hunton & Williams as well as AEP, Southern Company, Tri-State Generation, and Vistra Energy[8] appears in Mr. Wehrum's calendar. This calendar entry indicates that meeting was also delegated to Mandy Gunasekara but also lists Mr. Wehrum as one of the attendees. Should Mr. Wehrum have participated in this meeting, it would also have been prohibited under the Trump ethics pledge.

In light of these numerous potential violations of the Trump ethics pledge, I would appreciate responses to the following questions by October 26, 2018:

1. Mr. Minoli indicated that despite repeated counseling by his office, Mr. Wehrum refused to sign an ethics agreement and instead used "other tools that he deemed effective in helping him comply" with federal ethics requirements. Mr. Minoli also represented that Mr. Wehrum has not received any ethics waivers or authorizations to participate in meetings with former clients or employers. The meetings listed above suggest these "other tools" did not prevent Mr. Wehrum from violating the Trump ethics pledge. Please provide any documentation that these meetings were reviewed and/or authorized by EPA ethics officials. In addition, please advise how Mr. Wehrum would be allowed to

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[6] UARG is a trade association representing electric utilities. As it does not disclose its members, it is entirely possible that both AEP and Southern Company are also members.
[7] Once again, AEP, Southern Company, and Tri-State Generation may be members of UARG.
[8] AEP, Southern Company, Tri-State Generation, and Vistra Energy may be members of UARG.

participate in these meetings without having received a waiver or authorization in advance.

2. Is it official EPA policy to allow an employee to choose his own "tools" to comply with federal ethics requirements, other than those specified in federal regulation? Are any other EPA employees also not complying with these requirements?

3. Has Mr. Wehrum faced any consequences for participating in the meetings listed above?

4. Has EPA ascertained who the members of UARG are? Has EPA concluded that Mr. Wehrum can meet with UARG and UARG members to discuss a particular matter involving these specific parties? If so, please describe under what circumstances such meetings can take place.

5. Did Mr. Wehrum attend the February 12 and February 16 meetings with UARG and select electric utility companies?

President Trump campaigned on a promise to "drain the swamp" of corruption in Washington, D.C. While you and I may disagree as to whether appointing lobbyists and lawyers to oversee the industries they used to represent constitutes draining the swamp, we can certainly agree that President Trump's appointees should comply with the President's ethics pledge. Allowing appointees to openly flout the terms of President Trump's ethics pledge only serves to make a mockery of it.

Sincerely,

Sheldon Whitehouse
United States Senator

JANICE D. SCHAKOWSKY
9TH DISTRICT, ILLINOIS

COMMITTEE ON ENERGY AND COMMERCE
Ranking Member, Digital Commerce and Consumer Protection
Health
Oversight and Investigations

COMMITTEE ON THE BUDGET

CHIEF DEPUTY WHIP

Congress of the United States
House of Representatives
Washington, DC 20515-1309

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October 17, 2018

The Honorable Andrew R. Wheeler
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Acting Administrator Wheeler,

We write to urge the Environmental Protection Agency (EPA) to extend the comment period for an additional 60 days beyond the current period for the proposed rulemaking and Draft Environmental Impact Statement (Docket No. NHTSA-2017-0069) on the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks (Docket No. EPA-HQ-OAR-2018-0283).

Any proposed rule change must include sufficient time to gather input from concerned and affected parties. It is egregious that such a significant rule change is constrained by too limited of a time and opportunity for stakeholder analysis and thorough public comment.

Considering the strong response from scientists and environmental groups after the rule change was officially proposed, a comment period of 60 days does not allow for meaningful engagement from stakeholders. The Natural Resources Defense Council (NRDC) issued a statement opposing the proposal on the grounds that it will increase pollution and oil consumption, cost consumers $170 billion at the pump, and stop all progress toward environmentally-friendly transportation. Additionally, both Environment America and the Union of Concerned Scientists have stated that the proposal would dismantle one of the country's most successful climate initiatives to date. What is most shocking is that, by the agencies' own admission, the automotive industry will lose $200-$250 billion in revenue, cut investments in technology by $40 billion, and cut jobs by 60,000 in 2025. This is in addition to the loss of hundreds of thousands of jobs that would be created under the existing standards as fuel-saving innovations put more money in consumers' wallets and local economies.

The EPA has the vital mission of protecting human health and the environment. Yet this rule change profoundly diverges from that mission. The rollback will not only lead to Americans paying higher costs for fuel and increase oil consumption, but it will also raise pollution and put American lives at risk. The latest data from the National Highway Traffic Safety Administration confirms this. With this mission in mind, any significant rule changes that puts jobs, the environment, public health, and human lives at risk should be afforded a thorough discussion and a robust comment period.

We ask that you give the American public and interested stakeholders a chance to engage in the process by extending the comment period by at least 60 days beyond the current comment period scheduled to close on October 26, 2018.

Thank you,

Jan Schakowsky
Ranking Member,
Digital Commerce and
Consumer Protection
Subcommittee

Paul D. Tonko
Ranking Member,
Environment Subcommittee

Mark DeSaulnier
Member of Congress

Grace F. Napolitano
Member of Congress

Barbara Lee
Member of Congress

Debbie Wasserman Schultz
Member of Congress

Alan Lowenthal
Member of Congress

Sheila Jackson Lee
Member of Congress

Peter Welch
Member of Congress

Nydia M. Velazquez
Member of Congress

Bobby L. Rush
Member of Congress

Mark Takano
Member of Congress

Salud Carbajal
Member of Congress

Daniel W. Lipinski
Member of Congress

Scott Peters
Member of Congress

Chellie Pingree
Member of Congress

Eddie Bernice Johnson
Member of Congress

Betty McCollum
Member of Congress

Steve Cohen
Member of Congress

Brian Fitzpatrick
Member of Congress

Jerry McNerney
Member of Congress

Jamie Raskin
Member of Congress

Zoe Lofgren
Member of Congress

Henry C. "Hank" Johnson
Member of Congress

Peter DeFazio
Member of Congress

Jared Huffman
Member of Congress

Rick Larsen
Member of Congress

Raul M. Grijalva
Member of Congress

Brian Higgins
Member of Congress

Adriano Espaillat
Member of Congress

Jimmy Panetta
Member of Congress

Rosa L. DeLauro
Member of Congress

A. Donald McEachin
Member of Congress

Danny K. Davis
Member of Congress

Julia Brownley
Member of Congress

Pramila Jayapal
Member of Congress

Mike Thompson
Member of Congress

Darren Soto
Member of Congress

André Carson
Member of Congress

Nanette Barragán
Member of Congress

Doris Matsui
Member of Congress

Lucille Roybal-Allard
Member of Congress

Earl Blumenauer
Member of Congress

Albio Sires
Member of Congress

Yvette D. Clarke
Member of Congress

José E. Serrano
Member of Congress

Tim Ryan
Member of Congress

Adam Smith
Member of Congress

Mark Pocan
Member of Congress

Tulsi Gabbard
Member of Congress

John Garamendi
Member of Congress

From: Senator Dan Sullivan (imailagent) [mailto:casework_sullivan@sullivan.senate.gov]
Sent: Tuesday, October 23, 2018 12:42 PM
To: Hladick.christopher@EPAmail.epa.gov
Subject: Case (b) (6) [redacted]

DAN SULLIVAN
Alaska

FOR HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-3004

United States Senate

Dear Mr. Hladick,

On September 21, 2018, I sent the attached letter to you asking for your assistance on a matter relevant to your agency for (b) (6) [redacted]. To this date I have not received a response from your agency. I would appreciate your prompt assistance in this matter in compliance with all applicable laws, regulations, and agency policies.

Please provide a status report on this case and any information that will assist me in responding to my constituent as soon as possible to Rachel Bylsma in my district field office at the following location:

Director of Constituent Services
Office of Senator Dan Sullivan
510 L Street, Suite 750
Anchorage, Alaska 99501-1956
907-271-5915

Thank you for your assistance.

Sincerely,

Dan Sullivan
United States Senator

JANICE D. SCHAKOWSKY
9TH DISTRICT, ILLINOIS

COMMITTEE ON ENERGY AND COMMERCE
Ranking Member, Digital Commerce and Consumer Protection
Health
Oversight and Investigations

COMMITTEE ON THE BUDGET

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October 26, 2018

The Honorable Elaine Chao
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

The Honorable Andrew R. Wheeler
Acting Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Re: Docket ID No. NHTSA-2018-0067 and No EPA-HQ-OAR-2018-0283

Dear Secretary Chao and Acting Administrator Wheeler:

We appreciate the opportunity to comment on the proposed rulemaking and Draft Environmental Impact Statement on the "Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks."

The proposed Corporate Average Fuel Economy (CAFE) and greenhouse gas emissions standards in the SAFE Vehicles Rule will increase pollution, gasoline costs, and oil dependency while simultaneously stifling technological development, reducing the competitiveness of the U.S. vehicle industry, and jeopardizing thousands of American jobs. For these reasons, we see no justification for either amending the 2021 Model Year (MY) standards or for adopting the Trump Administration's preferred alternative to the final augural CAFE and greenhouse gas standards announced in 2012 for MYs 2022-2025 (augural CAFE standards). We urge you to withdraw this proposal.

Reducing Emissions is Vital to Public Health

Managing greenhouse gas emissions from passenger cars and light trucks is critical to addressing the threat of global warming. On October 6, 2018, the Intergovernmental Panel on Climate Change (IPCC) released its special report on the effects of global warming indicating that human activities have caused global warming of approximately 1.0°C and that warming is likely to reach 1.5°C, perhaps as early as 2030.[1] Debra Roberts, co-chair of IPCC Working Group II said: "The

[1] Intergovernmental Panel on Climate Change, *Global Warming Of 1.5°C: Summary for Policymakers* (Oct. 6, 2018) (http://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf).

decisions we make today are critical in ensuring a safe and sustainable world for everyone, both now and in the future."[2] Since 2001, we have experienced 17 of the 18 warmest years on record.[3] Our nation continues to see the effects of climate change in the form of sea-level rise, drought, record fire seasons, and more frequent and more extreme weather events. The startling, rapid development of Hurricane Michael is the latest example of the trend that is resulting in lives lost, severe infrastructure damage, and escalating disaster costs for our nation. The only way to slow the pace of this change and avoid greater risks is to reduce greenhouse gas emissions and other pollutants.

The transportation sector is now the largest contributor of greenhouse gas emissions—primarily in the form of carbon dioxide according to EPA's "Inventory of U.S. Greenhouse Gas Emissions" for 2016—accounting for 34% of total U.S. CO_2 emissions.[4] Light duty vehicles account for 59% of the greenhouse gas emissions from the transportation sector. Without significant improvement in fuel efficiency and emission reduction, we have little hope of stabilizing Earth's temperature and avoiding the most serious risks of climate change.[5]

Vehicle emissions contain other air pollutants including carbon monoxide (CO), course and fine particulate matter (PM10 and PM2.5), nitrogen oxides (NO_X), volatile organic compounds (VOCs), and several toxic air pollutants including benzene and formaldehyde. These air pollutants are associated with many adverse health outcomes, such as increased asthma attacks, acute bronchitis, and premature death. While we have made improvements in air quality over the past decades, vehicle pollution remains a significant source of these pollutants. Improved fuel efficiency would reduce these emissions and deliver substantial health benefits, especially to people living near roadways in areas with dense traffic.

Climate change threatens the health of the most vulnerable Americans – elderly and children are at greater risk from extreme weather events. People who live with chronic respiratory illness like asthma, cardiovascular disease, and diabetes will also be hurt by climate pollution. The additional oil that will be used as a result of the proposed standards will also cause significant harm due to additional air pollution and toxic emissions from refineries – these emissions will specifically hurt the communities already most impacted by upstream

Flawed Analysis

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[2] Intergovernmental Panel on Climate Change, *Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C* (Oct. 8, 2018) (https://www.ipcc.ch/news_and_events/pr_181008_P48_spm.shtml) (press release).
[3] *2017 Was One of the Hottest Years on Record. And That Was Without El Niño.*, New York Times (Jan. 18, 2018).
[4] *Id.* I would change this to the report itself:
EPA *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2018* (April 2018) (https://www.epa.gov/sites/production/files/2018-01/documents/2018_complete_report.pdf)
[5] National Highway Traffic Safety Administration & Environmental Protection Agency, *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks* (Aug. 24, 2018) (https://www.federalregister.gov/d/2018-16820/p-3) (hereinafter "Proposed Rule").

Rather than working to reduce U.S. fuel consumption and greenhouse gas emissions, the preferred alternative in the proposed rule would increase fuel consumption and the associated emissions significantly as compared to the augural CAFE and emissions standards. Even your own flawed Draft Environmental Impact Statement (DEIS) accompanying the agencies' proposal agrees.

While the DEIS correctly states that the proposed rule would negatively affect the environment by raising oil consumption and emissions of harmful air pollutants and contribute to increased global mean surface temperature, the DEIS is woefully incomplete.[6] In particular, the analysis of air quality and associated adverse health effects in the DEIS is deficient. The DEIS fails to include results of air quality modeling on ozone pollution for the various alternatives proposed in the rule.[7]

Also, assumptions relied upon in the Preliminary Regulatory Impact Analysis (PRIA) and the DEIS about the impact of the "rebound effect" on vehicle miles travelled and changes in fleet age associated with alternative CAFE and greenhouse gas standards in the proposed rule are troubling. These assumptions have significantly affected the results of the analyses. For example, the agencies appear to have selected information on technology costs, consumer, and driving behavior that would diminish the value of the augural standards for emission reduction and public health relative to the proposed rule.[8] Yet even the inadequate, biased analyses in the DEIS result in the conclusion that "all action alternatives would result in increased adverse health impacts (mortality, acute bronchitis, respiratory emergency room visits, and work-loss days) nationwide compared to the No Action alternative as a result of increases in emissions of PM2.5, DPM, and SO_X."[9]

The most egregious and biased analysis, however, is associated with the assumption that greater fuel efficiency of the nation's vehicle fleet will result in greater fatalities on our roadways. There is no justification for this assumption. In fact, both fuel economy and safety have increased between 1970 and 2015 in the U.S. Highway fatalities per 100 million miles traveled declined from nearly 5 to 1 between 1970 and 2015.[10] During this same period, fuel economy increased from about 13 mpg to 22.4 mpg[11].

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[6] National Highway Traffic Safety Administration, *Draft Environmental Impact Statement for the Safer Affordable Fuel Efficient (SAFE) Vehicles Rule for Model Year 2021-2026* (July 2018) (hereinafter "DEIS").
[7] *DEIS* at pp.4-27.
[8] *Trying to Make Sense of Trump's Rollback of Vehicle Standards*, Forbes (Aug. 2, 2018) (https://www.forbes.com/sites/danielsperling/2018/08/02/trying-to-make-sense-of-trumps-rollback-of-vehicle-standards/#6358d25de71a).
[9] *DEIS* at p. S-9.
[10] National Highway Traffic Safety Administration, *Traffic Safety Facts 2015: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System* (2015).
[11] Oak Ridge National Laboratory, *Transportation Energy Data Book*, Edition 36.1, at Table 4.3 (Apr. 30, 2018) (https://cta.ornl.gov/data/chapter4.shtml).

The proposed rules change also claims it will reduce highway fatalities by 12,700 lives through MY 2029. However, a study published by Yale, and cited by the Administration itself, concludes that "CAFE likely saved lives" by reducing the average weight differences in automotive crashes.[12] This conclusion is corroborated by the National Highway Traffic Safety Administration's (NHTSA) own data.[13]

Moreover, much of the asserted safety benefits of the agencies' proposal assumes that light-weighting will be the primary choice for improving fuel economy, that light-weighting will be applied to all vehicles, and that there is a significant reduction in a vehicle's safety when lighter materials are used in its construction. In fact, numerous technologies are available to improve fuel efficiency through improved engine performance, improved transmissions, better aerodynamic design, etc. In addition, larger heavier vehicles will be considered for light-weighting not smaller, relatively light cars. Also, all vehicles, whether light-weighted or not, must comply with safety regulations as well as any requirements for fuel efficiency.

The agencies' analysis further assumes that new fuel-efficient technologies will increase the price of a vehicle such that fewer new vehicles will be sold and more consumers will continue to drive older, less safe vehicles. The estimates of the costs of fuel-efficient technologies appear inflated relative to more recent studies that estimate that costs of these technologies are continuing to decline.[14] And the analysis appears to minimize the degree to which investments in fuel-efficient technologies pay for themselves over the period of vehicle ownership in the form of reduced operating costs.

Protecting the Automotive Industry

This dramatic change in the trajectory of the fuel economy and emissions program is directly at odds with the realities of industrial development and manufacturing interests. Rather than securing and expanding the American automotive industry, the proposed rule changes will impede job growth, hinder technological development, and diminish America's standing among global technological competitors.

Although the proposed rules changes claim to secure American automotive jobs, they will do precisely the opposite. Even the Environmental Protection Agency and NHTSA admit that the changes will result in 50,000 fewer new jobs in 2025 compared to projections based on the

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[12] Antonio Bento, Kenneth Gillingham, and Kevin Roth, *The Effect of Fuel Economy Standards on Vehicle Weight Dispersion and Accident Fatalities* (Apr. 10, 2017) (http://environment.yale.edu/gillingham/Bentoetal_CAFEAttributesAccidents.pdf).

[13] Ernest Orlando Lawrence Berkeley National Laboratory, *Assessment of NHTSA's Report "Relationships Between Fatality Risk, Mass, and Footprint in Model Year 2004-2011 Passenger Cars and LTVs" (LBNL Phase 1)* (Mar. 2018) (https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0827-11039).

[14] International Council on Clean Transportation, *Efficiency Technology and Cost Assessment for U.S. 2025-2030 Light Duty Vehicles* (Mar. 2017) (https://www.theicct.org/sites/default/files/publications/US-LDV-tech-potential_ICCT_white-paper_22032017.pdf).

augural CAFE and emissions standards.[15] And a study commissioned by the Union of Concerned Scientists (UCS) estimates that the proposed changes in the standards would result in 126,000 fewer new jobs economy-wide in 2035 compared to the existing standards.[16] The rollback jeopardizes the well-being of American workers by threatening to slash job growth in a major industry.

The proposed changes to the standards are also a setback to American technological innovation. Across the globe, other nations continue to raise fuel efficiency standards. These developments not only lead to major technological innovations, but also increase the competitiveness of non-American vehicle brands. Based on the proposal's own data, the proposed rule would lead to a $33 billion reduction in technology investments by automotive companies—essentially stalling the industry at a time when rapid change is most needed.[17]

Producing vehicles that are more fuel efficient and less polluting ensures that U.S. manufacturers will be competitive in international vehicle marketplace. The U.S. automotive industry would begin to fall behind at an exponential rate and could stand to lose as much as $200-$250 billion in revenue.[18] Considering decreases to job growth and industrial losses, this proposal would reduce GDP growth by $8 billion compared to the augural CAFE and emissions standards.[19]

Automakers have a long history of innovating to improve emissions reductions while providing a wide range of options to meet consumers' demands. In a period in which industrial and automotive jobs continue to be moved overseas, the U.S. cannot afford to actively hurt its own industries and hinder economic growth.

Consumer and National Benefits

The proposed fuel economy and greenhouse gas emissions standards reflect greater concern for the profitability of oil companies than for the well-being of American citizens. Improving vehicle

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[15] National Highway Traffic Safety Administration & Environmental Protection Agency, *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks*, Table VII-26, pg. 43291, (https://www.federalregister.gov/d/2018-16820).
[16] Synapse Energy Economics, Inc., *Giving Back Half the Gains: Macroeconomic Impacts of the Proposed Rollback in Federal Vehicle Standards* (Sept. 25, 2018) (http://www.synapse-energy.com/sites/default/files/Giving-Back-Half-the-Gains-17-072.pdf).
[17] National Highway Traffic Safety Administration & Environmental Protection Agency, *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks*, Table VII-26, pg. 43291, (https://www.federalregister.gov/d/2018-16820).
[18] Union of Concerned Scientists, *8 Ridiculous Things in the Trump Rollback of Clean Car Standards (And 1 Thing They Get Right)*, (Aug. 2, 2018) (https://blog.ucsusa.org/dave-cooke/8-ridiculous-things-in-the-trump-rollback-of-clean-car-standards-and-1-thing-they-get-right?_ga=2.234215454.109422889.1539894504-608025473.1538668928).
[19] *Id.*

fuel efficiency provides benefits to consumers over the life of their vehicle by reducing their fuel costs.

As the proposed rule itself notes, reducing the fuel economy standards will lead to an increase in oil consumption of 0.5 million barrels of oil per day by the early 2030s.[20] A consumer driving a typical distance of 15,000 miles per year with an average vehicle complying with the baseline standards would use 401 gallons of gasoline in a year. Under the preferred alternative of this proposed rule, that same consumer would consume about 507 gallons of gasoline. Assuming a price of $3.00 per gallon, the increased fuel consumption would result in an additional $318 in annual fuel costs.[21] Over an average vehicle lifespan of about 11.6 years, assuming the cost of gasoline stays at $3.00 per gallon, an individual consumer would pay more than $3,600 more in fuel costs over that 11.6-year vehicle life cycle under the proposed standards.[22] Even considering upfront vehicle purchase costs and unrealistically low gasoline prices, projected lifetime fuel savings for consumers are significant.

Weakening fuel economy and emissions standards will diminish these substantial benefits for consumers. Such benefits aid all Americans, but they are particularly critical for low- and middle-income households. Even for those families that purchase used cars, improvements in fuel efficiency result in aftermarket vehicles that are less expensive to operate, saving these families significant fuel costs. The proposed rules would undermine these savings for those who need them the most.

The proposed rules also goes against our national interest by increasing reliance on oil. History demonstrates the importance of energy efficiency for national security. Increasing energy efficiency drives down resource consumption and reduces our need to depend on foreign nations.[23] In addition, the federal agency that uses the most energy is the Department of Defense, so increased energy efficiency saves money for the taxpayer.[24] Federal policy should promote energy security by reducing our dependence on fossil fuels and promote more fuel diversity in the transportation sector. Strong MY 2021-2026 fuel economy and greenhouse gas standards are an essential component of this effort.

Conclusion

This proposed rule will result in higher fuel costs for Americans, increased oil consumption, and increased harmful air pollution putting American lives at risk. It will also erode the leadership

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[20] Proposed Rule at p. 42995.
[21] *What the EPA's Proposed Fuel Standards Could Do to Your Gas Mileage*, Washington Post (Aug. 2, 2018) (https://www.washingtonpost.com/business/2018/08/02/what-epas-proposed-fuel-standards-could-do-your-gas-mileage/?noredirect=on&utm_term=.b1d9fadbfbb8).
[22] Proposed Rule at p. 42995; IHS Markit, *Vehicles Getting Older: Average Age of Light Cars and Trucks in U.S. Rises Again in 2016 to 11.6 Years, IHS Markit Says* (Nov. 22, 2016) (press release).
[23] Alliance to Save Energy, *National Security: Energy Efficiency Improves Mission Readiness While Reducing Demand for Foreign Oil* (Feb. 9, 2017).
[24] *Id.*

and competitiveness of the U.S. automotive industry. The only clear beneficiary of this proposed rule is the oil industry. Safer vehicles, healthier lives, industrial innovation, and more economical solutions can all be achieved with strong CAFE and greenhouse gas standards. This proposal will not accomplish these important national goals. We therefore strongly urge you to withdraw the proposed "Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks."

Sincerely,

Jan Schakowsky
Ranking Member
Subcommittee on Digital Commerce
and Consumer Protection
Committee on Energy and Commerce

Paul D. Tonko
Ranking Member
Subcommittee on Environment
Committee on Energy and Commerce

Mark DeSaulnier
Member of Congress

Debbie Wasserman Schultz
Member of Congress

Bobby L. Rush
Member of Congress

Jared Huffman
Member of Congress

Daniel W. Lipinski
Member of Congress

Yvette D. Clarke
Member of Congress

Barbara Lee
Member of Congress

Anna G. Eshoo
Member of Congress

Jerrold Nadler
Member of Congress

Alan Lowenthal
Member of Congress

Gwen Moore
Member of Congress

Rosa L. DeLauro
Member of Congress

Tim Ryan
Member of Congress

Doris Matsui
Member of Congress

Jamie Raskin
Member of Congress

Steve Cohen
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Peter Welch
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Jerry McNerney
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James P. McGovern
Member of Congress

Salud Carbajal
Member of Congress

Colleen Hanabusa
Member of Congress

Lloyd Doggett
Member of Congress

Darren Soto
Member of Congress

Donald S. Beyer Jr.
Member of Congress

A. Donald McEachin
Member of Congress

Mike Quigley
Member of Congress

United States Senate

WASHINGTON, DC 20510

October 4, 2018

Andrew R. Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Acting Administrator Wheeler:

We are writing to request your review of the federal government's implementation of Clean Water Act Section 401 to ensure it is consistent with the statute. We ask that you work with other federal agencies to determine whether new clarifying guidance or regulations are needed in light of recent abuses of the Section 401 process by certain states.

In the last few years, a troubling trend directed at fossil energy projects has arisen. A select number of states have hijacked Section 401 to delay or block the development of natural gas pipelines and a coal export terminal. While the focus of these abuses today is fossil energy, the approach could be used to target any type of project that is disfavored politically.

To address this concern, we introduced S. 3303, the Water Quality Certification Improvement Act of 2018. This bill clarifies appropriate considerations and processes to evaluate water quality impacts under Section 401. Recent obstruction of energy infrastructure projects has directly threatened national security by forcing reliance on foreign energy and increased air emissions.[1] This obstruction has hurt American workers,[2] states,[3] and tribes.[4]

We are firmly committed to states' and tribes' central role in protecting water resources, as we have maintained in other contexts.[5] In the few instances mentioned above, Section 401 is currently being used inappropriately to "fight" projects rather than protect water quality.[6] As the primary agency responsible for implementation of the Clean Water Act,[7] the Environmental Protection Agency (EPA) plays a critical role in ensuring that the statute is fairly

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[1] Editorial, *Why You'll Pay for Beacon Hill's Pipeline Folly*, BOSTON GLOBE, Apr. 22, 2018.

[2] *Hearing to Examine Implementation of Clean Water Act Section 401 and S. 3303, the Water Quality Certification Improvement Act of 2018: Hearing Before the S. Comm. on Env't & Pub. Works*, 115th Cong. (2018) [hereinafter *§401 Hearing*] (statement of Brent Booker, Secretary-Treasurer, North America's Building Trades Unions).

[3] Tim Fox, Attorney General of Montana, Opinion, *Washington State Should Stop Blocking Planned Coal Export Terminal*, N.Y. TIMES, June 21, 2018.

[4] *§401 Hearing*, *supra* note 2 (statement of CJ Stewart, Board Director, National Tribal Energy Association).

[5] *The Appropriate Role of States and the Federal Government in Protecting Groundwater: Hearing Before the S. Comm. on Env't & Pub. Works*, 115th Cong. (2018).

[6] *See* Tom Johnson, *Move in Congress to Weaken Clean Water Act Could Have Impact in New Jersey*, NJ SPOTLIGHT, Aug. 16, 2018 ("'If this bill happens, it will make it extremely difficult to fight these dangerous projects,' said Jeff Tittel, director of the New Jersey Sierra Club. 'It (the Section 401 review) is probably the most effective tool we have to fight these projects.'"); *see also §401 Hearing, supra* note 2 (letter of Millennium Bulk Terminals-Longview LLC submitted to the record).

[7] 33 U.S.C. §1251(d) ("Except as otherwise expressly provided in this chapter, the Administrator of the Environmental Protection Agency … shall administer this chapter.").

and uniformly applied. To our knowledge, the most recent EPA document regarding Section 401 is a 2010 interim "handbook" issued by the prior administration. EPA did not ask for public comment on the handbook, and it contains clear misstatements of law. For example, the handbook suggests that a state's "reasonable period" of time to act on a request for a water quality certification begins to run when an application is complete.[8] This is incorrect. That period begins to run when the state receives the application.[9]

We ask that you take immediate steps to review this handbook and other EPA materials. We also request that that EPA – as the lead federal agency – work with other federal agencies to determine what government-wide direction is needed, including the need for new clarifying guidance or regulations. All parties must have a clear understanding of the appropriate scope of water quality certification decisions. The federal permits and licenses that trigger the water quality certification process are often issued by other federal agencies, including the Federal Energy Regulatory Commission and U.S. Army Corps of Engineers. EPA must ensure that these agencies have consistent, coordinated direction.

Sincerely,

John Barrasso, M.D.
Chairman
Committee on Environment & Public Works

James M. Inhofe
U.S. Senator

Shelley Moore Capito
U.S. Senator

Steve Daines
U.S. Senator

Michael B. Enzi
U.S. Senator

Enclosures

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[8] EPA, *Clean Water Act Section 401 Water Quality Certification: A Water Quality Protection Tool for States and Tribes* at 11 (2010) ("The amount of time allowed for action on a certification application is determined by the Federal agency issuing the license or permit, while the certifying agency determines what constitutes a 'complete application' that starts the timeframe clock.").

[9] *NY State Dep't of Envt'l Conservation v. FERC*, 884 F.3d 450, 455-56 (2d Cir. 2018).

BRENT BOOKER
SECRETARY - TREASURER
NORTH AMERICA'S BUILDING TRADES UNIONS

SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
TESTIMONY

August 16, 2018

Good Morning and thank you Senator Barrasso and Senator Carper for your leadership and continued efforts to address permitting reform. As Secretary-Treasurer of North America's Building Trades Unions, and on behalf of the three million skilled construction workers I represent, thank you for allowing me to share with you the impacts of project delays on the hard-working men and women who build and maintain America's energy, water, and transportation infrastructure.

NABTU is dedicated to creating economic security and employment opportunities for North American construction workers by safeguarding wage and benefits standards, promoting responsible private capital investments, investing in renown apprenticeship and training, and creating pathways to the middle class for women, communities of color and military veterans in the construction industry.

Because of these efforts, and others, collectively amongst all 14 NABTU affiliates, more than one billion dollars is spent annually on apprenticeship training at 1,600 domestic training centers. And, we now boast 135 apprenticeship programs to ready students for the academic and real-world challenges of being a union apprentice.

North America's Building Trades Unions support responsible regulations that protect the environment, public health and worker safety. We believe they are critical to responsible infrastructure development that lasts for decades and allows for future generations to use these invaluable assets. What is concerning, however, is the tactic of project opponents using a constant stream of endless lawsuits to delay a project because they cannot defeat a project on the merits of the project itself. When projects are tied up or delayed because of court proceedings in the courts, not only are critical American infrastructure projects stalled, but also our members are not working, they are not putting food on the table, and they are not providing for their families.

In the Northeast region, this is the reality. Union construction workers stand ready to build necessary pipeline infrastructure to deliver Marcellus Shale

natural gas to utilities, industry, critical infrastructure like our schools and hospitals, and to consumers.

The region's notoriously high energy prices have met a perfect storm in the form of inadequate natural gas infrastructure being coupled with the delay of Constitution and Northern Access Pipeline projects. ISO New England recently highlighted that four gigawatts of natural gas-fired generation capacity – 24% of the region's gas-fired net winter capacity – was at risk of not being able to get fuel when needed.

And a safe, modern, and affordable solution, the Constitution pipeline, was delayed from being built after already receiving FERC approval. This permit denial is still delaying about 2,400 direct and indirect jobs from the pipeline construction generating 130 million in labor income and economic activity for the region. The decision continues to cost local governments approximately 13 million in annual property tax revenue.

Unfortunately, the Clean Water Act Section 401 permitting process has resulted in needless uncertainty. This can stymie approval for years – or, worse, halt a half-completed construction project in its tracks. By some

estimates, a six-year delay in starting construction on public works, including the effects of unnecessary pollution and prolonged inefficiencies, costs the nation over 3.7 trillion[i].

Let me be clear. When lawsuits aimed squarely at killing projects are brought forth for politically motivated reasons, it hinders our ability to create jobs and prepare the next generation of construction workers for tomorrow. These unnecessary delays thwart needed infrastructure progress, and impede NABTU members from working and earning a paycheck.

We must have regulatory certainty.

North America's Building Trades Unions strongly supported the FAST-41 reforms because they lead us toward a path of standardization and finality in the permitting process. We've supported the thoughtful steps taken to reform the system while maintaining the underlying regulations that protect the health and safety of our members on the jobsite and the environmental and human impacts of projects on communities across the country.

We will continue to be engaged with Congress and federal agencies as sensible regulatory reforms are identified and implemented.

Case in point, the reforms made by S. 3303. Requiring states to tell an applicant whether they have all the materials needed to process a certification is commonsense. The clarification that the scope of a Section 401 review is limited to only water quality impacts needs no explanation. We support reforms that reign in the legal challenges while thoughtfully protecting the environment, the public, and worker safety on the job.

On behalf of NABTU and our affiliates, thank you for the opportunity to testify. I look forward to the committee's questions.

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[i] *Two Years Not Ten Years: Redesigning Infrastructure Approvals.* Common Good. Web. Accessed 12/7/15. (http://commongood.3cdn.net/c613b4cfda258a5fcb_e8m6b5t3x.pdf)

Testimony of CJ Stewart of
the National Tribal Energy Association

Senate Committee on Environment and Public Works
"*Hearing to Examine Implementation of Clean Water Act Section 401 and S. 3303, the Water Quality Certification Improvement Act of 2018*"

August 16, 2018

CJ Stewart's 401 Testimony

Thank you Chairman Barrasso, Ranking Member Carper, and Members of the Environment and Public Works Committee. I appreciate the invitation and the opportunity to testify before this Committee on examining implementation of Clean Water Act (CWA) 401 and your accompanying legislation.

My name is CJ Stewart, and I am a Crow Tribal member and a Board Member and Co-Founder of the National Tribal Energy Association, or NTEA. NTEA advocates for both tribes and industry to promote healthy and sustainable energy economies on Native American lands. I am also currently in private practice as an energy consultant for Indian energy development and infrastructure.

I previously served two terms as a Senator for the Crow Legislative Branch and as Chairman of the Crow Natural Resource & Infrastructure Development Committees from 2007-2015. In 2016, at the request of Chairman Darrin Old Coyote, 21st Chairman of the Crow Nation, I held the position of Crow Nation Energy Advisor and Legislative Liaison. During this time, I was also appointed as Vice Chairman of Congressman Ryan Zinke's Natural Resource Advisory Committee.

Lastly, I worked for 10 years as a union coal miner hauling Crow coal and was the first Native American to be appointed to serve on the Montana Coal Board, where I was voted Vice Chairman.

Tribal economies face many obstacles to success, and currently the economy of the Crow Tribe is facing a critical crisis. While we are blessed with untold mineral wealth in oil, coal, and gas on the Crow reservation, regulatory roadblocks and political crises force us to languish in poverty. The tribe currently has an unemployment rate of 70 or more, and

hopelessness is beginning to cast a shadow where there was once hope for a vibrant and prosperous future.

Imagine having a trillion dollars in mineral wealth under your feet and yet your people are starving and destitute before you. It's a cruel nightmare that could be avoided if not for the Clean Water Act being weaponized against the Crow Tribal resource economy and the Crow people and culture.

Clean Water Act Section 401 was intended to provide states with a way to apply key water quality protections to federally permitted activities. However, certain states have misused the process to block Crow economic projects for political reasons that have nothing to do with water quality. These states have hijacked the 401 certification process and used it as a means to interfere with tribal and international trade policy in violation of the Commerce Clause of the U.S. Constitution, including and specifically the Indian Commerce Clause.

The economic prosperity of tribal communities throughout the country is dependent on the flow of goods to port facilities that is unencumbered by physical, commercial, or political roadblocks. Surely the founding fathers saw the necessity of the Indian Commerce Clause for tribal nations against hostile and racist actors be they private or public who bore animosity against native peoples. Importantly, these laws were put in place to protect sovereign tribal economic activity, but recent and ongoing activity on the part of certain coastal states severely infringes on the rights of states and tribes without direct access to export facilities to engage in interstate commerce.

The Crow Nation is deeply respectful of the need for states and tribes to be able to protect their own waters from projects that would degrade water quality and infringe upon water use. We are also needing of the same respect in terms of our commercial endeavors including our sovereign resource development and commercialization. Unlike these aforementioned hostile actors who are so detrimental to the quality of life for the Crow people, we seek no power over or ill will toward them. We instead seek a legislative remedy that maintains equal and fair application of the law.

The Water Quality Certification Improvement Act of 2018 is such a legislative remedy and does not inhibit the ability of states and tribes to enforce their water quality laws. Rather, it provides necessary transparency and clarity to the 401 process, while preserving the central role of tribes and states in protecting local waterways.

The U.S. holds more of the world's coal reserves than any other country, and the coal mined by the Crow Nation is preferred by high efficiency, low emission power plants that are in operation and being built around the world. However, even though our coal resources provide a critical component of U.S. export trade, our ability to get our coal to fast-growing Asian markets is being hindered by states on the West Coast who continue to refuse to grant needed approvals to build state of the art export facilities for political not water quality reasons.

The Water Quality Certification Improvement Act of 2018 ensures that water quality certifications focus on their intended environmental purpose the protection of local waterbodies potentially impacted by federally licensed activities. It will therefore protect the health of local communities while simultaneously promoting the ability of tribes and landlocked states to exercise their right to engage in interstate commerce and grow the economy.

September 12, 2018

The Honorable John Barrasso
Chairman, Senate Environment & Public Works Committee
307 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Carper
Ranking Member, Senate Environment & Public Works Committee
513 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of Millennium Bulk Terminals-Longview LLC, (Millennium) please accept this letter in support of the *Water Quality Certification Improvement Act of 2018.* As you know, Millennium proposes to build a coal export terminal on the lower Columbia River. Based on our experience in being the only project proponent to have received a water quality certification denial "with prejudice" in Washington State, and the only project to have been denied a water quality certification on the basis of non-water quality factors, we share your belief that the Clean Water Act (CWA) is to be used to protect water quality, and should not be misused to block projects that might be unpopular to some. Congress never intended that the limited authority provided to *states* under CWA section 401 to weigh in on the propriety of a proposed *federal* permit would be used by states to veto projects based on political concerns having nothing to do with water quality.

To the contrary, as you well know, section 401 was promulgated to enable states to ensure that federally permitted projects would not result in water quality standards violations in state waters. Recent developments in Washington State demonstrate that the CWA, as presently worded, is susceptible to abuse by state actors who have little regard for the *cooperative* federalism imbedded in the statute, and who wish, instead, to dictate whether a federal permit should be issued (or not) by manipulating the section 401 certification process for their political purposes.

In addition to providing support for the proposed legislation, this letter responds to the comments of Washington State Department of Ecology (Ecology) Director Maia Bellon. Director Bellon's letter to Chairman Barrasso dated August 15, 2018, addressed both the Committee's proposed legislation and her decision to deny Millennium a section 401 certification "with prejudice." Director Bellon insists that she denied Millennium's section 401 certification because her agency found that Millennium "failed to

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meet existing water quality standards;" and because Millennium failed to propose any mitigation to offset adverse environmental impacts. As we demonstrate below, these statements are patently false.

First, her lawyers insisted-- -- based on sworn statements from Ecology staff-- that the agency's denial "with prejudice" was *not* based on CWA factors, but was instead based entirely on authority under the Washington State Environmental Policy Act (SEPA). Unless her lawyers and staff provided false testimony to the administrative tribunal, Director Bellon's letter to Congress is at best mistaken, or otherwise simply false.

Second, contrary to Director Bellon's letter, Millennium has both proposed and submitted to Ecology a host of mitigation plans for environmental impacts. We are providing the following information to clear up any discrepancy in the record Director Bellon's letter created concerning Millennium, and to highlight for the Committee the grossly unfair treatment we received from the Department of Ecology at the direction of Director Bellon, and thus, the need for your proposed legislation.

At Millennium, we are committed to protecting the water resources of the state and federal government and we take that responsibility seriously. We were heartened that the Final Environmental Impact Statement published by the state of Washington and Cowlitz County (SEPA FEIS) concluded that our project would not result in significant adverse impacts to water quality, wetlands, aquatic biota, or fish. Notwithstanding these favorable water quality conclusions in the SEPA FEIS, Ecology Director Bellon denied the water quality certification based largely on indirect impacts from trains and vessels, and specifically, impacts that included air emissions from locomotives, impacts on vehicular traffic, rail capacity concerns and train -caused noise and vibrations, among other non-water quality factors.

Millennium Coal Export Terminal

Millennium is proposing to locate a coal export terminal on a 190-acre brownfield site on the Columbia River near Longview, Washington. At full build-out, the project would be capable of shipping up to 44 million metric ton per year to markets in Asia. The site was selected after a review of more than 20 sites on the west coast of the US, Canada and Mexico for its existing infrastructure. The project would reuse a portion of an industrial site originally developed for the aluminum industry during World War II, coexisting with an operating bulk product terminal. Coal from the Powder River or Uinta Basins would be transported by unit trains to the site over existing rail lines. Two new docks would be constructed on the Columbia River, providing access to Panamax-sized vessels that can reach the site via the existing US Army Corps of Engineers dredged shipping channel.

The project site is located in Cowlitz County, Washington, a county with unemployment rates that far exceed other Washington counties. Cowlitz County residents have expressed a strong support for the family-wage construction and operation jobs that would come with the project, and would provide opportunities for workers to stay close to home rather than having to commute long distances to find work.

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Millennium's objective is to transform the former Reynolds smelter site into a new, economically vibrant and environmentally responsible world-class port facility. To accomplish this, we are actively and voluntarily working with state and local agencies in our cleanup efforts. Millennium, Northwest Alloys (Alcoa) and Ecology have entered a voluntary agreement to ensure the cleanup of the site follows all state rules and regulations. Evidence of localized contaminants from Reynolds' operations has been measured, and although the site has been classified by Ecology as low-risk, we are closely and carefully coordinating an extensive cleanup process. Cleanup costs are carried by the private entities and not the public. Reports on the progress of our efforts are regularly submitted to local and state agencies. By conducting a thorough investigation and developing cleanup plans in compliance with applicable laws and regulations, we are a step closer to our goal of building a world-class port facility in an environmentally responsible way.

Permitting History

Millennium applied for local (Cowlitz County), state, and federal permits for the project in February 2012, over six years ago. In order to provide full disclosure of all of the potential impacts of the project, we have provided the agencies with over 15 million dollars to pay for a third party consultant to write separate state (SEPA) and federal (NEPA) EISs. The 13,600 page SEPA EIS was completed in April 2017. The NEPA Draft EIS was published in September 2016.

Ecology's Denial of Millennium's CWA Section 401 Water Quality Certification

Director Bellon's letter attempts to defend her agency's actions in denying the project a Section 401 Water Quality Certification. According to Director Bellon: *"The facts of this denial are simple: Millennium failed to meet existing water quality standards and further failed to provide any mitigation plan...."*

This statement is in direct contradiction to her department's reply brief to the Washington Pollution Control Hearing Board (PCHB) insisting that Ecology did not deny the certification "with prejudice" based on the deficiencies set forth in Section III (water quality) of the denial Order. That part of the Denial Order dealt with information that Ecology alleged was both missing and necessary for it to *first make* a determination as to whether it had "reasonable assurance" that the project would not violate water quality standards. In other words, Section III of the Order stated that Ecology simply could not determine based on the information it had, *whether or not* project discharges would comply with water quality standards.

Accordingly, the case she lays out in her letter to you is flatly contradicted by the plain language of the Denial Order itself. At best, it is inconsistent with both Ecology testimony during the appeal of the permit denial and the findings of the Washington PCHB (Decision at paragraph 19 concluding that the Denial "with prejudice" was based solely on SEPA), and at worst, is plainly disingenuous.

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Instead of properly relying on the CWA, Ecology insisted that Director Bellon *"decided to exercise Ecology's SEPA substantive authority on the first permit decision before her —the 401 certification-- and deny the certification with prejudice."* Ecology explained that *"the reason Ecology issued the denial "with prejudice" is that the significant, adverse, impacts identified in the EIS cannot reasonably be mitigated. Since they cannot be mitigated, there is no way for Millennium to address them and consequently no basis on which to continue keeping the section 401 process open."* In short, the record demonstrates that the denial "with prejudice" was based on anything other than water quality concerns, and in no way stemmed from any agency findings or conclusions that Millennium's proposed project would not be able to comply with water quality standards.

SEPA Findings and Proposed Mitigation

Similarly, Director Bellon's claims as to the impacts and risks that the project would pose are both contrary to testimony of her own lawyers and staff, and to the findings of the SEPA EIS. Her agency undeniably concluded in the Final EIS that Millennium's proposed coal export project will not have a significant adverse effect on water quality. Millennium is now appealing Ecology's certification denial, and the PCHB's decision upholding that denial, because both Ecology and the PCHB have inaccurately applied the CWA to our project. We are confident the law is on our side.

In her letter to you, and in other public statements, Director Bellon makes claims that are not supported by the SEPA EIS her own agency produced. Director Bellon wholly ignores the mitigation that Millennium has proposed to more than offset wetland and habitat losses. Among her claims, and the rebutting facts found in Ecology's EIS, are the following:

Bellon Claim:

> **The project would destroy 24 acres of wetlands on the site.**
>
> **FACT**: As stated in Section 4.3 of the SEPA FEIS, 24 acres of existing wetlands would be filled. Millennium submitted a Conceptual Mitigation Plan in May 2017 to the U.S. Army Corps of Engineers (Corps), Cowlitz County and Ecology. The Mitigation Plan identifies a nearby downriver site that is currently a ditched and drained agricultural pasture. The Plan would convert the pasture into 61 acres of wetlands, rehabilitate approximately 14 acres of degraded wetlands, and revegetate approximately 14 acres of upland buffer, providing a total of 88 acres of mitigation. This mitigation proposal provides more than what is required for wetland mitigation and is intended to insure against any unforeseen shortfalls in wetland creation. Neither the Corps nor the County has found the Plan to be inadequate. To the contrary, the County reviewed the plan, determined it to be adequate and issued a permit for that activity in July 2017.

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Section 4.3 of the SEPA FEIS concludes: *"Compliance with laws and implementation of the mitigation measures described above would reduce and compensate for impacts on wetlands. There would therefore be no unavoidable and significant adverse environmental impacts on wetlands."*

Most of the wetlands that will be impacted by the proposal (over 21 acres) are considered Category III wetlands, and only three acres are considered Category IV wetlands. Washington State ascribes this rating system to wetlands based on their functions. Washington State Wetland Rating System for Western Washington (Hruby 2006). Category I wetlands have the highest level of function, are afforded the widest buffers, and impacts on such wetlands require the largest amount of compensatory mitigation. Category IV wetlands, on the other hand, have the lowest level of function, are afforded more narrow buffers, and impacts on such wetlands require a lower amount of compensatory mitigation.

Millennium's proposed wetland mitigation plan would convert an existing ditched and drained agricultural pasture to a diverse habitat of emergent, forested and scrub-shrub wetlands within the historic, and now disconnected, floodplain of the Columbia River. The proposed mitigation would restore hydrology and historic forested and scrub-shrub wetlands, and provide potential habitat for wildlife such as Columbia white-tailed deer. In total, the mitigation would convert over approximately 61 acres of upland pasture to palustrine forested, scrub-shrub, and/or emergent wetlands, rehabilitate approximately 14 acres of degraded emergent wetlands and revegetate approximately 14 acres of upland buffer.

Bellon Claim:

Dredging 41 acres of river bed would damage Washington's water quality.

FACT: The dredging would be required to provide ships access from the US Army Corps maintained Columbia River shipping channel to the proposed new docks. As required by the Corps and other agencies, a sediment characterization report has been prepared. On August 25, 2017, Jennifer Sutter, Project Manager for Oregon's Department of Environmental Quality (DEQ), found that the dredge material would meet Class A criteria because the dredged spoils contain constituents at a level below detection levels for chemicals, metals and pesticides of concern to water quality. Dredge material that meets Class A criteria by definition does not impair water quality.

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Bellon Claim:

Driving 537 pilings into the river bed for over 2,000 feet of new docks would result in the loss of five acres of aquatic habitat.

FACT: Millennium has proposed to construct an aquatic habitat mitigation site by converting an existing, isolated pond to an off-channel aquatic habitat connected to the Columbia River. Our Conceptual Mitigation Plan for Wetlands and Aquatic Habitat was submitted to Ecology, Cowlitz County and the Corps in May of 2017. Cowlitz County has approved the plan and issued a Critical Areas Permit for the project in July 2017. Millennium proposes to construct the Off-Channel Slough Mitigation Site, which will provide seasonally-inundated off-channel habitat with associated emergent and riparian vegetation, by improving an existing pond and connecting it to the river. This habitat type was historically widespread but has since been vastly reduced throughout the lower Columbia River system. The pond is located along the shore, riverward of the levee, in the upstream portion of the Millennium lease area adjacent to the bulk terminal. As described below, approximately 12 acres of new habitat would be created to more than offset the loss of the five acres.

This compensatory mitigation will provide new off-channel aquatic habitat, which is highly valuable to juvenile salmonids of the lower Columbia River and has been disproportionately lost through development and management of the Columbia River. The proposed Site will achieve the following environmental goals:

- Provide off-channel aquatic habitat that is connected to the Columbia River.
- Ensure access to the off-channel habitat for juvenile salmonids.
- Provide structurally diverse native vegetation communities within the off-channel habitat.
- Provide structurally diverse native riparian vegetation on the outer berm.

Functional objectives detail how the goals of the mitigation action will be implemented. The functional objectives for the Aquatic Mitigation Action are as follows:

- Provide 7.0 acres of new off-channel aquatic habitat below OHW that incorporates emergent, shrub, and forested components.
- Provide an effective connection between the Columbia River and the off-channel habitat.
- Establish 4.5 acres of native emergent, shrub, and tree species within the off-channel habitat.
- Establish 0.75 acre of native riparian vegetation on the outer berm.

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Bellon Claim:

The application provided insufficient information on how contaminated wastewater and stormwater would be managed at the site during both construction and operations. The application did not provide sufficient information to demonstrate that wastewater and stormwater discharges would meet state water quality standards, including an inadequate description of the types and amounts of contaminants in the discharge, and an incomplete analysis of how the treated discharge would potentially impact the ambient water quality of the Columbia River. The application did not provide sufficient information on how contaminated wastewater and stormwater would be adequately controlled to minimize the discharge of pollution to the Columbia River.

FACT: Section 4.5 of the SEPA FEIS describes the best management practices proposed by MBT-Longview and the robust measures available and proposed for managing wastewater and stormwater during both construction and operations. The SEPA FEIS acknowledges that impacts could occur but that the level of impacts would be below benchmarks or applicable standards designed to protect water quality. The SEPA FEIS made repeated findings that the project would not result in significant adverse effects to water quality, wetlands, fish, and the aquatic environment more generally and anticipated that technology was available and would be implemented to ensure that any impacts would be mitigated in accordance with applicable water quality standards. Section 4.5 of the SEPA FEIS concludes: "*Compliance with laws and implementation of the measures and design features described above would reduce impacts on water quality. There would be no unavoidable and significant adverse environmental impacts on water quality*."

Millennium submitted detailed information to Ecology to demonstrate its ability to meet water quality standards sufficient for a section 401 certification, but Ecology decided not to work with Millennium to complete the certification process. Ecology and Director Bellon decided instead to abruptly terminate the process and deny the certification "with prejudice" to veto the project altogether, and in so doing, relied on non-water factors found in that same EIS.

Bellon Claim:

The company would need access to sufficient water supplies to manage coal dust and to suppress fires during normal operations at the site. The company could not demonstrate they had sufficient rights to use water wells on the site for these purposes.

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FACT: As stated on page 4.4-23 of the SEPA FEIS*: "Approximately 1,200 gpm during the wet season and 2,000 gpm during the dry season (approximately 2,034 AFY) would normally be required for dust suppression. On-site groundwater wells would provide approximately 635 gpm (1,025 AFY) to maintain minimum water levels in the storage pond to meet process water demands during the dry season. Water from the storage pond could also be used for the fire hydrant, sprinklers and deluge systems, watering of landscaping and other non-recyclable uses. Northwest Alloys holds water rights that originally authorized extraction of 23,150 gpm up to a total volume of 31,367 AFY." "The total demand accounts for less than 10% of the maximum pumping limit allowed under original water rights. Therefore, operation of the Proposed Action would have a negligible impact on groundwater supply. The Applicant would ensure that water rights are current before withdrawing any water for construction or operations; water rights would be maintained for ongoing groundwater use during operation of the Proposed Action."*

The Columbia River is not a closed basin, and new water rights can be obtained if needed.

Bellon Claim:

Because the site is a toxic cleanup site from past smelter operations, it has preexisting groundwater and soil contamination. The application needed to show how construction would affect this contamination and future cleanup work, and ensure that the discharge would continue to meet water quality standards. The application did not provide sufficient information to show that construction activities would be conducted in a way that would ensure that the existing contamination at the site would be properly contained and managed.

FACT: There has been an extensive (over 12 year) process to develop both a renewed NPDES permit for the site and a Remedial Investigation/Feasibility Study (RI/FS) on voluntary site cleanup. The cleanup site is ranked by Ecology as a 5 (on a 1 to 5 scale), which is the lowest risk ranking for both human health and the environment. As noted on page 4.4-18 of the SEPA FEIS, *"Construction of the Proposed Action could encounter previously contaminated areas currently identified in the MTCA Cleanup Action Plan, which could degrade groundwater quality. However, with the exception of two small areas—the eastern corner of the Flat Storage Area and the northeastern portion of Fill Deposit B-3 (Figure 4.4-5 in the FEIS)—cleanup actions are not recommended in the draft Cleanup Action Plan within the project area. For the Flat Storage Area and Fill Deposit B-3, construction and remediation activities would be coordinated to prevent spread of contamination or environmental impacts."*

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Waiver

As you know, under current law, the State was required to issue a final certification decision within one year of receipt of Millennium's application for a CWA Section 401 certification. 33 U.S.C. § 1341(a)(1)("if the state. . . fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements. . . shall be waived with respect to such Federal application."). To accommodate agency processes, Millennium applied for a CWA Section 401 certification three times over the last six years of permit processing. Millennium first applied for a CWA Section 401 certification on February 22, 2012 as part of its Corps permit application. At the Corps' request, Millennium withdrew the application to allow time for the completion of the EISs. On July 13, 2016, as the SEPA EIS neared completion, Millennium again submitted an application for a CWA Section 401 certification. To allow for additional time for Ecology to consider Millennium-provided reports and materials, and at Ecology's request, Millennium withdrew this application once again on June 21, 2017 and reapplied for the third time on June 27, 2017. Therefore the State was required to issue a final decision on that application by June 27, 2018.

Although Ecology issued an initial decision on September 26, 2017 denying Millennium's certification, the record demonstrates that the State has waived its right to issue a CWA section 401 certification in two separate and independent ways. First, more than one year passed between Ecology's receipt of the application and the PCHB's issuance of the final 401 certification decision. During the ensuing appeal of Ecology's certification denial, Ecology told the Superior Court in Cowlitz County that its Denial Order was not final until the PCHB reviewed and decided Millennium's administrative appeal. The PCHB's decision was made more than one month after the expiration of the one year statute of limitations period set forth under CWA section 401.

Second, even if this final decision was timely (and it was not), the certification decision made by Ecology and affirmed by the Board, is not the certification required by 33 U.S.C. §1341(a)(1). Pursuant to CWA section 401, the State was required to determine whether a facility's discharge will violate "the applicable provisions of sections 1311, 1312, 1313, 1316 and 1317" of the CWA. 33 U.S.C. § 1341(a)(1). The State did not make this determination. Instead the State decided to answer a different question: whether Ecology should deny the project based on SEPA, R.C.W. §43.21C.060. But Congress did not authorize states to certify whether a proposed project should be denied under SEPA either in CWA section 401 or anywhere else in the CWA.

Conclusion

Millennium is committed to operating in a responsible manner. We value our natural environment and the safety of our employees. Our employees have lived in and around Cowlitz County for generations. They understand the unique opportunities offered by the Columbia River and the responsibility that comes with protecting the air, water and land that surround it.

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In closing, we can have clean water and a healthy environment while safely utilizing the vast natural resources provided by the Columbia River. We thank you for your efforts to clarify the original intent of the CWA, and section 401 in particular, and trust that this letter will both set the record straight as it concerns Millennium's project, and provide support for the badly needed clarifying amendment your committee is debating.

Sincerely,

Kristin Gaines
Sr. Vice President of Regulatory Affairs
Millennium Bulk Terminals-Longview

CC: Patty Murray, Senator
Maria Cantwell, Senator
Jaime Herrera Beutler, Representative
Senate Environment & Public Works Committee Members

4029 Industrial Way ■ PO Box 2098 ■ Longview, WA 98632 ■ (360) 425-2800 ■ (360) 636-8340 Fax
www.millenniumbulk.com

BRIAN J. MAST
18TH DISTRICT, FLORIDA

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

FOREIGN AFFAIRS COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515–0918

2182 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3026

171 SW FLAGLER AVENUE
STUART, FLORIDA 34994
(772) 781-3266

October 26, 2018

Mr. Andrew Wheeler, Acting Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW,
Room 3426 WJC North
Washington, DC 20460

Dear Administrator Wheeler:

In the conduct of congressional oversight of water management of Lake Okeechobee, I have consistently encountered a frustrating disconnect between regulatory agencies over a common definition of toxic water. I am requesting the Environmental Protection Agency's expertise to help establish a baseline understanding of what substances constitute a toxin and at what level they are present for water to be considered toxic. Please respond to the following questions at your earliest convenience:

Do you consider microcystin algae, blue-green algae, and cyanobacteria to be toxins?

At what level do you consider each to be harmful to human health?

I would appreciate a written response by November 12 and thank you in advance for your assistance.

Sincerely,

Brian Mast
Member of Congress

PRINTED ON RECYCLED PAPER

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 11 2018

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Richard Shelby
Chairman, Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am transmitting the U.S. Environmental Protection Agency's response to the July 2018 U.S. Government Accountability Office report entitled, *K-12 Education: Lead Testing of School Drinking Water Would Benefit from Improved Federal Guidance* (GAO-18-382). The EPA prepared this response pursuant to 31 U.S.C. 720.

In this report, the GAO examines the extent to which (1) school districts are testing for, finding, and remediating lead in drinking water; (2) states are supporting these efforts; and (3) federal agencies are supporting state and school district efforts. The EPA agrees with the GAO's findings, conclusions, and recommendations.

GAO Recommendation:

The Assistant Administrator for Water of EPA's Office of Water should promote further efforts to communicate the importance of testing for lead in school drinking water to address what has been a varied approach by regional offices. For example, the Assistant Administrator could direct those offices with limited involvement to build on the recent efforts of several regional offices to provide technical assistance and guidance, and other forms of support. (Recommendation 1)

EPA Response:

The EPA agrees with this recommendation. The Office of Water's Office of Ground Water and Drinking Water holds regular meetings with the EPA's regional offices on drinking water in schools and will continue this collaboration. The EPA also will use implementation of the new congressional appropriation for lead testing in schools as a means to improve consistency in the EPA's approach.

GAO Recommendation:

The Assistant Administrator for Water of EPA's Office of Water should provide interim or updated guidance to help schools choose an action level for lead remediation and more clearly explain that the action level currently described in the 3Ts guidance is not a health-based standard. (Recommendation 2)

EPA Response:

The EPA agrees with this recommendation. The OW's Office of Ground Water and Drinking Water held regular meetings with regional offices, the Office of Research and Development, and the Office of Children's Health Protection to obtain input on improvements to the EPA's *Training, Testing and Telling for Reducing Lead in Drinking Water in Schools* (i.e., 3Ts) guidance. The EPA is in the process of incorporating the input and updating the EPA's 3Ts guidance to be released by the end of 2018. Potential revisions include updates to implementation practices, the sampling protocol, and the remediation trigger, including clarifying descriptions of different action levels and standards.

GAO Recommendation:

The Assistant Administrator for Water of EPA's Office of Water should, following the agency's revisions to the LCR, consider whether to develop a health-based level for school districts that incorporates available scientific modeling regarding vulnerable population exposures and is consistent with the LCR. (Recommendation 3).

EPA Response:

The EPA agrees with this recommendation. The EPA encourages schools to reduce their lead levels and prioritize remediation efforts based on lead sample results. The EPA also recognizes that states and local districts can and have set lower trigger levels as part of their efforts to further protect children from lead exposure. While the EPA has not yet determined the specific role of a health-based benchmark for lead in drinking water in the revised Lead and Copper Rule, the agency sees value in providing states, drinking water systems, and the public with a greater understanding of the potential health implications for vulnerable populations of specific levels of lead in drinking water. The objective of revising the 3Ts guidance is to provide an up-to-date and informative toolkit to assist schools and childcare facilities better in their efforts to reduce exposure to lead in drinking water.

GAO Recommendation:

The Assistant Administrator for Water of EPA's Office of Water should provide information to states and school districts concerning schedules for testing school drinking water for lead, actions to take if lead is found in the drinking water, and costs of testing and remediation. (Recommendation 4)

EPA Response:

The EPA agrees with this recommendation. The EPA will continue to reach out to states and schools to provide information, technical assistance, and training and will continue to make the 3Ts guidance available.

GAO Recommendation:

The Assistant Administrator for Water of EPA's Office of Water and the Director of the Office of Children's Health Protection should collaborate with Department of Education to encourage testing for lead in school drinking water. This effort could include further dissemination of EPA guidance related to lead testing and remediation in schools or sending letters to states to encourage testing in all school districts that have not yet done so. (Recommendation 6)

EPA Response:

The EPA agrees with this recommendation. Increased collaboration between the EPA's Office of Water and Office of Children's Health Protection, and between the EPA and the U.S. Department of Education, could improve school districts' awareness of information available regarding lead in drinking water. The EPA will continue to provide training and up-to-date information to assist schools and childcare facilities better in their efforts to reduce lead in drinking water, including schedules for testing and actions to take if lead is found.

The EPA's Office of Water and Office of Children's Health Protection are currently collaborating to develop additional resources for schools including a website to support the EPA's 3Ts guidance and case studies of school districts that have tested for lead. The Water Infrastructure Improvements for the Nation Act or "WIIN Act" of 2016 authorizes the EPA to award grants to states and tribes to assist local and tribal educational agencies in voluntary testing for lead contamination in drinking water at schools and child care programs.

The EPA appreciates the opportunity to review and respond to the final GAO report. If you have any questions, please contact me or your staff may contact Christina Moody, in the agency's Office of Congressional and Intergovernmental Relations, by email at moody.christina@epa.gov or by phone at (202) 564-0260.

Sincerely,

Holly W. Greaves
Chief Financial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 1 1 2018

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Ron Johnson
Chairman, Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

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The EPA appreciates the opportunity to review and respond to the final GAO report. If you have any questions, please contact me or your staff may contact Christina Moody, in the agency's Office of Congressional and Intergovernmental Relations, by email at moody.christina@epa.gov or by phone at (202) 564-0260.

Sincerely,

Holly W. Greaves
Chief Financial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 11 2018

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Rodney P. Frelinghuysen
Chairman, Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

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Sincerely,

Holly W. Greaves
Chief Financial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 11 2018

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Trey Gowdy
Chairman, Committee on Oversight
and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

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Sincerely,

Holly W. Greaves
Chief Financial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 11 2018

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Mick Mulvaney
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Mulvaney:

I am transmitting the U.S. Environmental Protection Agency's response to the July 2018 U.S. Government Accountability Office report entitled, *K-12 Education: Lead Testing of School Drinking Water Would Benefit from Improved Federal Guidance* (GAO-18-382). The EPA prepared this response pursuant to 31 U.S.C. 720.

The agency reviewed the report and pursuant to 31 U.S.C. 720, enclosed are copies of the EPA responses to the Chairs of the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the House and Senate Committees on Appropriations. If you have any further questions, please contact me or your staff may contact Christina Moody, in the agency's Office of Congressional and Intergovernmental Relations, by email at moody.christina@epa.gov or by phone at (202) 564-0260.

Sincerely,

Holly W. Greaves
Chief Financial Officer

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 1 1 2018

OFFICE OF THE
CHIEF FINANCIAL OFFICER

The Honorable Eugene Dodaro
Comptroller General
Government Accountability Office
Washington, D.C. 20548

Dear Mr. Dodaro:

I am transmitting the U.S. Environmental Protection Agency's response to the July 2018 U.S. Government Accountability Office report entitled, *K-12 Education: Lead Testing of School Drinking Water Would Benefit from Improved Federal Guidance* (GAO-18-382). The EPA prepared this response pursuant to 31 U.S.C. 720.

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Sincerely,

Holly W. Greaves
Chief Financial Officer

Enclosures

Dear Congressman Scott,

I am contacting you about the destruction that is being allowed to happen in the beloved and long-held historic village of Eclipse. As you read this, there is oil on the ground & construction equipment sitting in the water/ mud. Silt is out in the creek. Large trucks block the roadways and illegally park on the grounds of the nearby cemetery where many locals have buried their loved ones. Each day more trees are leveled, while the city of Suffolk idly sits by and ignores the pleas of its citizens. Putting aside our personal love and passion for this community, as well as the logistical planning concerns of its residents, there are even graver concerns that should - but have not yet been - considered/addressed by our local government. Here are just a few: 1. EROSION and failure to enforce erosion control measures on this construction site. 2. Resulting STORMWATER RUNOFF TO OUR WETLANDS from standing water that can now not properly filter on the site. 3. The DEQ issued permit in 2006 has been "grandfathered" via DEQ permitting in Richmond despite having a listed address that is an empty shopping mall - NOT A CURRENT/VALID ADDRESS. As a result, this has protracted attempts TO CONTACT AND MITIGATE WITH THE PERMITTEE for proper erosion control. 4. Development has continued despite operating on an EXPIRED PERMIT from 2011. Work must be stopped until the Army Corps of Engineers has issued a new wetland delineation and uplands wetlands delineation permit. 5. The AMOUNT OF GROUND BEING DISTURBED with all vegetation/trees on entirely wooded permiited land. 6. The lack of timeliness in which others are responding. Remember, DAMAGE TO OUR OYSTER BEDS cannot be reversed! 7. And, let us not forget, very simply ALLOWING the DEVELOPMENT of a so-called cluster subdivision covertly without true CITIZEN KNOWLEDGE! As you can see from the developer's plans, this is not the application of conservation of land and resources, intended to develop in a manner that creates green and open spaces, per the statute. I am hopeful that you will support the conservation of our environment and allow us to maintain the historical integrity and rich history of this watermans' community. Thank you in advance for your swift attention to these very important matters. I will eagerly await your reply.

Respectfully, (b) (6) [redacted]

United States Senate

WASHINGTON, DC 20510

October 12, 2018

Mr. Andrew Wheeler
Acting Administrator
Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, D.C. 20004

Dear Acting Administrator Wheeler:

We are writing to request an extension of the public comment period for the EPA's modifications to the New Source Performance Standards (NSPS) for methane emissions from oil and gas sources EPA-HQ-OAR-2017-0483. There is additional information that we require in order to adequately comment on the rulemaking.

We request that the EPA provide the full 75 day comment period that the previous Administration gave for the draft NSPS and delay beginning the comment period until your agency provides written answers to the following:

- The EPA's own analysis shows that weakening the oil and gas standards will result in substantial additional methane and VOC pollution. How is this outcome consistent with the agency's statutory mandates and duty to protect public health?
- The EPA's own analysis appears to show that the standards the agency adopted in 2016 are even more cost effective than the EPA originally projected; why has the EPA nonetheless proposed to weaken those standards?
- The EPA's standards have been in place and working for more than two years. Has the EPA considered the compliance data that the agency has collected during that time? Would the agency make that data fully available so the public can transparently assess the benefits of the current program?

We are concerned about the precedent that the proposed changes to this rule sets for states. There is clear and compelling evidence that the current NSPS rulemaking is cost-effective, improves air quality, and increases public health. Moreover, several states already have standards that are more health protective than the EPA's proposed revisions. While these states would be permitted to implement their cost-effective rules under the proposed revisions, their neighbors would only be required to adhere to the weaker standards that your agency promulgated. The result would be more harmful pollution crossing state borders, making it more difficult and costly for states to adhere to the EPA's National Ambient Air Quality Standards.

It has also been brought to our attention that the EPA is considering further modifying the NSPS methane standards and, in effect, removing the methane regulation entirely. The executive, legislative, and judicial branches of government have provided clear intent that the EPA has the

authority to regulate greenhouse gas emissions. Most recently, the Senate voted to retain the BLM's authority to regulate methane emissions from the oil and gas sector on public lands. We urge you to adhere to the direction from the Senate and retain the EPA's 2016 NSPS rulemaking for methane emissions from the oil and gas sector in full.

As we continue to hear from our constituents and local and state officials on this matter, we will likely have additional comments for you in the future on this issue. If you or your staff have questions about this letter, your staff is encouraged to contact Candace Vahlsing of Senator Michael Bennet's office at Candace_Vahlsing@bennet.senate.gov. We also request that this letter be added to the docket under EPA-HQ-OAR-2017-0483.

We appreciate your prompt attention to our requests and questions.

Sincerely,

Michael F. Bennet
United States Senator

Thomas A. Carper
United States Senator

Dianne Feinstein
United States Senator

Tom Udall
United States Senator

Sheldon Whitehouse
United States Senator

Edward J. Markey
United States Senator

Jeffrey A. Merkley
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Amy Klobuchar
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Richard Blumenthal
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Jack Reed
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Benjamin L. Cardin
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Chris Van Hollen
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Cory A. Booker
United States Senator

Tina Smith
United States Senator

Brian Schatz
United States Senator

Robert P. Casey
United States Senator

Tammy Duckworth
United States Senator

Martin Heinrich
United States Senator

Congress of the United States
Washington, DC 20515

October 15, 2018

Acting Administrator Wheeler
Environmental Protection Agency
Office of the Administrator - 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Acting Administrator Wheeler:

We write regarding recent actions taken by the Environmental Protection Agency (EPA) to waive Renewable Fuel Standard (RFS) blending requirements. We are concerned that these actions have effectively cut blending targets by 2.25 billion gallons, contributing to higher gas prices and elevated levels of harmful emissions, especially in communities of color. We therefore urge you to halt the issuance of any additional waivers and to instead consider steps that could help to unlock the full health and economic benefits of biofuels.

As you may know, transportation emissions have overtaken power plants as the primary source of greenhouse gas emissions in the United States. Unfortunately, these emissions have been found to cause or aggravate serious health conditions. For example, combustion emits aromatic hydrocarbons that increase fine particles in the air, which may in turn cause premature death, irregular heartbeat, asthma, and other respiratory problems. Further, performance-enhancing additives like methyl tertiary-butyl ether (MTBE) are known to contaminate water supplies, while alternatives such as benzene have been found to cause cancer.

The effects of these emissions are not borne evenly across our country. Evidence continues to mount that communities of color are disproportionately impacted by air pollution, including transportation emissions. In February, scientists from the EPA's National Center for Environmental Assessment published a study which found that in 46 states, non-white communities are between 1.2 and 1.5 times more likely to be exposed to higher levels of fine particle pollution than white communities, and people living in poverty were 1.3 times more likely to be negatively affected.

Fortunately, the use of biofuels lowers particulate matter and removes harmful aromatics from the transportation fuel supply. In addition, ethanol is already used as a replacement for additives like MTBE, helping to keep this and other harmful chemicals out of our drinking water.

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Beyond these important public health benefits, biofuels also present a sustainable fuel solution that can reliably lower gas prices for consumers. However, EPA waivers have served to keep ethanol out of the market, contributing to higher prices at the pump for American consumers and disproportionately harming low-income communities where residents typically spend a higher percentage of their income on transportation costs.

For these reasons, we respectfully urge you to halt the issuance of additional RFS waivers and to reallocate waived gallons in the 2019 Renewable Volume Obligation (RVO). Thank you for your attention to this request.

Sincerely,

Ruben Gallego
Member of Congress

Danny K. Davis
Member of Congress

Luis V. Gutierrez
Member of Congress

Linda Sánchez
Member of Congress

Bennie G. Thompson
Member of Congress

Gregory W. Meeks
Member of Congress

Jimmy Gomez
Member of Congress

Salud O. Carbajal
Member of Congress

Norma J. Torres
Member of Congress

Ruben J. Kihuen
Member of Congress

Nanette Diaz Barragán
Member of Congress

Adriano Espaillat
Member of Congress

Nydia M. Velázquez
Member of Congress

Albio Sires
Member of Congress

Donald M. Payne, Jr.
Member of Congress

Lucille Roybal-Allard
Member of Congress

Darren Soto
Member of Congress

Juan Vargas
Member of Congress

Henry C. "Hank" Johnson, Jr.
Member of Congress

EARL L. "BUDDY" CARTER
First District of Georgia

ENERGY AND COMMERCE COMMITTEE
SUBCOMMITTEE ON HEALTH
SUBCOMMITTEE ON ENVIRONMENT
SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS

Congress of the United States
House of Representatives
Washington, DC 20515–1001

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BRUNSWICK OFFICE
1510 Newcastle Street
Brunswick, GA 31520
(912) 265-9010

http://BuddyCarter.House.gov

September 26, 2018

Mr. Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Acting Administrator Wheeler,

In your role as the Acting Administrator of the EPA, you have a number of responsibilities and programs to oversee, including the Superfund program. I have the honor of serving on the Energy & Commerce Committee and in that role, I have asked questions about the Superfund program's progress, especially as it relates to timelines and remediation. One such site of interest is the Terry Creek/Hercules site in Brunswick, Georgia. This site, where chemicals were previously manufactured, is an important stretch of land and is extremely valuable to the local community's ability to develop. As such, I ask that you work with other federal partners, including the Department of Justice, to put forth a consent decree that is beneficial to all parties.

Last week, the Glynn County Board of Commissioners and the City of Brunswick passed a resolution opposing the consent decree and the proposed remedial action. That consent decree proposed an action to clean up the contaminated materials and store them on site, rather than remove and dispose of them at a different location. It is a difficult task pursuing economic development opportunities, and to have to market a property with contaminated materials only makes it more difficult. While the Department of Justice has a leading role in the recently released consent decree, I urge you to work with them to consider the thoughts and needs of the local communities and to put forth a solution that accounts for those.

The Superfund program plays an important role in cleaning up our communities and providing new opportunities where they weren't possible before remediation. Working with the local communities will help to further the role of the program while utilizing the input of those will be most impacted by those decisions. Thank you for your continued service to our country's environmental cleanup needs, especially as they relate to issues we're facing in the First Congressional District of Georgia. Please don't hesitate to reach out to my office if you need any additional information.

Sincerely,

Earl L. 'Buddy' Carter

Earl L. 'Buddy' Carter
Member of Congress

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CHRIS VAN HOLLEN
MARYLAND

SH-110 HART SENATE OFFICE BUILDING
WASHINGTON DC 20510
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United States Senate

COMMITTEES

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October 16, 2018

Mr. Troy Lyons
Associate Administrator for Congressional and Governmental Relations
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Room 3426 WJC North
Washington, DC 20460-0003

Dear Mr. Lyons:

I am writing today requesting information concerning the policies and procedures governing the dissemination of print material by individuals outside the main entrance of the EPA headquarters.

One of my constituents advised me that he has previously distributed information about the Affordable Clean Energy Plan to passers-by outside the EPA's main entrance. Last week he was informed by security personnel that the activity is no longer permitted in that location.

I would appreciate your advising me if there has been a change in policy regarding distribution of information near the EPA building. Please direct all correspondence to me at the following address:

111 Rockville Pike, Suite 960
Rockville, MD 20850
FAX: (301) 545-1512

If you need additional information, please contact Jeff Samuels of my staff at jeff_samuels@vanhollen.senate.gov or at (301) 545-1500. Thank you for your assistance.

Sincerely,

Chris Van Hollen
U.S. Senator

CVH/js

STATE OFFICES

MONTGOMERY COUNTY
111 ROCKVILLE PIKE
SUITE 960
ROCKVILLE, MD 20850
PHONE (301) 545-1500
FAX (301) 545-1512

ANNE ARUNDEL & SOUTHERN MARYLAND
60 WEST STREET
SUITE 107
ANNAPOLIS, MD 21401
PHONE (410) 263-1325

EASTERN SHORE
204 CEDAR STREET
SUITE 200C
CAMBRIDGE, MD 21613
PHONE (410) 221-2074

BALTIMORE REGION
1900 NORTH HOWARD STREET
SUITE 100
BALTIMORE, MD 21218
PHONE (667) 212-4610

WESTERN MARYLAND
32 WEST WASHINGTON STREET
SUITE 203
HAGERSTOWN, MD 21740
PHONE (301) 797-2826

PRINCE GEORGE'S COUNTY
1101 MERCANTILE LANE
SUITE 210
LARGO, MD 20774
PHONE (301) 322-6560

NEAL P. DUNN, MD
2ND DISTRICT, FLORIDA

COMMITTEE ON AGRICULTURE
COMMITTEE ON VETERANS' AFFAIRS
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

Congress of the United States
House of Representatives
Washington, DC 20515–0902

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300 SOUTH ADAMS STREET
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(850) 891-8610

423 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5235

October 12, 2018

The Honorable Andrew Wheeler
Acting Administrator, Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20004

Dear Acting Administrator Wheeler:

As you are aware, Hurricane Michael made landfall on October 10 as the third strongest hurricane ever recorded in the United States. This disaster has left a path of total devastation across the Florida panhandle and caused significant damage and power outages throughout the Southeast.

While the true impact of Michael is only beginning to be uncovered, it is important to ensure that those affected are able to begin rebuilding their communities as quickly as possible. In the coming weeks and months, Congress and the Administration will need direct coordination to ensure that those affected by this disaster are not burdened unnecessarily by government regulation and bureaucracy. Specifically, I ask that you work with me to ensure adequate fuel supply for the recovery effort, including:

- Any necessary flexibility to Reformulated Gasoline Requirements
- Any necessary waivers regarding Gasoline Reid Vapor Pressure (RVP)

I thank you for your help in ensuring a more timely and efficient recovery process for all those affected by Hurricane Michael. If I can be of any assistance, please do not hesitate to contact me.

Sincerely,

NEAL P. DUNN, M.D.
MEMBER OF CONGRESS

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United States Senate
WASHINGTON, DC 20510

October 4, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Acting Administrator Wheeler:

As strong supporters of prioritizing children's health, we are concerned by recent reports about the Environmental Protection Agency's plans for the Office of Children's Health Protection, which is critical to protecting the health of America's infants, children, and young adults from environmental risks. We write to express our strong support of the EPA's Office of Children's Health Protection, and remain concerned regarding the protection of children's health by the EPA. Many stakeholders are concerned about the future of this office and EPA's mission regarding children's health, after EPA's recent decision that the Director of EPA's Office of Children's Health Protection has been put on administrative leave. We also are alarmed about the negative impacts that this abrupt move could have on protecting the health of America's children and request additional information about the future of EPA's Office of Children's Health Protection (OCHP).

We recognize the important role that EPA's Office of Children's Health Protection plays as one of the only offices that addresses the impact of EPA regulations and policies on the health of America's infants, children, and young adults. Infants and children are uniquely vulnerable to environmental contaminants and face disproportionate exposure to environmental factors that negatively affect health. The OCHP, an office established over 20 years ago, is an incredibly important office dedicated to protecting America's children from environmental health risks. We are concerned about the future of this office and ensuring that all EPA actions and programs continue to address the unique vulnerabilities of children.

As a reminder, the Explanatory Statement for the Consolidated Appropriations Act, 2018 (P.L. 115-141) continues longstanding General Guidelines for Reprogramming that require agencies funded by the Department of the Interior, Environment and Related Agencies subcommittee to submit reorganization proposals for Committee review prior to implementation, including reorganizations of significant national importance and organizations that include any closures, transfers of functions, and consolidations. We expect that any proposed changes to the OCHP would not be initiated or implemented without the required approval from the Appropriations Committee.

In order to address these concerns, we seek responses to the following questions about EPA's decisions to continue to prioritize protecting children's health.

1. What are EPA's long-term plans for the Office of Children's Health Protection?
2. Have there been discussions about reorganizing the Office of Children's Health Protection? If so, why?
3. Are there any plans to reorganize the Office of Children's Health Protection? If so, what are those plans?
4. Are there plans to reduce funding or shift resources related to the staff, authorities and work of the Office of Children's Health Protection?
5. How do you address proposed rules and regulations that are in conflict with concerns raised by the Office of Children's Health Protection?
6. What is the plan for permanently filling the role of Director at EPA's Office of Children's Health Protection?

In addition, we request a full and complete explanation of the facts and purposes behind the personnel action taken against Dr. Etzel, the Director of OCHP, in order to assure Congress and the public that the leadership of this office is being handled appropriately, and according to the laws and agency procedures governing career civil service protections.

We urge the EPA to continue the work of the Office of Children's Health Protection to ensure that EPA's regulations and policies adequately protect the public health of America's infants, children, and young adults. In addition, we request that EPA answer these questions for Congress and the public as soon as possible, and no later than October 18, 2018.

Sincerely,

Tom Udall
United States Senator

Jack Reed
United States Senator

Jeffrey A. Merkley
United States Senator

Richard J. Durbin
United States Senator

Patty Murray
United States Senator

TAMMY DUCKWORTH
ILLINOIS

COMMITTEES
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COMMERCE, SCIENCE, AND TRANSPORTATION
SMALL BUSINESS AND ENTREPRENEURSHIP

United States Senate

September 27, 2018

VIA ELECTRONIC DELIVERY

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20004

Dear Acting Administrator Wheeler:

For three months, we have sought to meet with Ms. Cathy Stepp, the U.S. Environmental Protection Agency's (EPA) Region 5 Administrator, to discuss several urgent issues of critical importance to us and our constituents in Illinois.

On three different occasions, after her office confirmed meetings with us both, Administrator Stepp cancelled these appointments with little to no notice. Our offices were not even provided the courtesy of a reason for the cancellation of the third meeting, which was supposed to take place this week. And no effort has been made to reschedule the appointment.

While we understand exigent circumstances may arise that result in unforeseen and uncontrollable schedule changes, Ms. Stepp's repeated pattern of cancellation with little notice or explanation is not acceptable to our constituents, whose health and well-being depend on Region 5 efficiently and successfully protecting them from harmful pollution and toxic chemicals. Given the recent history of Region 5, we are especially alarmed by the apparent lack of urgency and responsiveness from the Regional Administrator.

We request that you meet with us at your earliest convenience so that we can finally get answers to our congressional oversight inquiries regarding several urgent issues affecting Illinois residents. We would appreciate a response by Monday, October 1, 2018.

Thank you for your consideration of our request.

Sincerely,

Tammy Duckworth
United States Senator

Richard J. Durbin
United States Senator

cc: The Honorable John Barrasso, Chairman, Senate Environment and Public Works Committee
cc: The Honorable Tom Carper, Ranking Member, Senate Environment and Public Works Committee

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8 SOUTH OLD STATE CAPITOL PLAZA
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(217) 528-6124

EURMA C. HAYES CENTER
441 EAST WILLOW STREET
CARBONDALE, IL 62901
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1823 2ND AVENUE
ROCK ISLAND, IL 61201
(309) 606-7060

SUITE 460
23 PUBLIC SQUARE
BELLEVILLE, IL 62220
(618) 722-7070

DAN SULLIVAN
Alaska

702 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-3004

United States Senate

Dear Mr. Hladick,

On , I sent the attached letter to you asking for your assistance on a matter relevant to your agency for (b) (6) [redacted]. To this date I have not received a response from your agency. I would appreciate your prompt assistance in this matter in compliance with all applicable laws, regulations, and agency policies.

Please provide a status report on this case and any information that will assist me in responding to my constituent as soon as possible to Rachel Bylsma in my district field office at the following location:

Director of Constituent Services
Office of Senator Dan Sullivan
510 L Street, Suite 750
Anchorage, Alaska 99501-1956
907-271-5915

Thank you for your assistance.

Sincerely,

Dan Sullivan
United States Senator

United States Senate

WASHINGTON, DC 20510

October 24, 2018

The Honorable Andrew Wheeler
Acting Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Acting Administrator Wheeler:

The Glynn County Board of Commissioners and the City of Brunswick have contacted our offices in opposition to the proposed consent decree for remediation of Operable Unit One (OU1) at the Terry Creek Superfund Site located in Glynn County Georgia. We write to you to bring the concerns of many residents of Glynn County to your attention as your Agency moves forward and hope that you will work with other federal partners, including the Department of Justice, to put forth a solution that is beneficial to all parties.

The proposed consent decree lodged on May 16, 2018 by the Department of Justice moves forward with a remedial option for OU1 that many stakeholders in Glynn County feel does not go far enough. Last month, the Glynn County Board of Commissioners and the City of Brunswick passed a resolution outlining their concerns with the current proposed consent decree.

The community is concerned that a solution that fails to fully remove all contaminated materials will have a negative economic impact on the county. The resolution outlines the importance of maintaining a healthy ecosystem for the county's tourism and recreation industries. Additionally, the resolution underscores the difficulty of pursuing economic development opportunities on a property that has contaminated materials contained on site and in a county that is home to more Superfund sites than any other county in Georgia.

Moving forward, we are hopeful that you will be able to strike the appropriate balance between the concerns of our constituents in Glynn County and finishing cleanup at this Superfund site promptly. If we can be of any further assistance in connecting you to local stakeholders, please do not hesitate to let us know.

Kindest regards,

Johnny Isakson
United States Senator

David A. Perdue
United States Senator

CC: Assistant Attorney General Jeffrey Clark
Regional Administrator Trey Glenn

Congress of the United States
Washington, DC 20515

October 10, 2018

Acting Administrator Andrew Wheeler
Environmental Protection Agency
1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Acting Administrator Wheeler,

We are writing to request an update on the status of negotiations with (b) (6) [redacted] a Colorado resident and property owner in Western Colorado. (b) (6) [redacted] personally owns the land in Gladstone, CO, which is adjacent to Cement Creek and downstream from the Gold King mine. When the Environmental Protection Agency (EPA) contractors blew the adit of the Gold King mine in August 2015, [redacted] authorized the EPA to use his land for emergency water treatment.

Since that time, the EPA has occupied (b) (6) [redacted] property, but (b) (6) [redacted] has received no compensation for this occupation. It is our understanding that the EPA and Mr. (b) (6) [redacted] are in the midst of negotiating a sale of the Gladstone land or a formal-lease agreement that lays out the terms of the EPA's occupation. We respectfully request that you work towards a solution that is mutually agreeable for both parties and fully recognizes the impact the EPA's action at Gold King Mine has had on (b) (6) [redacted]. We would appreciate an update on the status of the negotiations at your earliest convenience.

Sincerely,

Cory Gardner
U.S. Senator

Scott Tipton
Member of Congress

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JAY INSLEE
Governor

STATE OF WASHINGTON
Office of the Governor

October 26, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
Docket ID. No EPA-HQ-OAR-2018-0283
1200 Pennsylvania Avenue, NW
Washington DC, 20460

The Honorable Elaine Chao
Secretary
U.S. Department of Transportation
Docket ID No. NHTSA-2018-0067
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks (Docket ID No. EPA-HQ-OAR-2018-0283 / NHTSA-2018-0067)

Dear Acting Administrator Wheeler and Secretary Chao:

On behalf of the State of Washington, I write to express strong opposition to the proposed rule entitled *Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks*, which threatens our state's authority to set higher emissions reduction targets, thwarts progress on combatting climate change, and poses a risk to our residents. For these reasons, the Environmental Protection Agency (EPA) and the National Highway Transportation Safety Administration (NHTSA) should withdraw this flawed proposal and uphold the California waiver and other states' rights to adopt its standards.

We are facing an unprecedented challenge as a nation and as a global community to combat the threat of climate change. The recent report issued by the Intergovernmental Panel on Climate Change is a sober reality check about the urgency of acting now to reduce carbon emissions and protect our planet from reaching an irreversible tipping point of destructively high temperatures. Rather than seizing the opportunity to showcase our ability to invent and build the technologies that will fuel a carbon-free future, this proposal is doubling down on the old, polluting technologies that have helped create this threat in the first place.

Clean car standards are some of the most economical investments ever designed to clean up pollution – these standards have spurred manufacturers to design ways of making our cars run more cleanly and efficiently, saving consumers billions of dollars and helping clean our air. We have witnessed rapid and cost effective development of advanced vehicle technology spurred by California's regulations. Past vehicle standards have been achieved faster and at lower cost than experts predicted, and those standards have helped consumers by delivering cleaner, more efficient vehicles.

In Washington State, we have adopted aggressive greenhouse gas (GHG) reduction targets. Motor vehicles are by far our largest source of those emissions. As a Section 177 state, Washington relies on the California Advanced Clean Cars program to maximize vehicle emission reductions and drive the development of a cleaner, low-carbon transportation sector. Maintaining California's authority to adopt motor vehicle emission standards and the right for states like Washington to opt into those

standards, is vitally important to achieving our goals and protecting our communities. We will not meet our targets without significant additional reductions from the transportation sector. The proposed rollback of federal standards, if allowed to stand, could add over 2.5 MMT of GHG emissions into Washington's atmosphere by 2035.

This Administration's proposal to withdraw the existing federal standards under the unified national program is an unacceptable abdication of leadership at a time when the stakes for the health and safety of Americans couldn't be higher. Furthermore, it undermines our state's ability to mitigate those threats at this critical time. It fails to uphold needed and achievable national standards, undermines states' rights and threatens the health and safety of our residents. For these reasons, this proposal must be withdrawn.

Enclosed, please find a comprehensive evaluation by the Washington State Department of Ecology detailing the shortcomings and dangers of this proposal. If you have any questions, please contact my office in Washington, DC (Casey Katims, Director, Casey.Katims@gov.wa.gov, or Sharlett Mena, Deputy Director, Sharlett.Mena@gov.wa.gov).

Very truly yours,

Jay Inslee
Governor

Enclosure

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

October 26, 2018

Andrew Wheeler, Acting Administrator
U.S. Environmental Protection Agency
EPA Docket Center - Air and Radiation Docket
Mail Code 28221T
1200 Pennsylvania Ave. NW
Washington DC, 20460

Heidi King, Deputy Administrator
U.S. Department of Transportation
National Highway Traffic Safety Administration
Docket Management Facility - M-30
West Building, Ground Floor, Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: **The Safer Affordable Fuel-Efficient Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks (Docket ID Nos. EPA-HQ-OAR-2018-0283, NHTSA-2018-0067)**

Dear Acting Administrator Wheeler and Deputy Administrator King:

The Washington State Department of Ecology (Ecology) offers the following comments on the U.S. Environmental Protection Agency's (EPA) and National Highway Traffic Safety Administration's (NHTSA) Notice of Proposed Rulemaking (NPRM), the *Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks*, as published in the Federal Register on August 24, 2018 (83 FR 42,817). In addition, we concur with comments on this proposal submitted by Governor Jay Inslee, the National Association of Clean Air Agencies, the California Air Resources Board (CARB), and comments from the Attorney General of Washington in conjunction with the Attorneys General of other states.

Ecology opposes this deeply flawed NPRM. We urge EPA and NHTSA to withdraw the NPRM and retain the existing federal standards under the unified national program. EPA and NHTSA should uphold the waiver issued to the state of California under Section 209 of the Clean Air Act (CAA) for the greenhouse gas (GHG) and Zero Emission Vehicle (ZEV) components of the state's Advanced Clean Car (ACC) program, and uphold other states' rights under Section 177 of the CAA to adopt and enforce those standards.

I. The current GHG and fuel economy standards help prevent costly and damaging impacts of climate change.

The proposal is unacceptable. Rolling back current standards would undercut our ability to achieve greater vehicle efficiency, reduce energy costs for consumers, and reduce harmful emissions. It would leave the United States and Washington State more vulnerable to the impacts of climate change, putting at risk public health, our security, the economy, and our way of life. The conclusions of the latest reports from the Intergovernmental Panel on Climate Change (IPCC) and the U.S. Global Change Research Program (USGCRP) are clear: urgent action is needed to slow global warming and reduce our reliance on fossil fuels.[1]

Heat waves, wildfires, sea level rise, and ocean acidification are all projected to increase with warming.[2] Climate change will continue to alter snowpack and streamflow, and intensify challenges in providing an adequate supply of water for drinking, fish, wildlife, agriculture, and hydropower generation.[3] Scientists expect diseases carried by mosquitoes and other vectors to expand in range and season.[4] Washington's centuries old rainforests, lush alpine meadows below snow-topped mountains, millions of acres of wildland forests, stunning tree-lined coastline, and current and future generations are all at risk because of this flawed NPRM.[5]

The federal government has a legal and moral obligation to protect the public against carbon pollution. EPA's 2009 *Endangerment and Cause or Contribute Findings for Greenhouse Gases under the Clean Air Act* fulfilled a mandate from the U.S. Supreme Court to regulate GHGs as pollutants under the CAA.[6] Federal efforts such as the vehicle GHG and fuel economy standards support the federal government's role in meeting its legal obligations. The proposed rule is an abdication of the government's responsibility. Further, it would remove a critical tool in our fight against climate change, which increases the probability that the types of impacts described in the IPCC and USGRCP reports will occur with greater severity and frequency.

II. The NPRM is based on faulty assumptions, flawed modeling, and procedural shortcomings.

The manner in which the EPA and NHTSA propose to weaken the current standards is particularly troublesome. The Preliminary Regulatory Impact Analysis (RIA) proposal and the Draft Environmental Impact Statement prepared by NHTSA are based on flawed assumptions and procedural bias. NHTSA conducted the technical analysis for portions of the rule that are strictly under the purview of EPA.[7] We are concerned by EPA's abdication of responsibility in this regard, as the proposal appears to ignore EPA's obligations under the Clean Air Act and disregards the impacts on public health and the environment.

---

[1] IPCC, 2018, *Global Warming of 1.5°C*; USGCRP, 2017, *Climate Science Special Report: Fourth National Climate Assessment, Volume 1.*

[2] Climate Impacts Group (CIG), University of Washington, 2013, *Climate Change Impacts and Adaptation in Washington State: Technical Summaries for Decision Makers.*

[3] CIG, 2013.

[4] U.S. Global Change Research Program, 2016, *The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment.*

[5] CIG, 2013.

[6] See Massachusetts v. EPA, 549 U.S. 497 (2007).

[7] EPA Office of Transportation and Air Quality briefing to the National Association of Clean Air Agencies, August 14, 2018.

EPA's Office of Transportation and Air Quality raised concerns on NHTSA's approach, modeling, and many of NHTSA's conclusions, in memoranda included in the regulatory docket for the NPRM.[8] On review of the NHTSA analysis, EPA found that:

- Many aspects of NHTSA's analysis were indefensible.
- The NPRM is detrimental to safety, and would increase driver fatality relative to the current standards.
- The NPRM over-estimated costs and under-estimated benefits, and would reduce employment by over 60,000 automotive jobs.

This is similar to the findings of Synapse Energy Economics in their September 2018 report, which showed that the NPRM would reduce employment by 60,000 in 2025 and over 120,000 in 2035.[9] Synapse also found that the NPRM will reduce GDP by $8 billion in both 2025 and 2035 when compared to the current standards.

Furthermore, EPA and NHTSA have not conducted any analysis of the public health harms that would result from increased emissions of criteria pollutants and toxic air pollutants resulting from increased petroleum consumption. EPA and NHTSA have not adequately considered environmental justice and the potential for disproportionate impacts on disadvantaged communities. The assertion that the increase in GHG emissions from the NPRM would have a negligible impact on global warming is deeply concerning.

The outreach to states as co-regulators has been minimal or nonexistent, and the EPA and NHTSA have not consulted with states before they issued the proposal. In addition, the public comment period is woefully inadequate for a proposal of this complexity and with such far-reaching implications. Washington State requests additional time to review the proposal and supporting information.

III. The NPRM will result in a significant loss of benefits to Washington State.

The transportation sector is the largest source of GHG emissions in Washington State, and contributed 43 percent of total state GHG emissions in 2013.[10] The improvements in GHG and fuel economy standards resulting from the current rule are critical for Washington State to make progress in meeting mandated statewide GHG emission reductions.[11]

Under this proposal, GHG emissions from transportation petroleum use in Washington State are projected to increase by 1.4 million metric tons in 2030, and 1.8 million metric tons by 2035, compared to the current rule.[12] EPA and NHTSA project that gasoline and diesel consumption will increase, resulting in increased emissions from fuel production, delivery, and vehicle refueling.

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[8] Inside EPA, August 14, 2018, *EPA Sharply Questioned NHTSA's Safety Claims in Vehicle GHG Rollback.*

[9] Synapse Energy Economics Inc. September 25, 2018, *Giving Back Half the Gains: Macroeconomic Impacts of the Proposed Rollback in Federal Vehicle Standards.*

[10] Ecology, 2016, *Report to the Legislature on Washington Greenhouse Gas Emissions Inventory: 2010-2013,* publication number 16-02-025.

[11] RCW 70.235.020.

[12] Ecology estimate scaled and adapted from Rhodium Group, 2018, *The Biggest Climate Rollback Yet?,* based on AEO 2018 reference oil price.

It would also result in increases in emissions of nitrogen oxides (NOx) and volatile organic compounds (VOC) and increased localized exposure to benzene and other air toxics. These increases are primarily the result of increased air pollution from fuel production, distribution, and vehicle refueling. Under the current rule, improvements in vehicle efficiency will reduce fuel demand and emissions. Washington and other states rely on the current vehicle emission standards to meet and maintain the health-based National Ambient Air Quality Standards (NAAQS).

Increases in NOx and VOC would increase ozone levels in two areas at risk of ozone nonattainment in the central Puget Sound region and the Tri-Cities. Ozone pollution causes serious health effects, especially for children, the elderly, pregnant women, and people with existing illnesses. Ozone pollution aggravates asthma, inflames and damages lungs, and causes difficult or painful breathing. People living near major roadways, in dense urban areas, and near transportation hubs are most at risk from detrimental health effects.

The current rule provides savings for consumers in fuel costs through improvements in fuel efficiency, to the tune of thousands of dollars over the lifetime of the vehicle.[13] It also provides an incentive for automakers to pursue advanced vehicle technologies, which enhances global competiveness, stimulates innovation, and further boosts the clean-energy economy and jobs. Freezing GHG and fuel economy standards at model year (MY) 2020 levels for MYs 2021 to 2026 would hurt American and Washington families in their pocket books. The state would need to shift the burden and cost of achieving reductions across other sectors and none with as high an impact.

Harmonization of the program among EPA, NHTSA and California Air Resources Board provides regulatory certainty and market stability that benefits auto manufacturers, consumers, and state and federal regulators. This proposal puts the harmonized national standards agreed to in 2012 by these entities, and automakers at risk. If this proposal is finalized, automakers will be required to separately meet current California GHG standards and less stringent federal standards for vehicles starting with model year 2021. This causes a reshuffling of vehicle sales across the country, as automakers redirect more efficient vehicles to states that adopt California standards. Washington State is preparing a rulemaking action to update the adoption by reference of the California standards following their final adoption of the "deemed to comply" rule.

IV. The current standards finalized in 2012 remain appropriate.

Washington State disagrees with EPA and NHTSA's proposed conclusion that the GHG emission standards for MYs 2021-2025 established in 2012 are no longer appropriate. The current standards are supported by a strong technical and analytical record and robust stakeholder process to develop the 2016 draft Technical Assessment Report for the Mid-Term Evaluation that concluded in January 2017.[14]

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[13] The White House, August 28, 2012, "Obama Administration Finalizes Historic 54.5 MPG Fuel Efficiency Standard," https://obamawhitehouse.archives.gov/the-press-office/2012/08/28/obama-administration-finalizes-historic-545-mpg-fuel-efficiency-standard.

[14] EPA, 2016, *Proposed Determination on the Appropriateness of the Model Year 2022-2025 Light-duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation: Technical Support Document.*

EPA and NHTSA claimed to have analyzed new information and performed new analysis to support the revised final determination issued in April of 2018.[15] However, EPA and NHTSA have failed to provide adequate justification and have refused to provide critical pieces of technical information.

The technologies needed to meet the current standards are already available, cost-effective, and in use today.[16] Technology has advanced at a far greater pace than anticipated when the current standards were issued in 2012. Automakers have adopted these technologies into their fleets faster than expected.[17] In fact, there are new technologies that were not even contemplated in 2012 that provide tremendous opportunities for greater improvements. Freezing standards at MY 2020 levels would ignore the advances in technologies that have already entered the market and would stifle innovation, prevent critical emissions reductions, and harm the ability of state and local communities to protect public health and the environment.

V. The California Waiver must be maintained.

Washington is one of twelve states that adopted California GHG and fuel economy standards under the authority of Section 177 of the federal Clean Air Act. This year, the state of Colorado announced they will also adopt the California standards. California has the unique authority to set vehicle emissions standards that are more stringent than federal emission regulations. Motor vehicles are the largest source of GHG emissions, criteria pollutants, and toxic air pollutants in Washington State. In order to protect public health and the environment, Washington State needs to adopt the more stringent standards.

EPA must not rescind the waiver of preemption issued January 9, 2013 for the GHG and ZEV components of California's Advanced Clean Cars program. California has long-standing authority under Section 209 of the Clean Air Act to adopt its own more stringent clean car standards, subject to an EPA waiver.

EPA must provide this waiver, except under specified, narrow grounds. This proposal fails to adequately demonstrate that EPA is justified in rescinding the waiver. The justification for rescinding the waiver based on preemption of states from setting fuel economy standards under the Energy Policy and Conservation Act (EPCA) is legally indefensible and clearly contrary to the authority under the federal Clean Air Act and established legal precedent.[18]

Moreover, the finding in the proposal that California does not need the waiver to meet compelling and extraordinary conditions is unsubstantiated. The impacts of climate change on California are compelling and extraordinary, as demonstrated by the multi-year drought, intense heat, and unusually destructive wildfires experienced in recent years. Climate change will bring warmer temperatures and more frequent extreme heat events, exacerbating California's unique challenge in reducing ozone levels and bringing much of the state back into attainment with the NAAQS.

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[15] See 83 FR 16,077, April 13, 2018, *Mid-term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light-Duty Vehicles.*

[16] U.S. EPA, 2017, *Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation*, EPA-420-R-17-001.

[17] Ibid.

[18] See *Green Mt. Chrysler Plymouth Dodge Jeep v. Crombie,* 508 F. Supp. 2d 295 (2007); *Central Valley Chrysler-Jeep, Inc. v. Goldstene,* 529 F. Supp.2d 1151 (2007).

California is also unique for its leadership role in reducing emissions. Earlier this year CARB announced that California GHG emissions fell below 1990 levels, meeting an early GHG reduction target years ahead of schedule.[19] Carbon pollution dropped 13 percent statewide since a 2004 peak, with the economy growing 26 percent during the safe time frame.[20] The leadership in California demonstrates that environmental protection is clearly not at odds with economic growth, and there is a significant coalition of states dedicated to using the Section 177 authority to adopt California vehicle standards.

VI. Air conditioning refrigerant leakage, nitrous oxide and methane emissions should be included for compliance.

Washington State opposes the proposal to exclude CO_2 equivalent reductions associated with air conditioning (A/C) refrigerants and leakage, and nitrous oxide and methane emissions reductions for compliance with CO_2 standards after model year 2020. Hydrofluorocarbons used in vehicle A/C systems, nitrous oxide, and methane are all potent greenhouse gases with high global warming potentials between 25 to 1,430 times that of CO_2, based on a 100-year time horizon, and between 72 to 3,830 times that of CO_2 based on a 20-year time horizon[21] The emission standards should address the full suite of greenhouse gas emissions from motor vehicles instead of being limited only to CO_2.

Credit trading also offers needed flexibility to auto manufacturers to consider a full range of options to reduce greenhouse gases, including reducing leakage from vehicle A/C systems, improving A/C system efficiency, switching to a new refrigerant with a lower global warming potential, or installing control technologies to reduce methane or nitrous oxide. These mechanisms offer compliance flexibilities that can reduce the costs of compliance while also providing an important incentive to reduce emissions of potent greenhouse gases. EPA and NHTSA must retain this mechanism in the final rule.

Conclusion

In summary, EPA and NHTSA should withdraw this flawed NPRM, retain the existing federal standards under the unified national program, and uphold the California waiver and other states' rights to adopt California standards. In the future, EPA and NHTSA should collaborate closely with California, other state and local air agencies, auto manufacturers, and other stakeholders to find a path forward that the parties agree to, while also ensuring the critically important emission reductions that the State of Washington needs to protect public health and the environment for the people of our state.

Thank you for the opportunity to provide our perspective on this important issue.

Sincerely,

Maia Bellon by Polly Zehm

Maia D. Bellon
Director

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[19] CARB, July 11, 2018, *Climate pollutants fall below 1990 levels for first time.*

[20] Ibid.

[21] IPCC, 2007, *Climate Change 2007: The Physical Science Basis. Contribution of Working Group 1 to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change.*

LINDSEY O. GRAHAM
SOUTH CAROLINA

290 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-5972

UNITED STATES SENATE

October 30, 2018

Mr. Troy Lyons
Associate Administrator for Congressional Affairs
Environmental Protection Agency
1200 Pennsylvania Avenue Northwest, # 1301A
Washington, DC 20460-0003

(b) (6) [redacted]

Dear Mr. Lyons:

Enclosed is a copy of correspondence I have received from the above named constituent. I believe you will find it self-explanatory.

(b) (6) [redacted] lives downstream of the Burlington Industries Cheraw Superfund siteon Wilson's Branch. He is unsure ifthe PCB readings obtained by the EPA on his property are accurate given that the EPA is removing soil at Huckleberry Park right up the street. Both properties share the branch and the recent flooding may have pushed contamination further downstream.

Your reviewing this material and providing any assistance or information possible under the governing statutes and regulations will be greatly appreciated. Thank you for your attention in this matter. I look forward to hearing from you soon.

Sincerely,

Lindsey O. Graham
United States Senator

LOG/rt

Enclosure

Please refer to case (622702) in your response.

Please reply to: The Honorable Lindsey Graham
United State Senate
235 East Main Street, Suite 100

508 HAMPTON STREET
SUITE 202
COLUMBIA, SC 29201
(803) 933-0112

401 WEST EVANS STREET
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UNITED STATES SENATE
AUTHORIZATION FORM

By providing the information below and signing this form, I hereby authorize the appropriate agency to furnish the office of U.S. Senator Lindsey Graham information pertaining to my claim or request. Th(b) (6) thorization is in accordance with the Privacy Act of 1974.

Name: [redacted]

City: (b) (6) [redacted] State: S.C. Zip: 29520

Social Security Number: [redacted] VA Number (if applicable): SAME

In the space below, briefly describe the problems that you are experiencing and explain exactly what you would like Senator Graham to do on your behalf. Without this information, it will be impossible for Senator Graham to adequately assist you. (If you need more space, please use the back of the form).

Senator Graham!
We are having Problems with 1) EPA +
2) FEMA with PCB's + Hurricanes Florence
and Michael. (appealed FEMA decision)
Also I am Having Problem with 3) VA on my
Service in the National Guard. - Knees

Signed (b) (6) [redacted] Date: 10-23-18

NOTE: Those requesting assistance from Senator Graham should note that if they are represented by an attorney, that attorney must contact the Senator's office by letter or telephone before action can proceed. This is to eliminate any confusion and it is in the best interest of the client.

If represented by an attorney, please give attorney's name _____

Please return form to:

U.S. Senator Lindsey O. Graham
508 Hampton Street, Suite 202
Columbia, South Carolina 29201
Phone: (803) 933-0112
Fax: (803) 933-0957

Eades, Cassaundra

From: Hope, Brian on behalf of EPAExecSec
Sent: Thursday, October 11, 2018 12:28 PM
To: Eades, Cassaundra; Mims, Kathy
Cc: Richardson, RobinH
Subject: Fw: Case ID#PR-035464 - Rep. Raul Grijalva with 70 signees - Oct 03 18
Attachments: PR-035464 - Rep. Raul Grijalva with 70 signees - Oct 03 18.pdf; List of signatures (PR-035464).docx

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From: FN-WHO-Document Tracking Unit <FN-WHO-DocumentTrackingUnit@who.eop.gov>
Sent: Thursday, October 11, 2018 11:22 AM
To: EPAExecSec
Subject: Case ID#PR-035464 - Rep. Raul Grijalva with 70 signees - Oct 03 18

THE WHITE HOUSE
OFFICE OF RECORDS MANAGEMENT
DOCUMENT MANAGEMENT AND TRACKING UNIT

Please see attached letter addressed to the President from Congressional Member(s).

To: Environmental Protection Agency

Action Requested: Appropriate Action

Please send a copy of response or draft response for signature (if one is requested) to the Document Management and Tracking Unit mailbox, FN-WHO-DOCUMENTTRACKINGUNIT@WHO.EOP.GOV. include any additional comments and/or actions taken by your agency. If more information is needed call (202) 456-2590.

Congress of the United States

Washington, DC 20515

October 3, 2018

President Donald Trump
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Trump:

For nearly two years, your administration has executed a strategy of ignoring threats to public health, abusing taxpayer resources, and undermining efforts to combat climate change. While these efforts have taken the form of multiple federal actions across many agencies, the recent proposed evisceration of methane emission controls by the Environmental Protection Agency (EPA) and the Bureau of Land Management (BLM) will accomplish all three of these in one fell swoop. The EPA's proposal to weaken methane leak inspection and repair requirements for oil and gas operations[1] and BLM's rule gutting measures designed to reduce methane venting, flaring and leaks from oil and gas operations on public lands[2] will inflict tremendous harm on American citizens and on the air and water on which we all rely. We write on behalf of the communities across the country who will suffer because of these recent decisions, and to urge you to reverse course and put public health and environmental responsibility ahead of the self-serving demands of the oil and gas industry.

Weakening federal methane regulations will have real-world consequences on families and individuals who live near oil and gas operations. Oil and gas facilities leaking methane also emit volatile organic compounds (VOCs) and hazardous air pollutants such as benzene, formaldehyde, and acetaldehyde, which can exacerbate asthma and respiratory illnesses and have been linked to cancer, birth defects, and nervous system damage.[3] EPA acknowledges its proposal will "degrade air quality and adversely affect health and welfare," by increasing emissions of VOCs by 100,000 tons and hazardous air pollutants by 3,800 tons.[4] As a result of the BLM's new rule, federal regulation of methane emissions from public lands will largely revert to outdated measures that were in effect since 1979 and don't take advantage of advancements made in science, technology, and the U.S. energy industry since then. The new BLM rule will also increase emissions of VOCs by over 550,000 tons and hazardous air pollutants by over 13,000 tons between 2019 and 2025.[5] From California to Colorado to New Mexico, oil and gas activities exist in many of our backyards, and it's clear these recent actions directly threaten the health of citizens we represent, and the citizens you have a duty to

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[1] "EPA Proposes Oil and Gas Targeted Improvements Package to Advance President Trump's Energy Dominance Agenda." U.S. EPA. Sept. 11, 2018. https://www.epa.gov/newsreleases/epa-proposes-oil-and-gas-targeted-improvements-package-advance-president-trumps-energy

[2] "Interior Department Finalizes New Waste Prevention Rule." U.S. BLM. Sept. 18, 2018. https://www.blm.gov/press-release/interior-department-finalizes-new-waste-prevention-rule-0

[3] "Fossil Fumes: a public health analysis of toxic air pollution from the oil and gas industry." Clean Air Task Force. June 2016. http://www.catf.us/resources/publications/files/FossilFumes.pdf

[4] "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration." Proposed rule. U.S. EPA. Sept. 11, 2018. https://www.epa.gov/sites/production/files/2018-09/documents/frnoilgasreconsideration2060-at54nprm20180910.pdf

[5] "Final Environmental Assessment." Bureau of Land Management. Sept. 28, 2018. https://www.regulations.gov/document?D=BLM-2018-0001-223606

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protect. Furthermore, BLM's own analysis shows that rescinding the 2016 methane rule will result in the waste of nearly $1 billion worth of natural gas.

While you may continue to believe climate change is a hoax, destructive and costly extreme wildfires, extended heatwaves, and supercharged storms have become a new reality because of our addiction to fossil fuels. As a potent greenhouse gas (GHG) with 80 times the warming power of carbon dioxide over a 20-year period, methane is a key contributor to the climate crisis, and it demands a forceful response by the federal government. Methane accounts for close to 10 percent of annual U.S. GHG emissions, and of this amount, the oil and gas industry is the largest national source.[6] Oil and gas facilities annually emit over 8 million metric tons of methane, which is equivalent to a year's worth of pollution from 145 million cars.[7] State officials, business leaders and countries around the world understand that steps to address climate change must involve a plan to mitigate methane emissions, but these recent EPA and BLM actions undermine these efforts and will amplify the human suffering experts forecast will occur.

As a businessman, one would hope as President you would support policies that minimize waste of a public resource like natural gas. However, repealing EPA and BLM methane regulations demonstrate your administration governs with the benefit of the oil and gas industry in mind, not American taxpayers. Between 2009 and 2015, oil and gas producers on public and Indian lands flared, vented and leaked over 460 billion cubic feet of natural gas, enough to supply over 6 million households for a year.[8] The U.S. Government Accountability Office has determined that taxpayers are losing as much as $23 million per year in lost royalty revenue from this wasted energy resource,[9] and a separate independent analysis estimates that since 2013, the total value of wasted methane has exceeded $2 billion.[10] Lost royalty revenue could have been used for critical education, health, and infrastructure programs, but oil and gas companies have lobbied against EPA and BLM methane regulations by claiming compliance with the federal requirements are too costly for their struggling industry.

What makes your administration's decisions to roll back methane regulations even more disturbing and short-sighted is the fact that the government is using outdated methane emission estimates. A new scientific report from 24 authors representing 12 universities, two government labs, and more, reported that methane emissions from the U.S. oil and gas supply chain were roughly 60 percent higher than EPA inventory estimates and that emissions from production operations were more than double EPA estimates.[11] These revelations mean drastically more heat-trapping GHG

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[6] "Overview of Greenhouse Gases: Methane Emissions." U.S. EPA. https://www.epa.gov/ghgemissions/overview-greenhouse-gases

[7] "API's 'Environmental Partnership:' years behind the curve on methane from the oil and gas industry." Clean Air Tast Force. December 2017. http://www.catf.us/blogs/ahead/2017/12/06/apis-environmental-partnership-years-behind-the-curve-on-methane-from-the-oil-and-gas-industry/

[8] "Fact Sheet on Methane and Waste Prevention Rule." U.S. Bureau of Land Management. 2016. https://www.doi.gov/sites/doi.gov/files/uploads/methane_waste_prevention_rule_factsheet.pdf

[9] "Opportunities Exist to Capture Vented and Flared Natural Gas, Which Would Increase Royalty Payments and Reduce Greenhouse Gases." U.S. Government Accountability Office. October 2010. https://www.gao.gov/assets/320/311826.pdf

[10] "Needless waste of American energy resources." Environmental Defense Fund. https://www.edf.org/energy/needless-waste-american-energy-resources

[11] R.A. Alvarez, et al., *Assessment of methane emissions from the U.S. oil and gas supply chain,* Science 10.1126/science.aar7204(2018).

trapping GHG emissions from oil and gas facilities are polluting the atmosphere and that fossil fuel companies are wasting an even greater amount of a public resource. Furthermore, despite propaganda from the oil and gas industry claiming that its methane emissions have decreased due to voluntary actions, that decrease is due almost entirely to improvements in natural gas transmission and distribution. Methane emissions from field production, which the EPA and BLM regulations were designed to address, are up 34 percent since 1990, with the growth in methane emissions from the natural gas sector even outpacing the growth in natural gas production.[11]

The actions by EPA and BLM will reverse critical progress made under the Obama administration to identify and reduce methane emissions from oil and gas operations across the country. In recent years, managing methane emissions from the energy sector has presented an opportunity for those interested in public health, environmental stewardship, and fiscal responsibility to work with some in the oil and gas industry to address an issue that almost all parties have identified as a problem. While your decision to abdicate federal leadership and listen to the most extreme voices in the room is far from surprising, it is nonetheless a disappointing development and one that will have immediate and long-lasting harmful impacts on our nation.

Sincerely,

Raúl M. Grijalva
Ranking Member
Committee on Natural Resources

Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce

Alan Lowenthal
Ranking Member
Subcommittee on Energy
and Mineral Resources
Committee on Natural Resources

Diana DeGette
Ranking Member
Subcommittee on Oversight and
Investigations
Committee on Energy and Commerce

Jared Polis
Member of Congress

Michelle Lujan Grisham
Member of Congress

[11] U.S. EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990-2016.*

Nanette Díaz Barragán

Niki Tsongas

Grace F. Napolitano

Daniel T. Kildee

Anna G. Eshoo

A. Donald McEachin

Jamie Raskin

Denny Heck

Suzanne Bonamici

Raja Krishnamoorthi

Tulsi Gabbard

Peter Welch

Doris Matsui

Ben R. Luján

Matthew A. Cartwright

Kathy Castor

Rick Larsen

Sheila Jackson Lee

Hank Johnson

Adam Smith

Jim McGovern

Donald S. Beyer Jr.

David Price

Lucille Roybal-Allard

Bobby Scott

Henry C. "Hank" Johnson

Barbara Lee

Alcee L. Hastings

Elio King

Floyd Dorrett

David Limpin

Jim V Coty

Judy Chu

Wm Lacy Clay

John P Sarbanes

Frederica S Wilson

Mike Quigley

Eliot L. Engel

Paul D. Tonko

Debbie Dingell

Mark Takano

L J O'Neil

Alma Adams

Nydia Velázquez

List of signatures (PR-035464 - Rep. Raul Grijalva with 70 signees - Oct 03 18)

1. Rep. Adam Smith
2. Rep. Alan Lowenthal
3. Rep. Albio Sires
4. Rep. Alcee Hastings
5. Rep. Alma Adams
6. Rep. Anna G. Eshoo
7. Rep. Barbara Lee
8. Rep. Ben Ray Luján
9. Rep. Bobby Rush
10. Rep. Brad Sherman
11. Rep. Chellie Pingree
12. Rep. Colleen Hanabusa
13. Rep. Daniel T. Kildee
14. Rep. Daniel W. Lipinski
15. Rep. Darren Soto
16. Rep. David Price
17. Rep. Debbie Dingell
18. Rep. Debbie Wasserman Schultz
19. Rep. Denny Heck
20. Rep. Diana DeGette
21. Rep. A. Donald McEachin
22. Rep. Donald S. Beyer Jr.
23. Rep. Doris Matsui
24. Rep. Earl Blumenauer
25. Rep. Ed Perlmutter
26. Rep. Eliot Engel
27. Rep. Emanuel Cleaver, II
28. Rep. Frank Pallone, Jr.
29. Rep. Frederica S. Wilson
30. Rep. Grace Meng

31. Rep. Grace Napolitano
32. Rep. Henry C. "Hank" Johnson, Jr.
33. Rep. Jamie Raskin
34. Rep. Jan Schakowsky
35. Rep. Jared Huffman
36. Rep. Jared Polis
37. Rep. Jerry McNerney
38. Rep. Jimmy Gomez
39. Rep. Jimmy Panetta
40. Rep. John Sarbanes
41. Rep. John Yarmuth
42. Rep. Joseph P. Kennedy, III
43. Rep. Judy Chu
44. Rep. Kathy Castor
45. Rep. Lloyd Doggett
46. Rep. Lucille Roybal-Allard
47. Rep. Luis V. Gutiérrez
48. Rep. Marc Veasey
49. Rep. Mark DeSaulnier
50. Rep. Mark Pocan
51. Rep. Mark Takano
52. Rep. Matt Cartwright
53. Rep. Michelle Lujan Grisham
54. Rep. Mike Quigley
55. Rep. Nanette Barragán
56. Rep. Niki Tsongas
57. Rep. Nydia M. Velázquez
58. Rep. Paul D. Tonko
59. Rep. Peter DeFazio
60. Rep. Peter Welch
61. Rep. Raja Krishnamoorthi
62. Rep. Raúl M. Grijalva

63. Rep. Rick Larsen
64. Rep. Ruben Gallego
65. Rep. Salud O. Carbajal
66. Rep. Scott Peters
67. Rep. Sheila Jackson Lee
68. Rep. Suzanne Bonamici
69. Rep. Tulsi Gabbard
70. Rep. Wm. Lacy Clay
71. Rep. Zoe Lofgren

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VICE-CHAIR
NUCLEAR CLEANUP CAUCUS

Congress of the United States
House of Representatives

HOUSE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES
SUBCOMMITTEE ON HOMELAND SECURITY
SUBCOMMITTEE ON LEGISLATIVE BRANCH

HOUSE COMMITTEE ON RULES
SUBCOMMITTEE ON LEGISLATIVE AND BUDGET PROCESS
SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE HOUSE

October 26, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Acting Administrator Wheeler,

I hope you have settled in your new role as Acting Administrator of the Environmental Protection Agency (EPA). I would appreciate the opportunity to meet with you and discuss several challenges facing my district. I have the privilege of representing Washington's 4th Congressional District in the U.S. House of Representatives, which, along with the State of Washington, has regular interactions with your agency on numerous matters. I write to you today as a follow-up on conversations and letters sent to your predecessors with concerns from my constituents in Central Washington.

My topic of concern relates to the Resource Conservation and Recovery Act of 1976 (RCRA) and the significant threat posed to our nation's dairy and livestock producers, and potentially to any growers who rely on agricultural nutrients for their crops. As you know, there are numerous state and federal laws and regulations protecting and ensuring our nation's waters are kept clean. RCRA is not one of those laws.

In 2013, EPA approached four dairies in Washington about high nitrate levels in nearby wells, suspecting semi-permeable manure lagoons may be the cause. Three of the four dairies entered into a consent decree with EPA to identify and treat any nitrate deficiencies if they were, in fact, stemming from the dairies. Soon after, an environmental group filed a Freedom of Information Act (FOIA) request for information related to the dairies provided to EPA and used that information to file a citizen suit under RCRA against the dairies. Unfortunately, in early 2014 a federal judge ruled with the environmental group, asserting that dissolved nitrates constituted a "solid waste" under the RCRA statue, despite EPA's original regulations promulgated in the late 1970s specifically exempted from RCRA agricultural wastes returned to the soil as fertilizers. The problem is that RCRA – which largely governs landfills – was designed to prevent "solid waste" open dumping, and the judge's decision had to stretch the law's interpretation to describe manure nitrates as a "solid waste" to hold livestock producers liable.

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TWISP, WA 98856
PHONE (509) 406-0028

This outcome is concerning for several reasons. First, the scope and purpose of RCRA regulations under *CFR 40 §257.1* state that, *the criteria do not apply to agricultural wastes, including manures, and crop residues, returned to the soil as fertilizers or soil conditioners.* The judge's ruling completely disregards this. Second, the judge made several statements in his decision that undermine National Resources and Conservation Service (NRCS) standards for manure storage and handling, potentially leaving an opening for more heavy-handed EPA regulation on this matter. Third, the ruling poses concerning implications for farmers who apply manure or fertilizer – virtually every American crop farmer – as any elevated water nitrate levels may now lead to litigation. I have asked the EPA to work with the dairies, the Washington State Department of Agriculture, and the United States Department of Agriculture – Natural Resources Conservation Service to ensure that all laws and regulations remain equitable and within congressional intent.

Earlier this year, President Trump signed into law the *Consolidated Appropriations Act of 2018* which included bill and report language confirming the intent of Congress that the Solid Waste Disposal Act (SWDA) and specifically RCRA was never intended to regulate agricultural wastes.

> ***SEC. 434. Agricultural Nutrients*** *– None of the funds made available by this Act may be used by the Administrator of the Environmental Protection Agency to issue any regulation under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) that applies to an animal feeding operation, including a concentrated animal feeding operation and a large concentrated animal feeding operation, as such terms are defined in section 122.23 of title 40, Code of Federal Regulations.*

Further, the Act states:

> ***Agricultural Operations.*** *-The Committees note that Congress never intended the Solid Waste Disposal Act to govern animal or crop waste, manure, or fertilizer, or constituents derived from such sources. The Agency's longstanding regulations accurately reflect Congress' intent not to regulate manure and crop residues under the Solid Waste Disposal Act, and the Committees support legislative efforts to clarify and codify the treatment of agricultural byproducts under the Solid Waste Disposal Act.*

To be clear, I believe our nation's agricultural producers have an obligation to be good stewards of our nation's resources, and I strongly support the several laws in place to protect our nation's waters. However, RCRA was never intended to be one of those laws, and the purpose of RCRA was clearly not to provide environmental groups a tool to drive agricultural producers out of business.

Again, I would appreciate the opportunity to meet with you on this important issue and I ask that you continue to work with me to ensure that RCRA regulations are being appropriately applied and within the congressional intent.

Thank you in advance for your assistance in addressing this important matter, and I look forward to working with you and your staff. Please do not hesitate to contact my congressional office if you have any questions or would like additional information on this matter.

Sincerely,

Dan Newhouse
Member of Congress

Congress of the United States

Washington, DC 20510

October 11, 2018

Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Acting Administrator Wheeler:

We are writing to express serious concerns and request further information about the U.S. Environmental Protection Agency (EPA)'s abrupt decision to place Dr. Ruth Etzel on administrative leave from the position of Director of the Office of Children's Health Protection. The EPA has not provided sufficient justification for the dismissal of a senior non-political professional with decades of expertise in protecting children from unsafe exposure to toxins and chemicals, nor has the agency identified a new candidate willing to perform the duties of this office. The Office of Children's Health Protection is critical in an era where toxins in our environment, including lead, mercury, and per/polyfluoroalkyl substances (PFAS), introduce developmental and health barriers to thousands of American youth.

Our home state of Michigan experienced one of the nation's largest man-made environmental disasters with lead-contaminated drinking water in Flint. We heard from thousands of constituents, who were forced to use bottled water to drink, cook and bathe. To this day, many still do not trust the water coming from their faucets. But the most heartbreaking stories were from parents, whose children are facing significant physical, cognitive and developmental challenges from lead exposure. Children are the most vulnerable to the ill effects of lead exposure, and they will experience the longest term impact. Going forward, we need to ensure we have a strong national infrastructure to prevent a scenario like the Flint water crisis from ever happening again, and the Office of Children's Health Protection is key to this strategy.

The Flint water crisis is just one example of how childhood exposure to toxins can undermine the prosperity of an entire community. Children in lower income and minority communities continue to bear most of the health burden from mercury-emitting coal-fired plants. Each day, we also learn more about the chronic health conditions that develop as a result of widespread exposure to PFAS. Further research is needed on the health impacts caused by this class of over 4,700 industrial chemicals, but we already know certain PFAS increase the risk of some cancers, harm the immune and endocrine systems, and negatively affect the growth, learning, and behavior of infants and children.

Based on publicly available facts, Dr. Etzel is well-qualified for the position of Director at the Office of Children's Health Protection. She is a world-renowned pediatrician and epidemiologist with over three decades of experience aligned with the office's mission. Prior to becoming the office's Director in 2015, she served as a senior officer for environmental health research at the World Health Organization and received numerous national awards for her work. Dr. Mona Hannah-Attisha, a pediatrician who played a

central role in elevating the impact of the Flint water crisis on children, describes Dr. Etzel as "an international leader in children's health."

The EPA has stated that children's health remains a top priority for the Administration at the same time it has dismissed, without apparent reason, the head of the office that oversees children's health. As such, we request the EPA respond to the following requests for information within 30 days:

- What is EPA leadership's reasoning and justification for Dr. Etzel's removal?
- Which EPA officials were consulted and ultimately made the decision to place Dr. Etzel on leave?
- How was Dr. Etzel notified of the decision to place her on leave?
- How will this personnel decision impact the EPA's ability to perform its mission of reducing environmental risk factors for children's health?
- How many full-time staff have been budgeted within the Office of Children's Health Protection for Fiscal Year 2017, 2018, and 2019?
- Who is performing the duties of Director of the Office of Children's Health Protection currently?
- When does EPA intend to hire a new Director for the Office of Children's Health Protection?
- How long does EPA intend to provide administrative leave and other employment benefits for Dr. Etzel?

It is imperative that the EPA takes every possible step to avoid childhood exposure to unsafe toxins like lead and PFAS and ensure all children are able to grow up happy and healthy. As the federal government works to reduce the unnecessary incidence of asthma, developmental delays, and cancers, the EPA needs to keep a strong focus on the youngest Americans, who are most vulnerable to the negative impacts of environmental toxins. We request more information about a sudden personnel decision that suggests the EPA is not following through with its stated commitment to prioritizing children's health.

Sincerely,

Gary C. Peters
United States Senator

Debbie Stabenow
United States Senator

Daniel Kildee
Member of Congress

United States Senate
WASHINGTON, DC 20510

October 4, 2018

The President
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

Dear Mr. President:

In recent months, media outlets reported that the Environmental Protection Agency (EPA) is considering regulatory action to expand the sale of gasoline with 15 percent ethanol by volume (E15) year-round by waiving certain Clean Air Act (CAA) requirements related to Reid Vapor Pressure (RVP). However, a one-sided approach to addressing concerns related to the Renewable Fuel Standard (RFS) that favors only one industry stakeholder is misguided. We are concerned that doing so would do nothing to address the policies impacting refinery jobs, could hurt millions of consumers whose vehicles and equipment are not compatible with higher ethanol blended gasoline, and risk worsening air quality. We write to express our strong opposition to this approach.

As you know, in an effort to address evaporative emissions from motor vehicles and off-road equipment, as part of the 1990 CAA amendments, Congress established a maximum RVP for gasoline of 9.0 psi for the high ozone season, often referred to as the summertime driving season.[1] Recognizing that gasoline's volatility (or tendency to evaporate) increases with the blending of ethanol, the 1990 CAA amendments also provided an RVP limitation for fuel blends containing gasoline and 10 percent ethanol of 1.0 psi higher.[2] This "one pound waiver" applies only to fuel containing gasoline and 10 percent ethanol.

In 2010 and 2011, the EPA issued two partial CAA waivers permitting the use of E15 for model year 2001 and newer light duty motor vehicles.[3] The research to support the Agency's decisions was based on the impact of E15 on emissions control systems, and those results were inappropriately assumed to determine the impact on engine and fuel system durability. Subsequent research revealed that millions of vehicles approved to use E15 by the EPA are susceptible to engine and fuel system damage from E15 fuel.[4] Automobile manufacturers have cautioned consumers not to use the fuel in vehicles not designed to use it. Additionally, consumers, using lawn equipment, motorcycles, boats, and other small engines not approved by EPA to use E15, do not have the benefit of a robust misfueling prevention system.

Significantly, the EPA premised the original E15 waiver on retaining the existing CAA RVP limits, as the Agency had previously determined it lacked the legal authority to grant an RVP

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[1] 42 U.S.C. Section 7545(h)(1).
[2] 42 U.S.C. Section 7545(h)(4).
[3] 75 Fed. Reg. 68094 (November 4, 2010); 75 Fed. Reg. 4662 (January 26, 2011).
[4] https://crcao.org/reports/recentstudies2013/CRC%20664%20%5bAVFL-15a%5d/AVFL%2015a%20%5bCRC%20664%5d%20Final%20Report%20only.pdf

waiver to gasoline ethanol blends beyond 10 percent ethanol, noting the "significant potential" for higher blends to increased emissions and risk compliance with air quality standards:

> *Additionally, as explained in the misfueling mitigation measures proposed rule, EPA interprets the 1.0 psi waiver in CAA section 211(h) as being limited to gasoline-ethanol blends that contain 10 vol% ethanol. Therefore, given the significant potential for increased evaporative emissions at higher gasoline volatility levels, and the lack of data to resolve how this would impact compliance with the emissions standards, today's waiver is limited to E15 with a summertime RVP no higher than 9.0 psi.*[5]

The Agency reinforced this determination eight months later when it declared "the text of section 211(h)(4) and this legislative history supports EPA's interpretation, adopted in the 1991 rulemaking, that the 1 psi waiver only applies to gasoline blends containing 9–10 vol% ethanol."[6]

In conclusion, a decision to grant such a waiver goes against the Agency's long standing interpretation as well as a plain reading of the CAA. We urge you to engage in a collaborative and transparent process with robust engagement on any RFS reform efforts.

We look forward to working with you to address these issues to the benefit of all stakeholders and consumers.

Sincerely,

James M. Inhofe
United States Senator

Benjamin L. Cardin
United States Senator

John Cornyn
United States Senator

Robert Menendez
United States Senator

John Barrasso, M.D.
United States Senator

Tom Udall
United States Senator

Shelley Moore Capito
United States Senator

Joe Manchin III
United States Senator

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[5] 75 Fed. Reg. 68094, 68096 (November 4, 2010).
[6] 76 Fed. Reg. 44406, 44434 (July 25, 2011).

Orrin G. Hatch
United States Senator

Susan M. Collins
United States Senator

Michael B. Enzi
United States Senator

Johnny Isakson
United States Senator

Roger F. Wicker
United States Senator

John Boozman
United States Senator

Pat Toomey
United States Senator

Bill Cassidy, M.D.
United States Senator

James Lankford
United States Senator

Steve Daines
United States Senator

John Kennedy
United States Senator

Cindy Hyde-Smith
United States Senator

United States Senate

WASHINGTON, DC 20510–3603

OFFICIAL BUSINESS

U.S.S.

[redacted]

OCT 11 2018

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J #077

OCJ #029

COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES
SUBCOMMITTEE ON STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS

http://www.meng.house.gov
www.facebook.com/repgracemeng
twitter: @repgracemeng

Grace Meng
Congress of the United States
Sixth District, New York

CONGRESSIONAL ASIAN PACIFIC AMERICAN CAUCUS
EXECUTIVE BOARD MEMBER
CHAIR
TASK FORCE ON APPROPRIATIONS

SENIOR AND REGIONAL WHIP

CONGRESSIONAL KIDS SAFETY CAUCUS
CO-CHAIR

October 5, 2018

Mr. Andrew Wheeler
Acting Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Wheeler:

As Co-Chair of the Bipartisan Congressional Kids' Safety Caucus, I write to echo the concerns expressed by Dr. Phillip J. Landrigan and Dr. Lynn R. Goldman in Wednesday's *New York Times* article "A Bad Move That Could End Up Exposing Kids to Chemicals." They cautioned: "we worry that [placing Dr. Ruth Etzel, the Director of the Office of Children's Health Protection (OCHP) on administrative leave] signals one of two actions: closing the office, which has argued for tougher regulations on industrial pollutants, or minimizing its role in rule-making." It is my sincere hope that neither of these results is a desired end of the Environmental Protection Agency (EPA).

As you know, the manner in which prolonged exposure to chemicals impacts children differs greatly from the manner in which it impacts adults. Exposure to even low levels of toxic chemicals during pregnancy and the first years of life can damage cognitive function and developing organs, leading to an increased risk of learning disabilities, A.D.H.D., dyslexia, autism, and breathing difficulties. For more than two decades, OCHP has fought to protect American children from these outcomes and they should be allowed to continue to do so.

As the mother of two young children, I thank you for your attention to this matter and await your response. I look forward to working with you to protect all of America's children and urge you to contact me anytime with any questions or concerns you may have. Your staff may contact Rachana Shah of my staff at Rachana.Shah@mail.house.gov or (202) 225-2601.

Sincerely,

Grace Meng
Member of Congress

118-35 QUEENS BLVD, 17TH FL
FOREST HILLS, NY 11375
(718) 358-MENG (6364)

1317 LONGWORTH
WASHINGTON, DC 20515
(202) 225-2601

40-13 159TH STREET
FLUSHING, NY 11358
(718) 358-MENG (6364)

Please sign up for Rep. Meng's enewsletter at https://meng.house.gov/contact/newsletter

ROBERT C. "BOBBY" SCOTT
3RD DISTRICT, VIRGINIA

COMMITTEE ON
EDUCATION AND THE WORKFORCE
RANKING MEMBER

WASHINGTON:
1201 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–4603
(202) 225–8351

DISTRICT OFFICE:
2600 WASHINGTON AVENUE
SUITE 1010
NEWPORT NEWS, VA 23607–4333
(757) 380–1000

WWW.BOBBYSCOTT.HOUSE.GOV

Congress of the United States
House of Representatives
Washington, DC 20515–4603

October 15, 2018

Mr. Troy Lyons
Associate Administrator for Congressional and Intergovernmental Relations
Environmental Protection Agency
200 Pennsylvania Avenue, NW, Room 3426 WJC North
Washington, DC 20460-0001

Dear Mr. Lyons,

Enclosed is correspondence from my constituent, (b) (6) [redacted] N [redacted].

(b) (6) [redacted] has asked for my assistance regarding a development in the City of Suffolk that she believes is negatively impacting the surrounding ecosystem.

I would appreciate your looking into this matter and responding to my Legislative Assistant Demontre' Boone at 2600 Washington Ave. Ste. 1010 Newport News, VA 23607.

Thank you for your attention to this matter.

Very Truly Yours,

Robert C. "Bobby" Scott
Member of Congress

RCS/DB

PRINTED ON RECYCLED PAPER

[illegible]

ROBERT C. "BOBBY" SCOTT
3RD DISTRICT, VIRGINIA

COMMITTEE ON
EDUCATION AND THE WORKFORCE
RANKING MEMBER

WASHINGTON:
1201 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–4603
(202) 225–8351

DISTRICT OFFICE:
2600 WASHINGTON AVENUE
SUITE 1010
NEWPORT NEWS, VA 23607–4333
(757) 380–1000

WWW.BOBBYSCOTT.HOUSE.GOV

Congress of the United States
House of Representatives
Washington, DC 20515–4603

092618
092618

Constituent Consent and Information Form
(Please complete all applicable fields)

(b) (6)

Name: [redacted]

Social Security Number (Leave blank for USCIS inquiries): [redacted]

USCIS Identification Number (A#, [redacted] number, tracking number, etc.): [redacted]

(b) (6)

[redacted]

Do You Have An Attorney? No X *Yes* ___

If Yes, Please indicate your Attorney's Name & Telephone Number Below:
N/A

(b) (6)

[redacted]

Representative of the 3rd District of Virginia, and/or his staff to request any relevant information in order to assist in responding to my inquiry, in accordance with the provisions of the law. All information provided to Congressman Scott is complete, true and correct.

Signature: [redacted] (b) *Date:* 9/21/18

Request of the Congressman (Please provide a brief summary): Re: Development in the Village of Eclipse in Suffolk, VA - is impacting ecosystem because of antiquated building practices (Builder was grandfathered in). Please see email for detailed summary of concerns.

WEBSITE:
Tenney.House.Gov

Congress of the United States
House of Representatives
Washington, DC

SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATION

October 25, 2018

The Honorable Peter Lopez
Regional Administrator
Environmental Protection Agency
Region 2
290 Broadway, Floor 15-29
New York, NY 10007-1866

Dear Regional Administrator Lopez,

Enclosed is additional correspondence I received from [redacted], New York.

As you may recall from my August 23, 2018 correspondence on [redacted]'s behalf, he had very serious concerns regarding the chemicals the farm next to him is using on the crops grown by the farm, which [redacted] estimates is 100 acres. Your office provided a very comprehensive and helpful response on September 26, 2018, listing many resources for [redacted] in this matter.

However, [redacted] contacted my office this morning, claiming that he has been in contact with all of these organizations, and he alleges that none of these agencies will assist him or look into his concerns. [redacted] has asked that I reach back out to your office for any [redacted] concerns would be greatly appreciated.

Please respond to my New Hartford District Office, 555 French Road, Suite 101, New Hartford, New York, 13413.

Thank you for your time and continued attention in this matter.

Sincerely,

Claudia Tenney

Claudia Tenney
Member of Congress

WASHINGTON, DC:
512 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3665
FAX: (202) 225-1891

NEW HARTFORD:
555 FRENCH ROAD, SUITE 101
NEW HARTFORD, NY 13413
(315) 732-0713
FAX: (315) 732-0986

BINGHAMTON:
49 COURT STREET
METRO CENTER, SUITE 210
BINGHAMTON, NY 13901
(607) 723-3581

CLAUDIA TENNEY
22ND DISTRICT, NEW YORK

HOUSE FINANCIAL SERVICES COMMITTEE
SUBCOMMITTEE ON
MONETARY POLICY AND TRADE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SEP 28 2018

SEP 26 2018

The Honorable Claudia Tenney
U.S. House of Representatives
555 French Road, Suite 101
New Hartford, New York 13413

Dear Congresswoman Tenney:

Thank you for your letter of August 23, 2018 regarding your constituent, (b) (6) [redacted] of Rome, New York, who is concerned about the pesticides sprayed on crops by the farm adjacent to his home, and any impacts to his private well. We understand and appreciate his concern and are happy to provide our best guidance in response.

EPA Region 2 works very closely with our regulatory partners at the New York State Department of Environmental Conservation (NYSDEC) to protect human health and the environment from the improper use of pesticides. In particular, NYSDEC has primacy over the enforcement of laws pertaining to the application of pesticides and EPA has contacted NYSDEC regarding (b) (6) [redacted]s case. We were advised a NYSDEC pesticide control specialist has previously worked with (b) (6) [redacted] and that (b) (6) [redacted] not believe his neighbor was improperly or illegally applying pesticides, but was more concerned about the effect the pesticides might have on his well water.

Where a concern is not believed to be the result of improper pesticide application, the New York State Department of Health (NYSDOH) is the appropriate agency for follow up. As you know, County Health Departments work on behalf of NYSDOH, with many having staff who assist in addressing environmental health concerns, including the testing of private wells. The contact for Oneida County Health Department is:

Eric Lemieux
Water Supply Program
Oneida County Environmental Health Department
http://ocgov.net/oneida/envhealth
(315) 798-5064

In addition, the NYSDOH Wadsworth Center located in Albany, NY provides services to support drinking water testing. The Wadsworth Center can be reached at 518-485-5570 or through the following website: https://www.wadsworth.org/regulatory/elap/certified-labs. I have also enclosed a copy of the NYSDOH brochure titled "Test Your Well" which should be helpful to (b) (6) [redacted]. The brochure can also be accessed at: https://www.health.ny.gov/publications/6628.pdf.

If (b) (6) [redacted] would like more information on the pesticides applied to his neighbor's crops, I suggest that he reach out to one or both of the following organizations in Oneida County: the Oneida County Soil and Water Conservation District office and the Oneida County office of Cornell Cooperative Extension both located in Oriskany, NY. I've listed contact information for both below. Staff that work for these organizations have local knowledge and expertise about crops grown in the area and the specifics on the types of pesticides used, how they are applied and what the exposure and water quality risks might be. This information should help (b) (6) [redacted] determine how best to protect his health and property.

1. Oneida County Soil and Water Conservation District
   http://oneidaswcd.org/
   (315) 736-3334

2. Cornell Cooperative Extension, Oneida County
   CCE Oneida Farm & Home Center
   121 Second Street
   Oriskany, New York 13424
   http://cceoneida.com/agriculture
   (315) 736-3394

   - Bonnie Collins
     Ag. Senior Team Leader
     Bsc33@cornell.edu
     (315) 736-3394, Ext. 104

I hope this information proves helpful. Please let me know if we can be of further assistance. Feel free to contact me or my Chief of Staff, Mr. Chris Lyon at (212) 637-5000, or have your staff contact Ms. Carsen Mata, Congressional Liaison for NY and NJ at (212) 637-3652 or mata.carsen@epa.gov.

Sincerely,

Peter D. Lopez
Regional Administrator

Tips to Protect Your Water

- Test your well water at least once a year for bacteria and for other contaminants every 3-5 years.
- Test your water for *E. coli* and coliform bacteria after you disinfect and flush your well, or perform maintenance on your system to make sure problems are addressed.
- Regularly check and maintain the well, system components and area surrounding the well.
- Test your water if you notice changes in how your water looks, smells or tastes, after floods, changes in land use or concerns about local contaminants.
- If you suspect your well could be contaminated by gasoline, heating oil or chemicals, contact your health department and the DEC Spill Hotline at (800) 457-7362.
- Keep records of maintenance activities and water testing.
- Contact your health department for advice on maintaining, testing, disinfecting and flushing your well.
- Take steps to get connected to a public water system, if you have the opportunity. Public water is the best option for household water because it is regularly monitored and managed by a certified water operator.

Find your area health department:
www.health.ny.gov/EnvironmentalContacts

www.health.ny.gov/PrivateWells
(518) 402-7650
bpwsp@health.ny.gov

6628 NEW YORK STATE | Department of Health 3/18

Test Your Well

Protect Your Family's Water

Tips for People on Private Wells

Take steps to make sure the water from your private well is suitable for drinking, preparing food and all household uses.

Germs and chemicals can enter your drinking water from runoff and natural changes in the water that serves your well.

The use of contaminated water for drinking, preparing food and making ice can make you, your family and your pets sick. Babies, children, pregnant women, older adults and people with health conditions are most at risk of health effects from consuming contaminated water.

Regularly Test Your Water

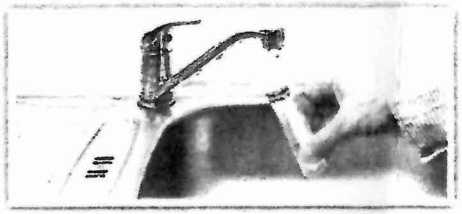
Testing your drinking water is the only way to make sure that your water remains suitable for household uses. Test your water at the tap at least once a year for bacteria and every 3-5 years for the other contaminants listed to the right. The best time to test your water is in the late spring or early summer.

Your lab will provide instructions and bottles. Find a certified lab at www.wadsworth.org/labcert/elap/comm.html.

Also Consider Testing If ...

- You notice changes in how your water looks, smells or tastes.
- There are changes in your household/family, such as pregnancy, new babies or changes in someone's overall health.
- You or your health care provider suspect your drinking water could be causing symotoms such as diarrhea or vomiting.
- You have made repairs to your well, pipes or home structure or have changed your drinking water system.
- You notice changes in land use, such as construction or farming, that could cause runoff to enter your well.
- You have concerns about local contaminants, such as radon or those from nearby industrial or waste sites.
- Your well was recently flooded or damaged by extreme weather.
- The well runs dry or the amount of water flowing from your fixtures changes.

Contact your area health department for advice. Look up your health department by county at www.health.ny.gov/EnvironmentalContacts.



Test Your Well EACH YEAR for

***E. coli* & coliform bacteria**- indicate fecal contamination that can cause symptoms such as diarrhea and vomiting

Test Your Well EVERY 3 - 5 YEARS for

Lead- harmful to many organs and systems in the body and most harmful to developing babies and young children

Nitrate & Nitrite- most harmful to babies; associated with infant blood problems

Arsenic- long-term exposure is associated with nerve and liver damage, cancer, high blood pressure and damage to blood vessels of the heart and brain

Sodium- concern for individuals on restricted sodium diets due to high blood pressure or other medical issues

Iron & Manganese- cause rust or black staining of fixtures or clothes

Turbidity- (cloudy water) interferes with chlorine and UV-light disinfection

pH- causes lead and copper pipe corrosion and metallic-bitter taste

Hardness- causes mineral and soap deposits on fixtures; reduces detergent efficiency

Alkalinity- interferes with chlorine disinfection and causes metallic-bitter taste

Your water could come from a private well if...

- You do not receive a water bill.
- You live in a rural area.
- You have a septic system.
- You have a water pump in your home for your drinking water system.

Questions? Contact Your Area Health Department
www.health.ny.gov/EnvironmentalContacts

AUG 2 3 2018

UNITED STATES REPRESENTATIVE
CLAUDIA TENNEY
SERVING THE 22ND DISTRICT OF NEW YORK
www.tenney.house.gov

Constituent Privacy Release Form:
Before our office can assist you, please fill out and return this form.

Our office can provide you with assistance when dealing with a range of federal issues and agencies. Whether you need help with Social Security and Medicare benefits or need to check the status of a claim with the VA, we can help. Our office can obtain the status of pending cases, expedite answers to important questions, or help track down missing information.

To initiate a case, please fill out this privacy release form and send it to the appropriate office checked below. *Please note that the Privacy Act of 1974 (5 U.S.C. § 552a) requires that Members of Congress or their staff have written authorization before they can obtain information from you about an individual's case.*

Once completed, please send this form and supporting documentation to the corresponding office checked below.

☑ **New Hartford District Office**
555 French Road, Suite 101
New Hartford, NY 13413
Phone: 315-732-0713

☐ **Binghamton District Office**
49 Court Street, Suite 210
Binghamton, NY 13901
Phone: 607-376-6002

PRIVACY AUTHORIZATION

I, (b) (6) [redacted], authorize the Office of Representative Claudia Tenney
Please Print Name

(22nd District, New York) to contact and share my correspondence and/or information with any federal agency or relevant organization on my behalf to receive information and/or records pertaining to me.

Date: 8-20-18 Signature: (b) (6) [redacted]

Spouses Signature (if applicable): _____

PERSONAL DETAILS

Please provide us with the requested personal information to help us better process your inquiry.

Prefix: X Mr. ____ Mrs. ____ Ms. ____ OTHER (Please specify: ____)

[redacted]: [redacted] (b) (6) [redacted] [redacted]: [redacted]

[redacted]: [redacted] [redacted]

[redacted] [redacted] [redacted]: [redacted] Zip: (b) (6) [redacted]

[redacted] (b) (6) [redacted] Email: (b) (6) [redacted]

[redacted]

Work Phone: [redacted]

[redacted] Social Security Number: (b) (6) [redacted] (b) (6)

Other Identification Numbers (VA, Service Number, etc.):

Alternate/Season Address:

CASEWORK INFORMATION

Please provide us with the necessary casework information to initiate your inquiry for assistance.

Agency Involved:

Explanation of Assistance Desired:

We Live in a Rural area, our House is located 10 yds. from a Farmers Field App. 100 Acres. We are concerned c̄ the Chemicals he puts on his Land. I have a small garden that will not grow on the Farmer's side. We are more concerned with what might be getting into our well H_2O. Along c̄ the Adjoining Neighbor's well.

A couple of our neighbors have come Down c̄ cancer in the Same area. We would like Someone to check our land & H_2O & neighbors includes for toxins. We have been in touch c̄ Oneida County & N.Y. State c̄ no help from either. Thank you for any Help you can give us!

F. JAMES SENSENBRENNER, JR.
First District, Wisconsin

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON
CRIME, TERRORISM, HOMELAND
SECURITY, AND INVESTIGATIONS
CHAIRMAN

COMMITTEE ON FOREIGN AFFAIRS

Congress of the United States
House of Representatives
Washington, DC 20515–4905

WASHINGTON OFFICE:
Room 2449
Rayburn House Office Building
Washington, DC 20515–4905
202-225-5101

DISTRICT OFFICE:
120 Bishops Way, Room 154
Brookfield, WI 53005–6294
262-784-1111

OUTSIDE MILWAUKEE METRO
CALLING AREA:
1-800-242-1119

WEBSITE:
http://sensenbrenner.house.gov

October 11, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Acting Administrator Wheeler:

I write to you with significant concerns about the recent proposal to expand the sale of E15 motor fuel.[1] The Renewable Fuel Standard (RFS) has been in place for more than a decade, yet this policy continues to violate the free market and pose a threat to consumers. Expanding to year-round E15 sales would prop up the RFS and continue to subject American consumers and farmers to government-mandated decision making.

I have had a very active role in the debate surrounding fuel blends with higher ethanol contents. Through this work, I have had ongoing conversations with many interested parties—your predecessors at the EPA, industry representatives, consumer groups, and environmental advocates. My work on this issue has always been driven by the belief that the government should not mandate the use of any product—or fuel—and the country would be better served if the RFS mandates are removed completely. Since this is as much a political debate as a policy-centered one, I recognize the barriers to a complete overhaul of the RFS. However, I would like to highlight some of the most glaring issues and how they will be exacerbated by the expanded sale of E15.

Contrary to the special interest arguments, the RFS is unfriendly to consumers. Misfueling with E15 is dangerous for many common machines. For example, lawnmowers, boats, snowmobiles, motorcycles, and vintage automobiles are incompatible with this fuel blend. The EPA acknowledged these issues in the original waiver permitting the use of E15 in newer automobiles. However, there has been insufficient work done to mitigate the potential for misfueling. Allowing for the expanded availability of E15 sales puts American consumers in greater jeopardy of the dangers of misfueling and product failure.

Free markets drive American innovation and sustain our economy. However, the RFS policy is antithetical to free market principles. The complex, government-mandated market for renewable blending credits is ripe for fraud.[2] Additionally, the EPA's use of its broad authority to grant exemptions from blending obligations demonstrates the standard's unattainability. Furthermore, approximately 40 percent of domestic corn production now feeds into ethanol production, meaning a not-insignificant portion of

[1] https://www.reuters.com/article/usa-trump-ethanol/refile-update-3-trump-raises-ethanol-use-in-gasoline-appeases-farmers-ahead-of-elections-idUSL2N1WP1AY
[2] https://www.justice.gov/opa/pr/biofuel-company-owners-sentenced-conspiracy-and-fraud-charges

American farmers are subject to the whims of government policy.[3] Rural America needs sustained, dependable growth, rather than programmed agricultural outputs generated by political motivations. The United States must return to its historical reliance on market-driven outcomes.

The RFS was established to strengthen national security by reducing dependence on foreign energy supplies. As an added benefit, it was also touted as decreasing the environmental impacts of automobile use. Some research questions whether increased farming activity correlated with the RFS cancels out its expected environmental benefits.[4]

I understand some industries have exerted significant political pressure to convince the EPA to expand the E15 waiver. However, I urge you to consider the RFS's legacy before propping up this overly-rigid, failed energy policy.

Sincerely,

F. JAMES SENSENBRENNER, JR.
Member of Congress

[3] https://subscriber.politicopro.com/energy/article/2018/10/trumps-ethanol-move-delivers-gift-to-corn-country-831493
[4] http://www.gibbs-lab.com/wp-content/uploads/2017/11/spawn_Summary.pdf

Congress of the United States
Washington, DC 20515

September 28, 2018

The Honorable Andrew Wheeler
Acting Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Mr. Wheeler,

We write to express our support for the WIFIA loan application, submitted by the City of Wichita, Kansas, to construct a new 120 MGD firm capacity water treatment facility that will provide high quality and reliable water service to the region for many generations to come.

The City of Wichita is the largest regional drinking water provider in the State of Kansas, providing drinking water to more than 500,000 people. The Wichita service area includes not only the citizens of the City of Wichita but numerous wholesale, commercial and industrial customers, including major aviation manufacturers Spirit AeroSystems and Textron Aviation, McConnell Air Force Base, and multiple advanced medical facilities. The Kansas economy is dependent on a strong and vibrant Wichita with robust and reliable water utility.

The Northwest Water Treatment Facility (NWWTF) project will address the significant risk to the community associated with Wichita's aging water treatment infrastructure. Water treatment is accomplished at a single Main Water Treatment Plant in the heart of Wichita and is the only water treatment plant currently serving the City of Wichita and surrounding communities. A significant portion of the water treatment plant is more than 75 years old. A recently completed condition assessment rated a vast majority of existing plant assets as being in Poor or Very Poor condition. The single water treatment plant and the overall poor condition of this facility constitutes an unacceptable level of risk to the City of Wichita and the region. The Kansas Department of Health and Environment has identified this situation as "critical".

WIFIA financing is critical to timely reduction of risks associated with the age and condition of Wichita's existing water treatment infrastructure. The combined impact of this project and the continuation of ongoing resource management practices will secure the future of the City of Wichita and the region for generations to come.

Thank you in advance for your careful consideration of this loan application and the great opportunity it represents for the residents of Kansas.

Sincerely,

Jerry Moran

Senator Jerry Moran

Pat Roberts

Senator Pat Roberts

Ron Estes

Congressman Ron Estes

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CLAUDIA TENNEY
22ND DISTRICT, NEW YORK

WEBSITE:
Tenney.House.Gov

Congress of the United States
House of Representatives
Washington, DC

HOUSE FINANCIAL SERVICES COMMITTEE
SUBCOMMITTEE ON
MONETARY POLICY AND TRADE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT

SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATION

October 9, 2018

USEPA
Office of Water, 4101M
1200 Pennsylvania Ave, NW
Washington DC, 20460
Attn: Raffael Stein, Director, Water Infrastructure Division

Dear Director Stein:

I write today in support of the City of Cortland's application for the Water Infrastructure Finance and Innovation Act (WIFIA) credit assistance in regards to their Clinton Avenue Gateway project. This project will significantly boost several key areas of infrastructure in the upstate New York city.

The Clinton Avenue Gateway project will replace aged water, sanitary sewer, storm drainage, and city streets, providing new infrastructure in key areas across the City of Cortland. The project includes 4,100 linear feet of new 8" diameter water main, services, hydrants and valves. Related work includes new gravity sanitary sewer collection, contemporary green storm drainage system, bioretention, new sidewalks, street lights, street trees, road diet, new curbs, dedicated bike lanes, and pavement.

The new infrastructure noted above will result in proper water/sewer main separation, reduced treatment costs for water and wastewater, and cleaner water for residential areas, making this a key economic investment for the City of Cortland. While the effects will be felt on the current residents almost immediately after completion of the project, long term positive impacts include an increase in tourism and an increase in job opportunities in the city as more businesses are attracted to an area with new infrastructure. For these reasons, I support this vital project.

Thank you for taking the time to read this letter. If you have any questions, please do not hesitate to contact me at my New Hartford District Office 315-732-0713.

Sincerely,

Claudia Tenney

Claudia Tenney
Member of Congress

WASHINGTON, DC:
512 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3665
FAX: (202) 225-1891

NEW HARTFORD:
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NEW HARTFORD, NY 13413
(315) 732-0713
FAX: (315) 732-0986

BINGHAMTON:
49 COURT STREET
METRO CENTER, SUITE 210
BINGHAMTON, NY 13901
(607) 723-3581

MIKE THOMPSON
5TH DISTRICT, CALIFORNIA

COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON HEALTH
SUBCOMMITTEE ON TAX POLICY

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

DISTRICT OFFICES:
2721 NAPA VALLEY CORPORATE DRIVE
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(707) 226-9898

985 WALNUT AVENUE
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2300 COUNTY CENTER DRIVE, SUITE A100
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(707) 542-7182

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231 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3311

WEB: http://mikethompson.house.gov

October 11, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Acting Administrator Wheeler:

We are writing in strong opposition to a recent request submitted by the Delta Conveyance Finance Authority (DCFA) to the U.S. Environmental Protection Agency (EPA), requesting $1.6 billion in federal loans to support construction of the State of California's massive twin tunnels project, known as "WaterFix."

We have long opposed the WaterFix project on the basis that it fails to satisfy the co-equal goals of the 2009 Sacramento-San Joaquin Delta Reform Act – namely, providing a more reliable water supply for Californians while protecting, restoring, and enhancing the Delta ecosystem. Neither of these goals would be met by the twin tunnels proposal, which would simultaneously devastate the Delta and the communities that rely on it while failing to address California's basic water supply challenges.

In addition, the EPA has repeatedly expressed concerns with aspects of the environmental review process for the WaterFix project. For instance, in early 2017, EPA indicated to the Bureau of Reclamation that "water quality for municipal, agricultural, and aquatic life beneficial uses will be degraded" as the Delta becomes more saline, while reaffirming earlier predictions of "substantial declines in quantity and quality of aquatic habitat for 15 or 18 fishes evaluated under WaterFix preferred operations." These concerns echo previous sentiments expressed by EPA that actions proposed in the Draft Environmental Impact Statement could also result in violations of the water standards provisions of the Clean Water Act.

The Department of the Interior – the lead federal agency for the WaterFix project – has stated publicly that it does not expect to participate in the funding or construction of the tunnels. And, despite assurances that proponents of the WaterFix proposal would fund it at their own expense, the DCFA's petition to EPA highlights the astronomical cost of the project, which already well exceeds initial projections. Indeed, the $1.6 billion loan request referenced above is DCFA's *initial* request. Estimated costs are now $19.9 billion (a 22 percent increase from the State's

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previous projection of $16.2 billion). As construction costs for WaterFix continue to increase, the federal government should not be on the hook for underwriting a low-interest loan to cover the additional expenses.

Lastly, this funding award would disadvantage other noncontroversial projects seeking the same funds that have greater potential to enhance water supplies. Given the EPA's geographic consideration requirements, awarding $1.6 billion to the twin tunnels project would almost certainly exclude other California communities from accessing program funds.

For these reasons, we believe it would be imprudent for the Agency to approve financing for this project through funds derived from the Water Infrastructure Finance and Innovation Act (WIFIA), as DCFA has requested. Rather than financing a project that seeks to do nothing more than move a portion of our state's existing, strained water supply from one area of our state to another, EPA, along with its federal partners and all impacted stakeholders, should support a comprehensive plan that captures, conserves and preserves our limited water supplies now and into the future. Pursuing more cost-effective approaches to increase the availability of water, while reducing reliance on the Delta as required by the Delta Reform Act, represents a far more prudent and promising path to meeting California's water needs.

Thank you for your consideration of this important matter. We stand ready to work with EPA to find real solutions to California's complex water challenges.

Sincerely,

MIKE THOMPSON
Member of Congress

DORIS MATSUI
Member of Congress

JOHN GARAMENDI
Member of Congress

JARED HUFFMAN
Member of Congress

MARK DESAULNIER
Member of Congress

JERRY MCNERNEY
Member of Congress

AMI BERA
Member of Congress

Senator Dan Sullivan (Alaska)

Privacy Act Release Form

This Privacy Act generally requires your written consent before a government agency will release information to my office regarding your records. To better serve you, please complete this form and return it to the address at the bottom of this page. **Please Print Clearly**

First Name: (b) (6) [redacted]

Social Security #: _____ (If applicable) Military Branch: _____ (If applicable)

Mailing Address: (b) (6) [redacted]

State: Alaska _____ Zip Code: 99501 _____ Phone: (b) (6) [redacted]

Date of Birth: (b) (6) [redacted]

Agency/Dept. Involved EPA _____

PROBLEM: Briefly explain your problem and outline the steps that have been taken by you and the agency with regard to your situation. In addition, please make your request for assistance as specific as possible. Should you require more room, feel free to attach a letter addressed directly to the Senator.

Our Family has owned (b) (6) [redacted] on September 27 of 2017 of last year there was found where 10-15 gallons of Durathane II, a roofing product, we were notified and we cleaned it up and had it disposed of NRC Alaska. We subsequently received a site inspection from the EPA on 7 November 2017 after which we received the attached Summary of Violations on 16 July 20018 for a total sum of $61,903.00. I would like to ask your assistance in dealing with them. Please see attached #1 Summary of Violations, #2 EPA justification, #3 (b) (6) [redacted] response, #4 RCRA {40 CFR 262.14 Conditions for exemption for a very small quantity generator and #5 Hazardous Waste Generator Regulatory Summary. Thank you for your help with EPA's over step.

PRIVACY ACT: In accordance with the provision of the Privacy Act of 1974, I authorize the Office of U.S. Senator Dan Sullivan to obtain information about me from covered agencies in connection with my case. To the best of my knowledge, the information I provided is complete, true, and correct.

Signed: (b) (6) [redacted] Date: 9-13-18

Please email, mail, or fax the signed and completed form and any attachments to:

U.S. Senator Dan Sullivan
Anchorage Field Office
510 L Street, Suite 750
Anchorage, AK 99501
Phone: 907-271-5915
Fax: 907-258-9305
EMAIL: Casework_Sullivan@sullivan.senate.gov

Help With A Federal Agency| Aug 30 2018 02:08:44 | (b) (6) [redacted]

PRIVACY ACT: In accordance with the provision of the Privacy Act of 1974, I authorize the Office of U.S. Senator Dan Sullivan to obtain information about me from covered agencies in connection with my case. **To the best of my knowledge, the information I provided is complete, true, and correct**(b) (6) [redacted]

Signed [redacted] **Date:** 8 / 30 / 18

Please email, mail, or fax the signed and completed form and any attachments to:

U.S. Senator Dan Sullivan
Anchorage Field Office
510 L Street, Suite 750
Anchorage, AK 99501
Phone: 907-271-5915
Fax: 907-258-9305
Email: casework_sullivan@sullivan.senate.gov

Help With A Federal Agency| Aug 30 2018 02:08:44 | (b) (6) [redacted]

DAN **SULLIVAN**
UNITED STATES SENATOR *for* ALASKA

Please Remit To:
U.S. Senator Dan Sullivan
Anchorage Field Office
510 L Street, Suite 750
Anchorage, AK 99501

Help With A Federal Agency

This Privacy Act generally requires your written consent before a government agency will release information to my office regarding your records. To better serve you, please sign this form and return it to the address at the bottom of this page.

Your Information

Name:
(b) (6) [redacted]

Social Security Number*
(b) (6) [redacted]

Your Case Details:

Agency/Dept. Involved*
EPA

PROBLEM: Briefly explain your problem and outline the steps that have been taken by you and the agency with regard to your situation. In addition, please make your request for assistance as specific as possible

Our family has owned (b) (6) [redacted] on September 27 of 2017 of last year there was found where a spill of 10-15 gallons of Durathane II, a roofing product, we were notified and we cleaned it up and had it disposed of by NRC Alaska. We subsequently received a site inspection from the EPA on 7 November 2017 after which we received the attached Summary of Violations on July 16 2018 for a total sum of $61,983.00. I would like to ask your assistance in dealing with them, please see attached #1 Summary of Violations, #2 EPA justification, #3 (b) (6) [redacted] Conditions for exemption for a very small quantity generator and #5 Hazardous Waste Generator Regulatory Summary. Thanks for your help with EPA's over step. (b) (6) [redacted]

#1

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FEDERAL RULE OF EVIDENCE 408

Summary of Violations and Proposed Penalty
RJH, Inc. d.b.a. Steelfab

(b) (6) [redacted] that has operated at its current location since 1948. As part of its operations, the facility generates a number of potential hazardous waste streams that include solvents, solvent still bottoms, aerosol cans, used oil, and fluorescent lamps.

On November 7, 2017, the United States Environmental Protection Agency [redacted] Compliance Inspection at the (b) (6) [redacted] The facility was inspected to ensure compliance with standards for hazardous waste generators and universal and oil waste management practices. Based on the observations of the inspector, (b) (6) [redacted] was eligible to manage hazardous waste as a "small quantity generator" of hazardous waste, and a "small quantity handler" of universal waste, based on the amount of waste generated. (b) (6) [redacted] hazardous waste practices, generation points, and accumulation areas were inspected.

Alleged Violations:

Violation 1: Illegal Disposal of Hazardous Waste:

a) RCRA § 3005(a) [42 U.S.C. § 6295(a)] Requires that the owner and operator of a hazardous waste management unit have a permit for disposal of any hazardous waste during the active life of the unit in which this takes place. (b) (6) [redacted] does not have a permit for disposal of hazardous waste.
b) On or about September 27, 2017, (b) (6) [redacted] disposed of Durathane II, a characteristically ignitable hazardous waste, at its facility.

Violation 2: Illegal Treatment and Storage of Hazardous Waste without a Permit:

a) RCRA § 3005(a) [42 U.S.C. § 6295(a)] Requires, *inter alia*, that the owner and operator of a hazardous waste management unit possess a hazardous waste permit for the storage or treatment of any hazardous waste during the active life of the hazardous waste management unit. (b) (6) [redacted] does not have a permit for the storage or treatment of hazardous waste.
b) 40 C.F.R. § 262.16 provides a conditional exemption for small quantity generators to accumulate hazardous waste without a permit, provided the generator meets several exemption requirements. Among these requirements, the small quantity generator must ensure the wastes are properly labelled with: the words "hazardous waste," the type of hazard the waste exhibits, and the date the waste began being accumulated. Additionally, inspections of central accumulations areas must be conducted weekly.
c) On or about November 7, 2017, (b) (6) [redacted] stored and accumulated hazardous aerosol can residuals in a 55-gallon container located in the Service Center without a permit, and without following the labelling or inspection requirements needed for a permit exemption.
d) On or about November 7, 2017, (b) (6) [redacted] stored and treated hazardous paint waste in the New Paint Shop without a permit, and without following the labelling or inspection requirements needed for a permit exemption.
e) On or about November 7, 2017, (b) (6) [redacted] accumulated and stored a cubic foot container and four 85-gallon overpack containers holding hazardous waste spill clean-up wastes without a permit, and without fulfilling the labelling and inspection requirements needed for a permit exemption.

Violation 3:

a) 40 C.F.R. § 273.13 requires small quantity handlers of universal wastes to store lamps in closed containers that are adequate to prevent breakage. 40 C.F.R. § 273.13 requires universal waste lamp

containers to be labelled as "Universal-Waste- Lamp(s)," or "Waste Lamps(s)" or "Used Lamps(s)." Additionally, 40 C.F.R. 273.15 requires small quantity handlers of universal waste to be able to demonstrate the length of time that the universal waste has been accumulated.

b) On or about November 7, 2017, (b) (6) [redacted] stored approximately 32 universal waste fluorescent lamp bulbs. The containers were not closed or adequate to prevent breakage, the containers did not contain the proper labelling, and Steelfab did not provide information to demonstrate the length of time the bulbs had been accumulated.

Proposed Settlement Penalty

The following table provides EPA's determination, for settlement purposes, of the appropriate categorization of the "potential for harm" and "extent of deviation" for each violation alleged and the corresponding proposed civil penalty amount. The penalty amounts provided below are the result of the application of the RCRA Civil Penalty Policy (RCPP) to each violation.

The penalty matrices used for the gravity-based penalties are those in the April 6. 2010 "Revision to Adjusted Penalty Policy Matrices Package Issued on November 16, 2009." For violations that occurred after August 1, 2016, penalty inflation is computed pursuant to 81 FR 43091 (July 1, 2016).

In accordance with the RCPP, EPA adjusted the gravity-based penalty upwards by 20 percent for (b) (6) [redacted] negligence. As described in the RCPP, "the penalty may be adjusted upward for willfulness and/or negligence." Factors to be considered can include how much control the violator had over the event constituting the violation and whether the violator took reasonable precautions against the events constituting the violation. Here, as to Violation 1, (b) (6) [redacted] negligent placement of Durathane II in an area outside of its facility, the lack of precautions taken to prevent the spill constituting disposal, and the facility manager not being aware of the disposal, clearly demonstrate significant negligence. Thus, the gravity-based penalty is adjusted upward by 20 percent.

The following table summarizes EPA's determination, for settlement purposes, of **$61,983** as the appropriate total penalty for the violations alleged.

#	Violation	Potential for Harm	Extent of Deviation	Gravity	Multi-Day	Adjustments	Economic Benefit	Total Penalty
1	Disposal of hazardous waste	Major	Major	$40,779	$0	+20%	n/a	$40,779[1]
2	Storage/treatment of hazardous waste	Moderate	Moderate	$10,602	$0	0%	n/a	$10,602
3	Universal waste management	Moderate	Moderate	$10,062	$0	0%	n/a	$10,602
					Total Proposed Penalty			**$61,983**

[1] Capped at the statutory maximum for a single day of violation.

#2

686 F.Supp. 218 (S.D.Ind. 1988)

UNITED STATES of America, Plaintiff,

State of Indiana, by its agent Indiana Department of Environmental Management, Intervening Plaintiff,

v.

INDIANA WOODTREATING CORP., Defendant.

No. IP 86-253-C.

United States District Court, S.D. Indiana, Indianapolis Division.

March 18, 1988

Sue Hendricks Bailey, Asst. U.S. Atty., Deborah E. Albright, Deputy Atty. Gen., Indianapolis, Ind., Frank Bentkover, Kurt weissmuller, Dept. of Justice, Washington, D.C., for plaintiff.

David C. Campbell and Ellen C. Siakotos, Bingham, Summers, Welsh & Spilman, Indianapolis, Ind., for defendant.

ORDER

STECKLER, District Judge.

This matter is before the Court on the motion of plaintiff United States of America for partial summary judgment pursuant to Fed.R.Civ.P. 56. This rule states, in part, that:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Fed.R.Civ.P. 56(c). In ruling on a summary judgment motion, the district court must examine the evidence in the light most favorable to the nonmoving party by drawing all reasonable inferences in favor of that party. *See Fischer v. Central Newspapers, Inc.*, 816 F.2d 313, 316 (7th Cir. 1987); *United States Shoe Corp. v. Hackett*, 793 F.2d 161, 166 (7th Cir. 1986). The Court, having examined the motion, the memorandums of law, the affidavits and the other exhibits, now finds that there is no genuine issue as to any material fact and the plaintiff United States of America is entitled to partial summary judgment on liability as a matter of law. The Court now enters the following findings of fact and conclusions of law.

Findings of Fact

1. The plaintiff, the United States of America, filed this action against the defendant, Indiana Woodtreating Corporation ("IWC") on February 26, 1986. In the complaint, the plaintiff alleged that IWC had committed numerous violations of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6991h. On April 24, 1987, the Indiana Department of Environmental Management entered the action as an intervening plaintiff.

2. Since at least 1977, IWC has operated a woodtreating plant in Bloomington, Indiana. At the plant IWC produces railroad ties. In the production process, IWC treats wood with a creosote-coal tar solution.

3. IWC placed creosote-coal tar solution that it had spilled in the production process in a wastepile or elsewhere on its property. The wastepile at IWC's plant contains creosote soaked sawdust.

4. From 1977 to September 6, 1984, IWC's plant generated wastewater from the treatment of wood with a creosote-coal tar solution. This wastewater came into contact with creosote, and hence contained creosote. IWC produced wastewater at a rate of 240,000 gallons per year during the period from November 19, 1980, to September 1984. IWC placed the wastewater in two impoundments (evaporation ponds) at its facility.

5. The wastepile and the impoundments at IWC's plant contained bottom sediment sludge from the creosote-coal tar solution. The sludge at the bottom of the impoundments contained creosote constituents, including phenanthrene, naphthalene and acenaphthene. The concentration of the constituents ranged from 7,900 to 250,000 parts per million.

6. IWC did not file a complete "Notification of Hazardous Waste Activity" form with the Environmental Protection Agency ("EPA"). IWC did send an incomplete notification form to the EPA. In a letter attached

to the form, IWC's president, John Gourley stated:

We are a small plant, who treat railroad crossties with creosote. After a thorough review of the specifications and our operations we feel we are exempt from filing under Section 261.5 of the regulations which would classify us as

a small quantity generator.

On the notification form itself, IWC did not indicate whether it generated, treated, stored or disposed of hazardous waste. IWC also did not indicate the types of hazardous waste it generated or stored.

7. IWC has never removed any of the sludge that has accumulated in its impoundments. All of the sludge that settled out of the wastewater over the years is still in the impoundments. As of 1985, measurements showed that the east impoundment was 46 feet by 44 feet and held sludge one foot deep, while the west impoundment was 46 feet by 32 feet and held sludge one-half foot deep. As of 1985, approximately 145 cubic yards of creosote sludge, with an estimated weight of 128,573.3 kilograms, had accumulated on the bottom of IWC's impoundments. On average an estimated 2,472.5 kilograms of sludge accumulated per month for the time that IWC was placing wastewater into its impoundments, June 1980 to September 1984.

8. IWC did not obtain a RCRA permit for the treatment, storage, or disposal of hazardous waste. IWC did not submit a Part A application for a permit under RCRA and did not obtain interim status under RCRA.

9. The EPA and Indiana officials conducted an RCRA interim status compliance inspection at the IWC facility on September 10 and 11, 1985. The inspection revealed the following:

a. IWC had not obtained a detailed chemical and physical analysis of a representative sample of its waste.

b. IWC had not maintained a waste analysis plan at its facility.

c. IWC had not implemented a groundwater monitoring program capable of detecting a discharge of hazardous waste into groundwater.

d. IWC had not established a closure trust fund.

e. IWC had not established a surety bond guaranteeing payment into a closure trust fund.

f. IWC had not obtained a closure letter of credit for IWC.

g. IWC had not established a financial test and corporate guarantee for closure of its facility.

h. IWC had not established financial assurance of any kind for the closure of the facility.

i. IWC had not displayed warning signs of any kind along Clear Creek or the railroad tracks which provided access to the active portion of the facility.

j. IWC had not performed inspections of its facility to detect facility malfunctions and deterioration, or operation errors or discharges of hazardous waste constituents into the environment.

k. IWC had not instituted or maintained a training program or classroom instruction to teach its employees to perform their duties in accordance with interim status regulations.

l. IWC had not maintained a contingency plan to minimize hazards to human health or the environment from fires, explosions, or any unplanned, sudden, or nonsudden release of hazardous waste or hazardous waste constituents into the air, soil or surface water.

m. IWC had not maintained operating records regarding, among other things, the location and quantity of hazardous waste within the facility, results of waste analyses, results of inspections, and details of hazardous waste received at the facility.

n. IWC had not submitted annual or biennial reports concerning its generation, and treatment, storage or disposal of hazardous waste.

Page 221

o. IWC had not prepared or maintained an RCRA closure plan for the IWC facility.

p. IWC had not maintained two feet of Freeboard in its surface impoundments: the liquid level in the impoundments had been higher than two feet from the top of the impoundment.

q. IWC had not placed a protective cover of any kind over the waste pile at the facility.

r. IWC had not protected its wastepile from wind dispersal.

10. During the inspection of September 10 and 11, 1985, inspectors observed that water evidencing a sheen emptied into Clear Creek from the eastern embankment of the creek which is located on defendant's property. Inspectors also observed dark substances on the bottom of Clear Creek which, when disturbed, gave off an oily sheen. This dark, thick substance was oozing into Clear Creek from the eastern embankment.

11. During the inspection of September 10 and 11, 1985, inspectors observed that creosote was spilled on the surface soil throughout the IWC facility. Inspectors also observed numerous bodies of creosote at the bottom of Clear Creek. This creosote was oozing into Clear Creek from the eastern embankment.

12. Inspectors took borings into the soil below the

wastepile at the IWC facility. Laboratory analysis of the borings showed the presence of several hazardous constituents of creosote in the soil.

13. Inspectors also took samples of the following: sludge and water from one of the impoundments; sediment and water from two "seeps" of dark substances along the eastern embankment of Clear Creek; sediment from the bottom of Clear Creek; nonaqueous liquids from Clear Creek; and soil between the impoundments and Clear Creek. Laboratory analyses of the samples showed concentrations of hazardous constituents of creosote. The soil borings between the impoundments and Clear Creek did not show contamination at the surface but did show the presence of several hazardous creosote constituents in the saturated zone (subsurface groundwater where soil pores are filled with water), 52 to 72 inches below the surface. The evidence indicates a release of hazardous waste and constituents from one or both of the impoundments at the IWC facility.

14. On February 7, 1986, the Regional Administrator of the United States EPA Region V determined that there had been a release of hazardous waste into the environment from the IWC facility.

Conclusions of Law

Based on the foregoing findings of fact, the Court now makes the following conclusions of law.

1. The Court has jurisdiction over the subject matter of this action. 28 U.S.C. §§ 1331, 1345 and 42 U.S.C. §§ 6928, 6973.

2. IWC failed to notify EPA of its hazardous waste activity under § 3010 of RCRA. Section 3010 of RCRA, 42 U.S.C. § 6930, provides that:

Not later than ninety days after promulgation of regulations ... listing any substance as hazardous waste subject to this subchapter, any person generating or transporting such substance or owning or operating a facility for treatment, storage, or disposal of such substance shall file with the Administrator ... a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person.

The EPA issued regulations listing hazardous wastes, pursuant to § 3001 of RCRA, 42 U.S.C. § 6921, on May 19, 1980. (45 Fed.Reg. 33,083 *et seq.*) Persons generating, or treating, storing or disposing of such hazardous wastes were required to file a notification of hazardous waste activity with the EPA by August 18, 1980.

IWC generated, and also treated, stored or disposed of two wastes which are defined as hazardous wastes in the RCRA regulations. One is creosote, hazardous

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waste U051. 40 C.F.R. § 261.33.[1] The other is creosote sludge, hazardous waste K001. The regulations define hazardous waste K001 as "[b]ottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenal." 40 C.F.R.§ 261.32. IWC treated the wastewater from the wood preserving process when it placed the wastewater in its impoundments.[2]

IWC failed to notify the EPA by August 18, 1980, of the location and general description of its hazardous waste activity. Therefore IWC violated § 3010 of RCRA, 42 U.S.C. § 6930 on and after August 18, 1980.

3. IWC was not entitled to an exemption from the requirements of § 3010 of RCRA as a small quantity generator. Under § 3001(d) of RCRA, 42 U.S.C. § 6921, and the regulations thereunder at 40 C.F.R. § 261.5, the small quantity generator exemption applied in 1980 only to persons who generated less than 1,000 kilograms of hazardous waste in a month, and who stored no more than that amount on site. IWC did not meet this standard.

4. IWC failed to obtain a permit or interim status as required by § 3005 of RCRA. Section 3005 of RCRA, 42 U.S.C. § 6925(a), provides that any facility which treats, stores or disposes of hazardous waste, must either obtain a permit from the EPA or obtain interim status. IWC's hazardous waste activity constituted "treatment, storage, or disposal" of hazardous waste within the meaning of RCRA. "Treatment" of hazardous waste is defined as any "method" or "process" which is "designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume." 42 U.S.C. § 6903(34). "Disposal" of hazardous waste is defined as the "discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters." 42 U.S.C. § 6903(3).

IWC never obtained an RCRA permit for the treatment, storage or disposal of hazardous waste. IWC did not submit a Part A application under RCRA and did not obtain interim status under RCRA. Therefore IWC violated § 3005 of RCRA, 42 U.S.C. § 6925.

5. IWC violated the interim status requirements of § 3004

of RCRA. Section 3004 of RCRA, 42 U.S.C. § 6924, authorizes the EPA to promulgate rules governing owners and operators of hazardous waste treatment, storage or disposal facilities. Among the regulations is "Part 265--Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities." IWC was required to comply with the Part 265 standards even though it never achieved interim status. The standards apply to:

those owners and operators of facilities in existence on November 19, 1980 who have failed to provide timely notification as required by section 3010(a) of RCRA and/or failed to file Part A of the permit application....

40 C.F.R. § 265.1(b).

IWC, as the owner or operator of a facility that treats, stores, or disposes of hazardous waste, violated the following standards:

a. Before an owner or operator treats, stores, or disposes of any hazardous

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waste it must obtain a detailed chemical and physical analysis of a representative sample of the waste. 40 C.F.R. § 265.13.

b. Within one year after the effective date of these regulations, the owner or operator must implement a ground-water monitoring program capable of determining the facility's impact on the quality of ground water in the uppermost aquifer underlying the facility. 40 C.F.R. §§ 265.90 to 265.94.

c. The owner or operator must establish financial assurance for the closure of the facility through: a) a closure trust fund; b) a surety bond guaranteeing payment into a closure trust fund; c) a closure letter of credit; d) closure insurance; e) a financial test and corporate guarantee for closure; and f) use of multiple financial mechanisms. 40 C.F.R. §§ 265.140 to 265.150.

d. The owner or operator must prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of the facility. 40 C.F.R. § 265.14.

e. The owner or operator must inspect its facility for malfunctions and deterioration, operator errors, and discharges which may be causing--or may lead to: (1) release of hazardous waste constituents to the environment or (2) a threat to human health. 40 C.F.R. § 265.15(a).

f. The owner or operator must implement a program of classroom instruction or on-the-job training to teach its employees to perform their duties in a way that ensures the facility's compliance with the requirements of Part 265. 40 C.F.R. § 265.16.

g. The owner or operator must develop a contingency plan to minimize hazards resulting from fires, explosions, or unplanned releases of hazardous wastes. 40 C.F.R. §§ 265.50 to 265.56.

h. The owner or operator must maintain written operating records regarding the location and quantity of hazardous waste within the facility, records and results of waste analyses, results of inspections, and details of hazardous wastes received at the facility. 40 C.F.R. §§ 265.70 to 265.77.

i. The owner and operator must prepare and retain a written closure plan for the IWC facility. 40 C.F.R. § 265.112(b).

j. The owner and operator must maintain enough freeboard in its surface impoundments to prevent any overtopping of the dike by overfilling. 40 C.F.R. § 265.222(a).

k. The owner and operator must protect its waste pile from wind dispersal. 40 C.F.R. § 265.251.

6. Section 3008(h) of RCRA requires IWC to undertake corrective action. Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), provides that:

Whenever on the basis of any information the Administrator determines that there is or has been a release of hazardous waste into the environment from a facility authorized to operate under section 6925(e) of this title, the Administrator may issue an order requiring corrective action or such other response measure as he deems necessary to protect human health or the environment or the Administrator may commence a civil action ... for appropriate relief, including a temporary or permanent injunction.

This section applies to facilities such as IWC which have failed to obtain interim status.[3] Since there has been a release of hazardous wastes and hazardous constituents into the environment at the IWC facility,

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IWC is liable for corrective action pursuant to § 3008(h) of RCRA.

7. If any of the above conclusions of law shall subsequently be determined to constitute a matter of fact rather than a conclusion of law, they shall be treated as having been determined as a finding of fact. If any of the

above findings of fact shall subsequently be determined to be a conclusion of law, they shall be treated as having been determined as a conclusion of law.

8. There is no genuine issue as to any material fact and the plaintiff United States of America is entitled to partial summary judgment on liability as a matter of law.

Accordingly, by reason of the foregoing, the Court hereby

GRANTS the motion of the plaintiff United States of America for partial summary judgment.

IT IS SO ORDERED.

Notes:

[1] The creosote-coal tar solution that IWC used in the wood treating process is hazardous waste U051, even though it is not pure creosote. The creosote grades used by the wood preserving industry are "technical grades" under the regulations. To be hazardous waste U051, creosote does not have to be the sole active ingredient in the technical grade. *See* 40 C.F.R. § 261.33(d).

[2] The regulations also encompass the constituents from hazardous waste U051 and hazardous waste K001, *see* 40 C.F.R. § 261.3(c)(2)(i), which inspectors discovered at the IWC facility on September 10 and 11, 1985.

[3] On its face the section applies to facilities "authorized to operate under section 6925(e)." Section 6925(e) refers to the interim status provision of RCRA. However, the section must also apply to facilities that have failed to obtain interim status. Otherwise, facilities could gain exemption from the obligation to perform corrective action by failing to submit the forms necessary to obtain interim status. This would undermine congressional intent and be contrary to the EPA's interpretation of its corrective action authority.

#3

REEVES AMODIO LLC
ATTORNEYS AT LAW

August 23, 2018

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VIA EMAIL AND U.S. MAIL

Bradley Roberts
U.S. EPA, Region 10
Attorney-Adviser | Office of Regional Counsel
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Re: Steelfab Response to Notice of Intent and Summary of Alleged Violations

Dear Brad:

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This letter sets forth (b) (6) [redacted] position and response to the violations alleged in the EPA Notice of Intent (NOI) to File an Administrative Complaint for Violations of the Resource Conservation and Recovery Act and Opportunity to Confer prior to filing (EPA July 12, 2018). Enclosed with the NOI was a Summary of Alleged Violations and Proposed Penalty (SAV).[1] Also enclosed with the NOI was a copy of the RCRA Civil Penalty Policy, and the Small Business Resources Information Sheet.

The primary point is that at the relevant time (b) (6) [redacted] was a Very Small Quantity Generator (VSQG). Applicable regulations (*e.g.*, 40 CFR 262.14) indicate that an accidental spill of material may be cleaned up without affecting the party's status as a VSQG. *See* additional discussion below. In this instance, the clean-up and disposal of the (solidified) Durathane occurred promptly upon notice of the spill, with the oversight and approval of the Alaska Department of Environmental Conservation (ADEC). Further, as I noted in our discussion, STEELFAB has already spent more than $100,000 in addressing and cleaning up the Durathane and other items, which were properly disposed of in accordance with law.

(b) (6) [redacted] is still interested in resolving this matter informally with EPA, to avoid the costs and burden of a lawsuit or administrative proceeding. Thus, we intend to participate in the teleconference that we have previously scheduled for early next week. However, we wanted to set forth our position in writing, so that you can (hopefully) understand why we believe that there is no basis for the violations alleged in the NOI and SAV.

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[1] The SAV contains an obvious typo: it refers to section 42 U.S.C. 6295(a), when it clearly meant to refer to section 6925(a), Permits for treatment, storage, or disposal of hazardous waste.

Discussion

Our review of the alleged violations indicates that many, if not all the violations are placed out of context relative to (b) (6) [redacted] regulatory status at the time of the EPA site inspection resulting in regulatory misinterpretation by EPA personnel. The following discussion is based on a good faith review of the applicable facts and law by our environmental consultant, Restoration Science & Engineering, LLC (RSE).

(b) (6) [redacted] and EPA RCRA Inspection Allegations

(b) (6) [redacted] has operated under its status as a Conditionally Exempt Small Quantity Generator also known as a Very Small Quantity Generator (VSQG). ADEC and others noted several drums containing various materials including Durathane II had been damaged or tipped releasing a small portion of the drum contents. This spill was noted by ADEC on September 27, 2017. Shortly after receipt of notification of the spill, (b) (6) [redacted] personnel righted the Durathane II drum and recovered the hardened material for proper disposal. It is noted that 40 CFR Part 262.14 details conditions for exemption for a very small quantity generator which we believe that STEELFAB was meeting at the time of the release.

Based on discussions with Ian Ainoa at EPA Region 10 (b) (6) [redacted] temporarily changed its generator status to Small Quantity Generator (SQG) to accommodate a proper disposal of spill cleanup and other accumulated VSQG waste that along with the spill cleanup materials that was anticipated to exceed the 2,200 pound VSQG accumulation limit. RSE's initial contact with EPA representative Mr. Ainoa was to apply for Episodic Generator Status. Discussions with EPA resulted in (b) (6) [redacted] being directed towards filing for a temporary SQG status instead of filing as an Episodic Generator. (b) (6) [redacted] estimated that the spill and other accumulated VSQG waste exceeded the 2,200 pound threshold, and as such, RSE proceeded to assist (b) (6) [redacted] with completing EPA form 8700-12 for the temporary SQG status instead of the initially discussed Episodic Generator status. This temporary status change from VSQG status to SQG status was actually not required, as upon shipment and final weighing, the VSQG waste was measured at a total weight of 1,700 pounds. *See* Manifest dated November 17, 2017, a copy of which is enclosed for your convenience.

(b) (6) [redacted] submitted form 8700-12 stating "change to VQG status is to accommodate a one-time potential exceedance of 2,200 [lb.] limit."[2] *See* completed Form 8700-12, copy enclosed. At the time of EPA's November 7 inspection, (b) (6) [redacted] had remained in VSQG status as the requested change was sent to EPA on November 3, 2017 by mail and confirmation of status change was not received from EPA until November 13, 2017. See email from Ian Ainoa, dated November 13, 2017, copy enclosed.

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[2] The completed Form contains a typographical error on the last page. When it refers to "2,200 kg. limit," it should say "2,200 lb. limit." *See id.*

The referenced 1,700 pounds of VSQG generated hazardous paint waste and the Durathane II spill cleanup material was collected and transported by NRC Alaska on November 17, 2017 shortly after receipt of EPA confirmation of regulatory status. Based on this information, (b) (6) [redacted] responses to EPA allegations are provided below.

Violation 1: Illegal Disposal of Hazardous Waste

Violation 1: In this alleged violation, (b) (6) [redacted] is charged with not having a permit for disposal of hazardous waste and refers to 42 U.S. Code part 6925 – Permits for treatment, storage or disposal of hazardous waste. This charge is based on the September 27, 2017 observed release of near solid Durathane II when a drum containing this material was observed tipped at the (b) (6) [redacted]. The violation refers to a September 27, 2017 date of "disposal" of the material. (b) (6) [redacted] maintains the release was an accidental spill as evidenced by the ADEC management under Spill Response and in no manner was considered a hazardous waste disposal activity.

Violation 1 relies on the assertion that Durathane II exhibited an ignitable characteristic rendering it a hazardous waste. Ignitability is defined by having a flashpoint of less than 60 degrees C and is assigned a D001 waste code during disposal. (b) (6) [redacted] familiarity with the product along with manufacturer information demonstrate that the near solid Durathane did not meet an ignitibility characteristic at the time of spill observation and during subsequent cleanup activities. We are attaching email correspondence with the manufacturer of Durathane II noting that the solidified product is not a hazardous waste. *See* August 21-22 email exchange, copy enclosed.

Response: (b) (6) [redacted] did not intend to dispose of the material. The drums were placed at the subject location (near the southeast area of the (b) (6) [redacted] lease property), by a former employee and apparently damaged and tipped due to snowplow or other site activities. (b) (6) [redacted] was unaware of the release at the time of ADEC observation, and responded by taking immediate actions to address the spill and contain the release by recovering the material and moving it to an interior storage area for proper disposal.

This release was rapidly investigated further by ADEC spill response personnel and based on conversations with (b) (6) [redacted] personnel initiated interim measures to contain and clean up the release by uprighting the drum, gathering the solidified contents released from the drum, and relocating the materials to a proper interior storage location. (b) (6) [redacted] had no intention of disposing or abandoning the subject material as it was able to be managed under the VSQG waste stream permitted by the VSQG status. Further, after being advised of the release, (b) (6) [redacted] engaged with NRC Alaska, a hazardous waste transportation company and disposal broker to assist with proper disposal, as well as the services of RSE, to characterize the area where the drum was tipped in accordance with spill response requirements of the ADEC. NRC inspected the material and prepared profiling for proper transport and disposal and RSE prepared a site assessment workplan which was approved by ADEC for characterization of the spill area. RSE conducted site characterization activities on October 25, 2017 and based on the sample data

collected, prepared a Site Characterization Report issued on January 12, 2018, sampling of soil in the "Drum Area" showed the only slight exceedances of ADEC cleanup levels with relatively low concentrations of 1,2,4-Trimethylbenzene, Ethylbenzene and Xylenes. These compounds were detected at extremely low concentrations and this demonstrates the non-liquid or solidified material was released and it did penetrate into the soil and in no way represented an immediate threat to human health or the environment. Further these trace hydrocarbon constituents may have originated from other non-Durathane II sources and are expected to naturally degrade in a relatively short period of time if provided access to nutrients, moisture, and oxygen. There were no other ADEC cleanup value exceedances unrelated to background conditions at the Drum Area. It is possible that some of these observed impacts are related to historic off-site sources such as Standard Steel. (RSE, 2018).

In summary (b) (6) [redacted] does not concur with EPA that the release of the near-solid Durathane II constituted at "disposal of hazardous waste" for the reasons cited above. (b) (6) [redacted] retained the VSQG status throughout the period of initial cleanup and characterization of the site. The site characterization of the Drum Area failed to detect significant contamination based on comparison with ADEC soil cleanup standards further supporting that the Durathane II was in a near solid and non-ignitable and therefore not characteristic or subject to hazardous waste categorization at the time of release.

Violation 2: Illegal Treatment and Storage of Hazardous Waste without a Permit

Violation 2: In this alleged violation, (b) (6) [redacted] is charged with "Illegal Treatment and Storage of a Hazardous Waste without a permit." This allegation appears to be related to (b) (6) [redacted] cleaning up the spilled Durathane II and containerization and storage of these materials. This violation essentially extends from Violation 1 above where as EPA has decided to address an accidental spill of near solid Durathane II as an illegal disposal of hazardous waste.

Response: At the time of the discovery of the Durathane II drum release, (b) (6) [redacted] was operating under VSQG status. As such the release of the Durathane II was managed under ADEC spill response and contaminated sites regulations consistent with EPA expectations for spill cleanup. The released product was recovered, containerized and stored in an interior location, NRC was contacted to assist with material disposal, and RSE was contracted to prepare a Site Investigation Workplan approved by ADEC followed by a field investigation to define the impacts (if any) of the observed release to soil. (b) (6) [redacted] was operating at the direction of ADEC regulators and attempting to fully comply with all applicable environmental regulations. EPA appears to maintain that by virtue of the observed release that (b) (6) [redacted] became owner or operator of a hazardous waste management unit and extends from that position that (b) (6) [redacted] did not have a proper permit for such activities. (b) (6) [redacted] did not attempt to abandon or dispose of the subject materials and immediately worked with ADEC to execute a cleanup which largely consisted of recovering non-liquid materials from the ground surface for proper recycling or disposal. (b) (6) [redacted] continued to properly operate under its VSQG status and does not concur

with EPA that a permit was required to maintain (b) (6) [redacted] status or that somehow STEELFAB lost the exemptions associated with VSQG regulatory status.

In charge (a) under Violation 2, EPA appears to believe that (b) (6) [redacted] was operating as a SQG which is incorrect. Based on this erroneous assertion, EPA has maintained that (b) (6) [redacted] was required to label containers and conduct weekly inspection of central accumulation areas. (b) (6) [redacted] points out it was encouraged by EPA Region 10 personnel to change from VSQG to short term SQG status versus seeking an Episodic Generation status. RSE discussed with EPA filing a notification for an episodic waste generation status which would allow for maintenance of VSQG status during the disposal event. However, EPA personnel verbally suggested RSE on behalf of (b) (6) [redacted] seek temporary status of SQG to allow for a one-time shipment of more than 2,200 pounds of hazardous waste. (b) (6) [redacted] submitted such the Form 8700-12 on November 3, 2017. At the time of EPA's November 7, 2017 inspection, (b) (6) [redacted] remained as a VSQG. As such, for any portion of these alleged violations relating (b) (6) [redacted] temporary status as a SQG (EPA Notification of revised SQG status received by [redacted] November 13, 2017), are not supported. If EPA finds regulatory or legal support for holding (b) (6) [redacted] to the SQG status, (b) (6) [redacted] reminds EPA that information from EPA personnel played a pivotal role in that status change. (b) (6) [redacted] maintains that at the time of EPA inspection, (b) (6) [redacted] retained the facility status as VSQG and as such any of the alleged violations related to non-VSQG status are invalid. Given this, the alleged Violation 2 (a, b, c, d, and e) are not supported by fact and not applicable as (b) (6) [redacted] was operating under VSQG status.

Violation 3: Universal Waste Management

This allegation cites that 40 CFR 273.13 requires small quantity handlers of Universal Waste to store lamps in closed container that are adequate to prevent breakage. The new and used fluorescent bulbs at (b) (6) [redacted] were stored upright in open containers removed from active facility operations pending use or proper recycling or disposal through the MOA CESQG Hazardous Waste Facility. Additional Universal Waste compliance allegations included failure to label the container and demonstrate the time that the universal waste had been accumulated. (b) (6) [redacted] does not dispute EPA characterization but would like to point out that the bulbs, while not in strict compliance with Universal Waste regulations, were being maintained intact, in a protected, out-of-the-way place, and subjected to proper final disposal.

Conclusion

In sum, we believe that the alleged violations are flawed, as a matter of law and/or fact. As noted, however, we would prefer to resolve this matter informally with EPA. Furthermore, (b) (6) [redacted] recognizes the importance of complying with all applicable environmental regulations. Indeed, (b) (6) [redacted] has implemented a formal, detailed Environmental Practices Plan designed to ensure such regulatory compliance in the future.

We look forward to further discussions with you on our teleconference next week.

Sincerely,
REEVES AMODIO LLC

Thomas Amodio

Enclosures
Cc: Client

#4

Cornell Law School

CFR › Title 40 › Chapter I › Subchapter I › Part 262 › Subpart A › Section 262.14

40 CFR 262.14 - Conditions for exemption for a very small quantity generator.

§ 262.14 Conditions for exemption for a very small quantity generator.

(a) Provided that the very small quantity generator meets all the conditions for exemption listed in this section, hazardous waste generated by the very small quantity generator is not subject to the requirements of parts 124, 262 (except §§ 262.10-262.14) through 268, and 270 of this chapter, and the notification requirements of section 3010 of RCRA and the very small quantity generator may accumulate hazardous waste on site without complying with such requirements. The conditions for exemption are as follows:

(1) In a calendar month the very small quantity generator generates less than or equal to the amounts specified in the definition of "very small quantity generator" in § 260.10 of this chapter;

(2) The very small quantity generator complies with § 262.11(a) through (d);

(3) If the very small quantity generator accumulates at any time greater than 1 kilogram (2.2 lbs) of acute hazardous waste or 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §§ 261.31 or 261.33(e) of this chapter, all quantities of that acute hazardous waste are subject to the following additional conditions for exemption:

(i) Such waste is held on site for no more than 90 days beginning on the date when the accumulated wastes exceed the amounts provided above; and

(ii) The conditions for exemption in § 262.17(a) through (g).

(4) If the very small quantity generator accumulates at any time 1,000 kilograms (2,200 lbs) or greater of non-acute hazardous waste, all quantities of that hazardous waste are subject to the following additional conditions for exemption:

(i) Such waste is held on site for no more than 180 days, or 270 days, if applicable, beginning on the date when the accumulated waste exceed the amounts provided above;

(ii) The quantity of waste accumulated on site never exceeds 6,000 kilograms (13,200 lbs); and

(iii) The conditions for exemption in § 262.16(b)(2) through (f).

(5) A very small quantity generator that accumulates hazardous waste in amounts less than or equal to the limits in paragraphs (a)(3) and (4) of this section must either treat or dispose of its hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under part 270 of this chapter;

(ii) In interim status under parts 265 and 270 of this chapter;

(iii) Authorized to manage hazardous waste by a state with a hazardous waste management program approved under part 271 of this chapter;

(iv) Permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to part 258 of this chapter;

(v) Permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit, is subject to the requirements in §§ 257.5 through 257.30 of this chapter;

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation;

(vii) For universal waste managed under part 273 of this chapter, a universal waste handler or destination facility subject to the requirements of part 273 of this chapter;

(viii) A large quantity generator under the control of the same person as the very small quantity generator, provided the following conditions are met:

(A) The very small quantity generator and the large quantity generator are under the control of the same person as defined in § 260.10 of this chapter. "Control," for the purposes of this section, means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person as defined in § 260.10 of this chapter shall not be deemed to "control" such generators.

(B) The very small quantity generator marks its container(s) of hazardous waste with:

(1) The words "Hazardous Waste" and

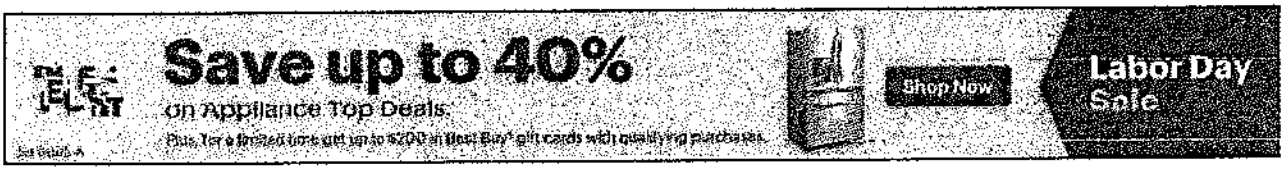
(2) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.*, ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704).

(b) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste

containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(c) A very small quantity generator experiencing an episodic event may generate and accumulate hazardous waste in accordance with subpart L of this part in lieu of §§ 262.15, 262.16, and 262.17.

[81 FR 85808, Nov. 28, 2016]



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#5

We've made some changes to EPA.gov. If the information you are looking for is not here, you may be able to find it on the EPA Web Archive or the January 19, 2017 Web Snapshot.

Hazardous Waste Generator Regulatory Summary

****NOTE****

EPA has finalized a rulemaking that made several changes to the hazardous waste generator regulations. The information on this page has been updated to reflect these changes. Check out the new rule now.

The Resource Conservation and Recovery Act (RCRA) regulations establish basic hazardous waste management standards for persons who produce hazardous waste, called hazardous waste generators. These standards are found in title 40 of the Code of Federal Regulations (CFR) in part 262. The generator regulations ensure that hazardous waste is appropriately identified and handled safely to protect human health and the environment, while minimizing interference with daily business operations.

On this page:

- Summary Table
- Additional Resources

Summary Table

The table below provides a summary of requirements for each class of hazardous waste generator. This is not an exhaustive list of all of the requirements for generators and should be used as just a guide. Generators are responsible for all applicable requirements in 40 CFR part 262. Additionally, hazardous waste generators should check with their state regulatory agency because certain states have additional or more stringent requirements than the federal government.

Requirement	Very Small Quantity Generators	Small Quantity Generators	Large Quantity Generators

Requirement	Very Small Quantity Generators	Small Quantity Generators	Large Quantity Generators
Quantity Limits The amount of hazardous waste generated per month determines how a generator is categorized and what regulations must be complied with.	≤100 kg/month, and ≤1 kg/month of acute hazardous waste, and ≤100 kg/month of acute spill residue or soil §260.10	>100 and <1,000 kg/month §260.10	≥1,000 kg/month, or >1 kg/month of acute hazardous waste, or >100 kg/month of acute spill residue or soil §260.10
EPA ID Number Acquire a unique EPA identification number that identifies generators by site.	Not required	Required §262.18	Required §262.18
On-Site Accumulation Quantity Determine amount of hazardous waste generators are allowed to "accumulate" on site without a permit.	≤1,000 kg or ≤1 kg acute hazardous waste or ≤100 kg of acute spill residue or soil §§262.14(a)(3) and (4)	≤6,000 kg §262.16(b)(1)	No limit
Accumulation Time Limits Determine amount of time hazardous waste is allowed to accumulate on site.	None	≤180 days or ≤270 days (if transporting greater than 200 miles) §§262.16(b)-(d)	≤90 days §262.17(a)

Requirement	Very Small Quantity Generators	Small Quantity Generators	Large Quantity Generators
Accumulation Requirements Manage hazardous waste in compliance with certain technical standards.	None	Basic requirements with technical standards for containers, tanks, drip pads or containment buildings §§262.16(b)(2)-(5)	Full compliance for management of containers, tanks, drip pads or containment buildings §§262.17(a)(1)-(4)
Personnel Training Ensure appropriate personnel complete classroom or on-the-job training to become familiar with proper hazardous waste management and emergency procedures for the wastes handled at the facility.	Not required	Basic training required §262.16(b)(9)(iii)	Required §262.17(a)(7)
Contingency Plan and Emergency Procedures Develop procedures to follow during an unplanned major event.	Not required	Basic planning required §§262.16(b)(9)	Full plan required Part 262 subpart M (from §262.17(a)(6))
Preparedness and Prevention Develop procedures to follow in the event of an emergency.	Not required	Required §262.16(b)(8)-(9)	Required Part 262 subpart M (from §262.17(a)(6))

Requirement	Very Small Quantity Generators	Small Quantity Generators	Large Quantity Generators
Air Emissions Control hazardous air emissions from tanks and containers	Not required	Not required	Required Part 265 subparts AA, BB and CC from §262.17 (a)(1) and (2)
Land Disposal Restrictions Meet standards for placing on the land and associated requirements for certifications, notifications, and waste analysis plans	Not required	Required Part 268 from §262.16(b)(7)	Required Part 268 from §262.17(a)(9)
Manifest Tracking hazardous waste shipments using the multiple-copy manifest - required by the Department of Transportation (DOT) and EPA	Not required	Required Part 262 subpart B	Required Part 262 subpart B
Waste Minimization Certify steps taken to reduce or eliminate the generation of hazardous waste	None	Good faith effort required §262.27	Program in place required §262.27

Requirement	Very Small Quantity Generators	Small Quantity Generators	Large Quantity Generators
Pre-Transport Requirements Package and label hazardous waste for shipment off site to a RCRA facility for treatment, storage, or disposal	Only if required by the DOT or the state	Required §§262.30-262.33	Required §§262.30-262.33
Biennial Report Report data from off-site shipments of waste during the previous calendar year	Not required	Not required	Required §262.41
Exception and Additional Reporting Report if any required copies of signed manifests are not received back Provide information on quantities and disposition of wastes upon request	Not required	Required §§262.42(b) and 262.43	Required §§262.42 and 262.43
Recordkeeping Maintain records of waste testing, manifests, biennial reports and exception reports	Not required	Required (except biennial reports) §262.11(f) and §262.40(a) and (d)	Required §262.11(f) and §262.40

Requirement	Very Small Quantity Generators	Small Quantity Generators	Large Quantity Generators
Facility Type Send off-site shipments to appropriate facilities for management	Facilities noted in §§262.14(a)(5)	RCRA permitted/interim status facility Parts 264/265, 266/267 and 270	RCRA permitted/interim status facility Parts 264/265, 266/267 and 270
Closure Close equipment, structures, soils and units by meeting specified performance standards and disposal and decontamination requirements	Not required	Required for tanks, drip pads and containment buildings - Tanks only §262.16(b)(3)(vi) Unit specific Part 265, subpart W and DD for drip pads and containment buildings	Required - General §262.17 (a)(8) - Unit specific Part 265, subpart W for drip pads

Additional Resources

- Categories of Hazardous Waste Generators
- Training Module: Introduction to Generators
- State-specific regulations
- Hazardous Waste Requirements for Large Quantity Generators
- RCRA Orientation Manual

LAST UPDATED ON AUGUST 9, 2017

How-to: JavaScript

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101-3140

JUL 16 RECD

OFFICE OF
COMPLIANCE AND ENFORCEMENT

JUL 12 2018

Reply To: OCE-101

CONFIDENTIAL FOR SETTLEMENT PURPOSES ONLY
CERTIFIED MAIL — RETURN RECEIPT REQUESTED

(b) (6) [redacted]

Re: Notice of Intent to File an Administrative Complaint for Violations of the Resource Conservation and Recovery Act and Opportunity to Confer Prior to Filing

Dear (b) (6) [redacted]

The U.S. Environmental Protection Agency (EPA) has documented violations of the hazardous waste management requirements of the Resource Conservation and Recovery Act (RCRA) at the (b) (6) [redacted] facility located a (b) (6) [redacted] The purpose of this notice is to inform you that EPA is prepared to initiate an enforcement action for these violations and to offer you the opportunity to discuss this matter with EPA prior to the filing of a Complaint.

The State of Alaska has not been authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, to carry out a hazardous waste program in lieu of the Federal program. Pursuant to Section 3008(a), EPA may enforce the federal hazardous waste program in the State of Alaska.

Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to assess administrative penalties, or to bring a civil action in federal district court seeking civil penalties, up to the statutory maximum per day of noncompliance for each violation of a requirement of Subtitle C of RCRA. EPA determines the amount of penalty it will seek in RCRA enforcement actions using the factors set forth in Section 3008 of RCRA, 42 U.S.C § 6928; the *Federal Civil Penalties Inflation Adjustment Act of 1990* as amended in 2015; 40 C.F.R. Part 19; and EPA's *RCRA Civil Penalty Policy* ("Penalty Policy"), available at http://www2.epa.gov/sites/production/files/documents/rcpp2003-fnl.pdf. EPA has determined that an appropriate penalty to settle the violations is $61,983.

A Summary of the Alleged Violations and Proposed Penalty, which provides information about EPA's allegations in this matter as well as an explanation of EPA's proposed penalty, is enclosed along with a copy of the Penalty Policy.

In general, EPA favors prefiling discussions, which help ensure that we have all relevant information. Prefiling discussions may lead to a settlement that avoids the time and expense of litigation. If we are able to reach a settlement, we would resolve the case with an administrative Consent Agreement and a Final Order, and EPA would not file a Complaint. Once a Consent Agreement and a Final Order is signed by all parties, EPA generally issues a press release announcing the settlement.

CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FEDERAL RULE OF EVIDENCE 408

Summary of Violations and Proposed Penalty
RJH, Inc. d.b.a. Steelfab

(b) (6) [redacted] that has operated at its current location since 1948. As part of its operations, the facility generates a number of potential hazardous waste streams that include solvents, solvent still bottoms, aerosol cans, used oil, and fluorescent lamps.

On November 7, 2017, the United States Environmental Protection Agency ("EPA") conducted a RCRA (b) (6) [redacted] The facility was inspected to ensure compliance with standards for hazardous waste generators and universal and oil waste management practices. Based on the observations of the inspector, (b) (6) [redacted] was eligible to manage hazardous waste as a "small quantity generator" of hazardous waste, and a "small quantity handler" of universal waste, based on the amount of waste generated. (b) (6) [redacted] facility processes, hazardous waste practices, generation points, and accumulation areas were inspected.

Alleged Violations:

Violation 1: Illegal Disposal of Hazardous Waste:

a) RCRA § 3005(a) [42 U.S.C. § 6295(a)] Requires that the owner and operator of a hazardous waste management unit have a permit for disposal of any hazardous waste during the active life of the unit in which this takes place. (b) (6) [redacted] permit for disposal of hazardous waste.
b) On or about September 27 [redacted] of Durathane II, a characteristically ignitable hazardous waste, at its facility.

Violation 2: Illegal Treatment and Storage of Hazardous Waste without a Permit:

a) RCRA § 3005(a) [42 U.S.C. § 6295(a)] Requires, *inter alia*, that the owner and operator of a hazardous waste management unit possess a hazardous waste permit for the storage or treatment of any hazardous waste during the active life of the hazardous waste management unit. (b) (6) [redacted] does not have a permit for the storage or treatment of hazardous waste.
b) 40 C.F.R. § 262.16 provides a conditional exemption for small quantity generators to accumulate hazardous waste without a permit, provided the generator meets several exemption requirements. Among these requirements, the small quantity generator must ensure the wastes are properly labelled with: the words "hazardous waste," the type of hazard the waste exhibits, and the date the waste began being accumulated. Additionally, inspections of central accumulations areas must be conducted weekly.
c) On or about November 7, 2017, (b) (6) [redacted] stored and accumulated hazardous aerosol can residuals in a 55-gallon container located in the Service Center without a permit, and without following the labelling or inspection requirements needed for a permit exemption.
d) On or about November 7, 2017, (b) (6) [redacted] stored and treated hazardous paint waste in the New Paint Shop without a permit, and without following the labelling or inspection requirements needed for a permit exemption.
e) On or about November 7, 2017, (b) (6) [redacted] accumulated and stored a cubic foot container and four 85-gallon overpack containers holding hazardous waste spill clean-up wastes without a permit, and without fulfilling the labelling and inspection requirements needed for a permit exemption.

Violation 3:

a) 40 C.F.R. § 273.13 requires small quantity handlers of universal wastes to store lamps in closed containers that are adequate to prevent breakage. 40 C.F.R. § 273.13 requires universal waste lamp

containers to be labelled as "Universal-Waste- Lamp(s)," or "Waste Lamps(s)" or "Used Lamps(s)." Additionally, 40 C.F.R. 273.15 requires small quantity handlers of universal waste to be able to demonstrate the length of time that the universal waste has been accumulated.

b) On or about November 7, 2017, (b) (6) stored approximately 32 universal waste fluorescent lamp bulbs. The containers were not closed or adequate to prevent breakage, the containers did not contain the proper labelling, and (b) (6) did not provide information to demonstrate the length of time the bulbs had been accumulated.

Proposed Settlement Penalty

The following table provides EPA's determination, for settlement purposes, of the appropriate categorization of the "potential for harm" and "extent of deviation" for each violation alleged and the corresponding proposed civil penalty amount. The penalty amounts provided below are the result of the application of the RCRA Civil Penalty Policy (RCPP) to each violation.

The penalty matrices used for the gravity-based penalties are those in the April 6, 2010 "Revision to Adjusted Penalty Policy Matrices Package Issued on November 16, 2009." For violations that occurred after August 1, 2016, penalty inflation is computed pursuant to 81 FR 43091 (July 1, 2016).

In accordance with the RCPP, EPA adjusted the gravity-based penalty upwards by 20 percent for (b) (6) negligence. As described in the RCPP, "the penalty may be adjusted upward for willfulness and/or negligence." Factors to be considered can include how much control the violator had over the event constituting the violation and whether the violator took reasonable precautions against the events constituting the violation. Here, as to Violation 1, (b) (6) negligent placement of Durathane II in an area outside of its facility, the lack of precautions taken to prevent the spill constituting disposal, and the facility manager not being aware of the disposal, clearly demonstrate significant negligence. Thus, the gravity-based penalty is adjusted upward by 20 percent.

The following table summarizes EPA's determination, for settlement purposes, of **$61,983** as the appropriate total penalty for the violations alleged.

#	Violation	Potential for Harm	Extent of Deviation	Gravity	Multi-Day	Adjustments	Economic Benefit	Total Penalty
1	Disposal of hazardous waste	Major	Major	$40,779	$0	+20%	n/a	$40,779[1]
2	Storage/treatment of hazardous waste	Moderate	Moderate	$10,602	$0	0%	n/a	$10,602
3	Universal waste management	Moderate	Moderate	$10,062	$0	0%	n/a	$10,602
					Total Proposed Penalty			**$61,983**

[1] Capped at the statutory maximum for a single day of violation.

RCRA CIVIL PENALTY POLICY

RCRA Enforcement Division
Office of Regulatory Enforcement
Office of Enforcement and Compliance Assurance
U.S. EPA

June 2003

RCRA CIVIL PENALTY POLICY

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Under this Policy, two factors are considered in determining the gravity-based penalty component:

- potential for harm; and
- extent of deviation from a statutory or regulatory requirement.

These two factors constitute the seriousness of a violation under RCRA, and have been incorporated into the following penalty matrix from which the gravity-based component will be chosen.

MATRIX[1]

Extent of Deviation from Requirement

Potential for Harm	MAJOR	MODERATE	MINOR
MAJOR	$27,500 to 22,000	$21,999 to 16,500	$16,499 to 12,100
MODERATE	$12,099 to 8800	$8,799 to 5,500	$5,499 to 3,300
MINOR	$3,299 to 1,650	$1,649 to 550	$549 to 110

The Policy also explains how to factor into the calculation of the gravity-based component the presence of multiple and multi-day (continuing) violations. The Policy provides that for days 2 through 180 of multi-day violations, the calculation of penalties using a multi-day component is mandatory, presumed, or discretionary, depending on the "potential for harm" and "extent of deviation" of the violations. For each day for which multi-day penalties are sought, the penalty amounts should be determined using the multi-day penalty matrix. The penalty amounts in the multi-day penalty matrix range from 5% to 20% (with a minimum of $110 per day) of the penalty amounts in the corresponding gravity-based matrix cells. Enforcement personnel also retain discretion to impose multi-day penalties: (1) of up to $27,500 per day, when appropriate under

[1]Although the upper end of the penalty range exceeds the statutory maximum found in RCRA Section 3008, 42 U.S.C. § 6928, a 10% increase in the statutory penalty amount was authorized by Congress in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. See footnote 3 for further discussion.

case-specific details supporting the decision from where in the matrix cell range the penalty is taken.

II. INTRODUCTION

To respond to the problem of improper management of hazardous waste, Congress amended the Solid Waste Disposal Act with the Resource Conservation and Recovery Act (RCRA) of 1976. Although the Act has several objectives, Congress' overriding purpose in enacting RCRA was to establish the basic statutory framework for a national system that would ensure the proper management of hazardous waste. Since 1976, the Solid Waste Disposal Act has been amended by the Quiet Communities Act of 1978, P.L. 95-609, the Used Oil Recycling Act of 1980, P.L. 96-463, the Hazardous and Solid Waste Amendments of 1984, P.L. 98-221, the Safe Drinking Water Act Amendments of 1986, P.L. 99-39, the Superfund Amendments and Reauthorization Act of 1988, P.L. 99-499, and the Federal Facility Compliance Act of 1992, P.L. 102-386. For simplicity and convenience, the Solid Waste Disposal Act, as amended, will hereinafter be referred to as "RCRA."

Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides that if any person has violated or is in violation of a requirement of Subtitle C, the Administrator of the Environmental Protection Agency (EPA) may, among other options, issue an order assessing a civil penalty of up to $25,000 per day for each violation. This amount has subsequently been increased to $27,500.[3] Section 3008(a)(3), 42 U.S.C. § 6928(a)(3), provides that any order assessing a penalty shall take into account:

- the seriousness of the violation, and
- any good faith efforts to comply with the applicable requirements.

Section 3008(g) applies to civil judicial enforcement actions and establishes liability to the United States for civil penalties of up to $27,500 per day for each violation of Subtitle C. This document sets forth the Agency's Policy and internal guidelines for determining penalty amounts that: (1) should be sought in administrative actions filed under RCRA[4] and (2) would be

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[3]The amount that may be sought was adjusted upward from the statutory maximum of $25,000 to $27,500 pursuant to the authority of the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461, and regulations implementing that Act found at 40 CFR Part 19. For more information, see the May 19, 1997, Memorandum from Steven A. Herman "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (Pursuant to the Debt Collection Improvement Act of 1996)."

[4] This Policy does not limit the penalty amount that may be sought in civil judicial actions. In civil judicial actions brought pursuant to RCRA, the United States may, in its discretion, continue to file complaints requesting a civil penalty up to the statutory maximum amount, and may litigate for the maximum amount justifiable on the facts of the case.

potential issues regarding the proposing of a penalty where information, such as the financial viability of the respondent, cannot be obtained before the complaint is filed. For more information, see the May 28, 1996, Memorandum from Robert Van Heuvelen "Interim Guidance on Administrative and Civil Judicial Enforcement Following Recent Amendments to the Equal Access to Justice Act" and the preamble to the revised Consolidated Rules of Practice, 64 Fed. Reg. 40137, 40151 (7/23/99).

The RCRA Civil Penalty Policy is immediately applicable and should be used to calculate penalties sought in all RCRA administrative actions or accepted in settlement of both administrative and judicial civil enforcement actions brought under the statute after the date of the Policy, regardless of the date of the violation. To the maximum extent practicable, the Policy shall also apply to the settlement of administrative and judicial enforcement actions instituted prior to but not yet resolved as of the date the Policy is issued.[8]

The procedures set out in this document are intended solely for the guidance of government personnel. They are not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with this Policy and to change it at any time without public notice.

III. RELATIONSHIP TO AGENCY PENALTY POLICY

The RCRA Civil Penalty Policy sets forth a method for calculating penalties consistent with the established goals of the Agency's Policy on Civil Penalties[9] which was issued on February 16, 1984. These goals are:

- deterrence;
- fair and equitable treatment of the regulated community; and
- swift resolution of environmental problems.

CFR Part 22. Revisions to these Rules were published on July 23, 1999, (64 Fed. Reg. 40137), and were effective August 23, 1999.

[8]For more information on the role of Agency penalty policies in administrative litigation and their use by Presiding Officers and the Environmental Appeals Board, see the March 19, 1997, Memorandum from Robert Van Heuvelen "Impact of Wausau on Use of Penalty Policies" and the December 15, 1995, Memorandum from Robert Van Heuvelen "Guidance on Use of Penalty Policies in Administrative Litigation." For EAB discussions on this subject, see In re: Catalina Yachts, 8 E.A.D. 199 (EAB, 3/24/99); In re: Ocean State Asbestos Removal, 7 E.A.D. 522 (EAB, 3/13/98). The Regions are counseled to review current caselaw and policies issued which may affect the role of the Agency's penalty policies in administrative litigation.

[9]Codified as Policy PT.1-1 in the Revised General Enforcement Policy Compendium.

To ensure that RCRA administrative complaints comply with the statute and the rules for those cases where a specific proposed penalty is sought when the complaint is initially issued, as long as sufficient facts are alleged in the complaint, enforcement personnel may plead the following:

> Based upon the facts alleged in this Complaint, upon those factors set forth in Section 3008(a)(3) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a)(3), and the RCRA Civil Penalty Policy, including the seriousness of the violations, any good faith efforts by the respondent to comply with applicable requirements, any economic benefit accruing to the respondent, and such other matters as justice may require, the Complainant proposes that the Respondent be assessed the following civil penalty for the violations alleged in this Complaint:
>
> Count 1 . . . . . $25,000
>
> Count 2 . . . . . $80,000

Where a specific penalty is sought, enforcement personnel may use the above general language in the complaint and should include a copy of the penalty calculation worksheets or the analogous regional penalty calculation summary as an attachment to the complaint. When the proposed penalty is sent to the respondent in the pre-hearing exchange submission, the penalty calculation worksheets or the analogous regional penalty calculation summary should be included at that time. Enforcement personnel must be prepared to present at the pre-hearing conference or evidentiary hearing more detailed information reflecting the specific factors weighed in calculating the penalty proposed in the complaint. For example, evidence of specific instances where the violation actually did, could have, or still might result in harm could be presented to the trier of fact to illustrate the potential for harm factor of the penalty.

The record supporting the penalty amount specified in the complaint should include a penalty computation worksheet or the analogous regional penalty calculation summary which explains the potential for harm, extent of deviation from statutory or regulatory requirements, economic benefit of noncompliance, and any adjustment factors applied (*e.g.*, good faith efforts to comply). An example of the worksheet is attached in the Appendix to this Policy. Also, the record should include any inspection reports and other documents relating to the penalty calculation. For more information, see the August 9, 1990, Memorandum from James Strock "Documenting Penalty.... Calculations and Justifications in EPA Enforcement Actions."

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alleged and a recitation of the statutory penalty authority applicable for each violation alleged in the complaint. See 40 CFR § 22.14(a)(4)(ii).

the final draft of the penalty computation worksheets or the analogous regional penalty calculation summary at the time a specific penalty amount is proposed. For more information on the Agency's policy of releasing information, see the August 15, 1996, Memorandum from Steven A. Herman "Public Release of EPA Enforcement Information." Because issues relating to FOIA and application of its exemptions require special attention, the Regional Freedom of Information Act Officer or appropriate attorney in the regional legal office should be consulted whenever any request is made by a member of the public relating to the application of the RCRA Penalty Policy in general or in a specific enforcement action. For additional information on FOIA and current Agency FOIA policy, Agency enforcement personnel should consult the 1992 EPA Freedom of Information Act Manual and contact the Office of General Counsel (Finance and Operations Law Office).

V. RELATIONSHIP BETWEEN PENALTY AMOUNT SOUGHT IN AN ADMINISTRATIVE ACTION AND ACCEPTED IN SETTLEMENT

The Consolidated Rules of Practice for administrative proceedings allow the Agency to include a specific proposed penalty in the complaint or within 15 days after the respondent files its prehearing exchange of information. The Rules require that, in either situation, the Agency must provide the respondent with an explanation of how the penalty was calculated in accordance with any criteria set forth in RCRA.[12] The Penalty Policy not only facilitates compliance with the Rules of Practice by requiring that enforcement personnel calculate a proposed penalty (and include this amount and the underlying rationale for adopting it either in the complaint or within 15 days after the respondent files the prehearing exchange), but also identifies a methodology for calculating penalty amounts which would be acceptable to EPA in settlement of administrative and judicial enforcement actions. The Agency expects that the dollar amount of the proposed penalty that will be sought in the administrative hearing will often exceed the amount of the penalty the Agency would accept in settlement. This may be so for several reasons.

First, at the time the complaint is filed, the Agency will often not be aware of mitigating factors (then known only to the respondent) on the basis of which the penalty may be adjusted downward. Second, it is appropriate that the Agency have the enforcement discretion to accept in settlement a lower penalty than it has sought in its complaint, because in settling a case the Agency is able to avoid the costs and risks of litigation. Moreover respondents must perceive that they face some significant risk of higher penalties through litigation to have appropriate incentives to agree to penalty amounts acceptable to the Agency in settlement.
Therefore, Agency enforcement personnel should, as necessary, prepare two separate penalty calculations for each administrative proceeding -- one to support the initial proposed penalty and the other to be placed in the administrative file as support for the final penalty amount the

[12]See 40 CFR §§ 22.19(a)(3) and (4).

proceedings at which proper penalty amounts for violations redressable under RCRA Sections 3008(a) and (g) are at issue. Such judicial officers thus have discretion to apply most of the upward or downward adjustment factors described in this Policy in determining what penalty should be imposed on a violator. However, judgments as to whether a penalty should be reduced in settlement because: (1) the violator is willing to undertake an environmental project in settlement of a penalty claim, (2) the Agency faces certain litigative risks in proceeding to hearing or trial, or (3) the violator demonstrates a highly cooperative attitude throughout the compliance inspection and enforcement process, are decisions involving matters of policy and prosecutorial discretion which by their nature are only appropriate to apply in the context of settling a penalty claim. It is therefore contemplated that decisionmakers in administrative proceedings would not adjust penalty amounts downward based upon their assessment of any of these three "settlement only" factors in assessing a civil penalty.

VI. DETERMINATION OF GRAVITY-BASED PENALTY AMOUNT

RCRA Section 3008(a)(3) states that the seriousness of a violation must be taken into account in assessing a penalty for the violation. The gravity-based component is a measure of the seriousness of violation. The gravity-based penalty amount should be determined by examining two factors:

- potential for harm; and
- extent of deviation from a statutory or regulatory requirement.

A. POTENTIAL FOR HARM

The RCRA requirements were promulgated in order to prevent harm to human health and the environment. Thus, noncompliance with any RCRA requirement can result in a situation where there is a potential for harm to human health or the environment. In addition to those violations that involve actual or potential contamination from the release of hazardous wastes, violations such as failure to comply with recordkeeping requirements create a risk of harm to the environment or human health as well as undermine the integrity of the RCRA regulatory program. Accordingly, the assessment of the potential for harm resulting from a violation should be based on two factors:

- the risk of human or environmental exposure to hazardous waste and/or hazardous constituents that may be posed by noncompliance, and

- the adverse effect noncompliance may have on statutory or regulatory purposes or procedures for implementing the RCRA program.

- existence, size, and proximity of receptor populations (*e.g.*, local residents, fish, and wildlife, including threatened or endangered species) and sensitive environmental media (*e.g.*, surface waters and aquifers).[16]

In considering the risk of exposure, the emphasis is placed on the potential for harm posed by a violation rather than on whether harm actually occurred. Violators rarely have any control over whether their pollution actually causes harm. Therefore, such violators should not be rewarded with lower penalties simply because the violations did not result in actual harm.

2. Harm To The RCRA Regulatory Program

There are some requirements of the RCRA program which, if violated, may not appear to give rise as directly or immediately to a significant risk of contamination as other requirements of the program. Noncompliance with these requirements, however, directly increases the threat of harm to human health and the environment. Therefore, all regulatory requirements are fundamental to the continued integrity of the RCRA program. Violations of such requirements may have serious implications and merit substantial penalties where the violation undermines the statutory or regulatory purposes or procedures for implementing the RCRA program. Some examples of this kind of regulatory harm include:

- failure to notify as a generator or transporter of hazardous waste, and/or owner/operator of a hazardous waste facility pursuant to section 3010;
- failure to comply with financial assurance requirements;
- failure to submit a timely/adequate Part B application;
- failure to respond to a formal information request;
- operating without a permit or interim status;
- failure to prepare or maintain a manifest; or
- failure to maintain groundwater monitoring results.

It should also be clear that these types of requirements are based squarely on protection concerns and are fundamental to the overall goals of RCRA to handle wastes in a safe and responsible manner. For example, preparation and maintenance of manifests are vital to ensure that hazardous waste is not mishandled, responses to information requests are necessary to ensure that crucial information is obtained and, in some cases, immediately acted upon, and groundwater monitoring results must be maintained to ensure releases can be fully addressed and

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[16]In considering this factor, the environmental sensitivity of the receptor areas or populations should be examined. The risk of exposure to a particularly sensitive environmental area, such as a wetlands, a drinking water source, or the habitat of a threatened or endangered species, may be a basis for an upward adjustment of the category chosen for the potential harm (i.e., minor to moderate, moderate to major) or a selection of a higher amount in the range of the chosen penalty matrix cell.

closure must be identical to the wording specified in 40 CFR § 264.151(a)(1). Failure to word the trust agreement as required may appear inconsequential. However, even a slight alteration of the language could change the legal effect of the financial instrument so that it would no longer satisfy the intent of the regulation thereby preventing the funds from being available for closure. Such a facility could potentially become another abandoned hazardous waste site. When the language of the agreement differs from the requirement such that funds would not be available to close the facility properly, the lack of identical wording would have a substantial adverse effect on the regulatory scheme (and, to the extent the closure process is adversely affected, could pose a substantial risk of exposure). This violation would therefore be assigned to the major potential for harm category.

Example 2 - Moderate Potential for Harm

Owners and operators of hazardous waste facilities that store containers must comply with the regulations found at 40 CFR Part 264, Subpart I. One of the regulations found in this Subpart requires owners/operators to inspect, at least weekly, container storage areas to ensure containers are not deteriorating or leaking (40 CFR § 264.174). If a facility was inspecting storage areas twice monthly, this situation could present a significant risk of release of hazardous wastes to the environment. Because some inspections were occurring, it is unlikely that a leak would go completely undetected; however, the frequency of the inspections may allow a container to leak for up to two weeks unnoticed. The moderate potential for harm category would be appropriate in this case.

Example 3 - Minor Potential for Harm

Owners or operators of hazardous waste facilities must, under 40 CFR § 262.23, sign each manifest certification by hand. If a facility was using manifests that had a type-written name where the signature should be, this would create a potential for harm. Enforcement personnel would need to examine the impact that failure to sign the manifest certification would have on the integrity of the manifest system and the validity and reliability of the information indicated on the manifest. If the manifests were otherwise completed correctly and had other indicia that the information was correct, the likelihood of exposure and adverse effect on the implementation of RCRA may be relatively low. The minor potential for harm category could be appropriate for such a situation.

B. EXTENT OF DEVIATION FROM REQUIREMENT

1. Evaluating the Extent of Deviation

The "extent of deviation" from RCRA and its regulatory requirements relates to the degree to which the violation renders inoperative the requirement violated. In any violative situation, a range of potential noncompliance with the subject requirement exists. In other words, a violator

the major category. In contrast, the violation may consist of a small oversight such as failing to lock an access route on a single occasion. Obviously, the degree of noncompliance in the latter situation is less significant. With all other factors being equal, the less significant noncompliance should draw a smaller penalty assessment. In the matrix system this is achieved by choosing the minor category.

C. PENALTY ASSESSMENT MATRIX

Each of the above factors -- potential for harm and extent of deviation from a requirement -- forms one of the axes of the penalty assessment matrix. The matrix has nine cells, each containing a penalty range. The specific cell is chosen after determining which category (major, moderate, or minor) is appropriate for the potential for harm factor, and which category is appropriate for the extent of deviation factor.

The complete matrix is illustrated below.

Extent of Deviation from Requirement

Potential for Harm	MAJOR	MODERATE	MINOR
MAJOR	$27,500 to 22,000	$21,999 to 16,500	$16,499 to 12,100
MODERATE	$12,099 to 8,800	$8,799 to 5,500	$5,499 to 3,300
MINOR	$3,299 to 1,650	$1,649 to 550	$549 to 110

The lowest cell (minor potential for harm/minor extent of deviation) contains a penalty range from $110 to $549. The highest cell (major potential for harm/major extent of deviation) is limited by the maximum statutory penalty allowance of $27,500 per day for each violation.[17]

[17]Note that all references in this Policy to matrix cells consist of the Potential for Harm factor followed by the Extent of Deviation factor (*e.g.*, major potential for harm/moderate extent of deviation is referred to as major/moderate).

VII. MULTIPLE AND MULTI-DAY PENALTIES

A. PENALTIES FOR MULTIPLE VIOLATIONS

1. Multiple Violations Criteria

In certain situations, EPA may find that a facility has violated several different RCRA requirements. A separate penalty should be proposed in an administrative proceeding and obtained in settlement or litigation for each separate violation that results from an independent act (or failure to act) by the violator and is substantially distinguishable from any other claim in the complaint for which a penalty is to be assessed. A given claim is independent of, and substantially distinguishable from, any other claim when it requires an element of proof not needed by the others. In many cases, violations of different sections of the regulations constitute independent and substantially distinguishable violations. For example, failure to implement a groundwater monitoring program, 40 CFR § 265.90, and failure to have a written closure plan, 40 CFR § 265.112, are violations which can be proven only if the Agency substantiates different sets of factual allegations. In the case of a facility which has violated both of these sections of the regulations, a separate count should be charged for each violation. For litigation or settlement purposes, each of the violations should be assessed separately and the amounts added to determine a total penalty to pursue.

It is also possible that different violations of the same section of the regulations could constitute independent and substantially distinguishable violations. For example, in the case of a regulated entity which has open containers of hazardous waste in its storage area, 40 CFR § 265.173(a), and which also ruptured these or different hazardous waste containers while moving them on-site, 40 CFR § 265.173(b), there are two independent acts. While the violations are both of the same regulatory section, each requires distinct elements of proof. In this situation, two counts with two separate penalties would be appropriate. For penalty purposes, each of the violations should be assessed separately and the amounts totaled.

Penalties for multiple violations also should be sought in litigation or obtained in settlement where one company has violated the same requirement in substantially different locations. An example of this type of violation is failure to clean up discharged hazardous waste during transportation, 40 CFR § 263.31. A transporter who did not clean up waste discharged in two separate locations during the same trip should be charged with two counts. In these situations, the separate locations present separate and distinct risks to public health and the environment. Thus, separate penalty assessments are justified.

Similarly, penalties for multiple violations are appropriate when a company violates the same requirement on separate occasions not cognizable as multi-day violations (See Section VII.B.). An example would be the case where a facility fails for a year to take required quarterly groundwater monitoring samples. For penalty purposes, each failure to take a groundwater

regulatory requirements. Examples are the case where: (1) a company through ignorance of the law fails to obtain a permit or interim status as required by Section 3005 of RCRA and as a consequence runs afoul of the numerous other (regulatory) requirements imposed on it by 40 CFR Part 265, or (2) a company fails to install groundwater monitoring equipment as required by 40 CFR §§ 265.90 and 265.91 and is thus unable to comply with other requirements of Subpart F of Part 265 (*e.g.*, requirements that it develop a sampling plan, keep the plan at the facility, undertake quarterly monitoring, prepare an outline of groundwater quality assessment program, etc.). In cases such as these where multiple violations result from a single initial transgression, assessment of a separate penalty for each distinguishable violation may produce a total penalty which is disproportionately high. Accordingly, in the specifically limited circumstances described, enforcement personnel have discretion to forego separate gravity-based and multi-day penalties for certain distinguishable violations, so long as the total penalty for all related violations is appropriate considering the gravity of the offense and is sufficient to deter similar future behavior and recoup economic benefit.

In deciding which penalties should be compressed (i.e., the violations for which separate penalties should not be calculated), enforcement personnel should consider the seriousness of the violation, the importance of the underlying requirement to the regulatory scheme, and the economic benefit resulting from each violation. Violations that involve substantial noncompliance or that result in economic benefit that should be recaptured (see Section VIII below) should be set forth separately in the complaint. For example, a failure to make a hazardous waste determination, 40 CFR § 262.11, should not be compressed because this requirement determines which wastestreams are subject to further regulation.

Even where separate penalties are not calculated for distinguishable violations, all significant violations should still be cited separately in the complaint to demonstrate the magnitude and scope of the violations.[21] The recitation of all significant violations will provide further support for a penalty that is based on a risk of harm and extent of deviation for the totality of the violations.

3. Multiple Violations Treated as Multi-day Violations

As discussed above, multiple violations are appropriate where EPA can demonstrate that independent and substantially distinguishable violations have occurred. As discussed in the next section, violations should be treated as multi-day violations (one penalty with a multi-day component) where the same violation continues uninterrupted for more than one day.

Where a facility has through a series of independent acts or omissions repeatedly violated the same statutory or regulatory requirement, the violations may begin to closely resemble multi-day violations in their number and similarity to each other. This is particularly true where the

[21] All complaints should cite those violations for which injunctive relief is sought.

inspection reveals that a facility has no groundwater monitoring wells in place it can be assumed, in the absence of evidence to the contrary, that the facility has never had any wells. Here the violation can be treated as having commenced on the day that waste management operations triggering the Part 265, Subpart F requirements began or the effective date of the regulations, whichever is later. A multi-day penalty could then be calculated for the entire period from the date the facility was required to have wells in place until the date of the inspection showing they did not.

Conversely, in cases where there is no statutory or regulatory deadline from which it may be assumed compliance obligations began to run, a multi-day penalty should account only for each day for which information provides a reasonable basis for concluding that a violation has occurred. For example, if an inspection revealed that a generator was storing unlabeled drums of hazardous wastes without complying with 40 CFR § 262.34, the facility would be in violation of the storage requirements for permitted facilities found in 40 CFR Part 264. Enforcement personnel should allege in the complaint and present evidence as to the number of days each violation lasted. Documentation in a case such as this might consist of an admission from a facility employee that drums were stored improperly for a certain number of days. In such a case, a multi-day penalty would then be calculated for the number of days stated.

Where EPA determines that a violation persists, enforcement personnel may calculate the penalty for a period ending on the date of compliance or the date the complaint is filed or, if the complaint references only the statutory maximum, the date the proposed penalty is submitted.

If the calculation is based on the date the complaint is filed, and if the violation continues after that date, the complaint should include language stating that EPA may amend the complaint because the violation may continue to occur after filing. For example, the complaint could state:

> The violation alleged in Count 1 of this complaint is of a continuing nature and continues, to the best of EPA's knowledge and belief, as of the date of the filing of this complaint. EPA, therefore, reserves the right to amend this complaint and the penalty proposed herein to reflect additional days of violation for the violation alleged in Count 1.

Alternatively, enforcement personnel may consider including language in the complaint stating that the penalty will include a specific, additional per day amount until the violation is corrected. The language of the complaint should be clear that the amount chosen is based on the circumstances as they are known at the time the complaint is filed and that if the conditions change, the amount of the penalty sought may change. For example, the complaint could state:

> The violation alleged in Count 1 of this complaint is of a continuing nature and continues, to the best of EPA's

days 2-180 of violations with the following gravity-based designations: major-minor, moderate-major, moderate-moderate. Therefore, multi-day penalties should be sought, unless case-specific facts overcoming the presumption for a particular violation are documented carefully in the case files. The presumption may be overcome for one or more days. Multi-day penalties for days 181+ are discretionary.

Discretionary multi-day penalties - Multi-day penalties are discretionary, generally, for all days of all violations with the following gravity-based designations: minor-major, moderate-minor, minor-moderate, minor-minor. In these cases, multi-day penalties should be sought where case-specific facts support such an assessment. Discretionary multi-day penalties may be imposed for some or all days. The bases for decisions to impose or not impose any discretionary multi-day penalties must be documented in the case files.

Step 3: Locate the corresponding cell in the following Multi-Day Matrix. Multiply a dollar amount selected from the appropriate cell in the multi-day matrix (or, where appropriate, a larger dollar amount not to exceed $27,500) by the number of days the violation lasted. (Note: the duration used in the multi-day calculation is the length of the violation minus one day, to account for the first day of violation at the gravity-based penalty rate.)

MULTI-DAY MATRIX OF MINIMUM DAILY PENALTIES (in dollars)

Extent of Deviation from Requirement

Potential for Harm	MAJOR	MODERATE	MINOR
MAJOR	$5,500 to 1,100	$4,400 to 825	$3,300 to 605
MODERATE	$2,420 to 440	$1,760 to 275	$1,100 to 165
MINOR	$660 to 110	$330 to 110	$110

The dollar figure to be multiplied by the number of days of violation will generally be selected from the range provided in the appropriate multi-day cell. The figure selected should not be less than the lowest number in the range provided. Selections of a dollar figure from the range of penalty amounts can be made at the Region's discretion based

VIII. EFFECT OF ECONOMIC BENEFIT OF NONCOMPLIANCE

The Agency's 1984 Policy on Civil Penalties mandates the recapture of any significant economic benefit of noncompliance (EBN) that accrues to a violator from noncompliance with the law. Enforcement personnel shall evaluate the economic benefit of noncompliance when penalties are calculated. A fundamental premise of the 1984 Policy is that economic incentives for noncompliance are to be eliminated. If, after the penalty is paid, violators still profit by violating the law, there is little incentive to comply. Therefore, it is incumbent on all enforcement personnel to calculate economic benefit. An "economic benefit" component should be calculated and added to the gravity-based penalty component when a violation results in "significant" economic benefit to the violator, as defined below. Economic benefit can result from a violator delaying or avoiding compliance costs, or when the violator achieves an illegal competitive advantage through its noncompliance.

The following are examples of regulatory areas for which violations are likely to result in significant economic benefits: groundwater monitoring, financial requirements, closure/ post-closure, surface impoundment retrofitting, improper land disposal of restricted waste, clean-up of discharges, Part B permit application submittals, and minimum technology requirements.

For certain RCRA requirements, the economic benefit of noncompliance may be relatively insignificant (*e.g.*, failure to submit a report on time). In the interest of simplifying and expediting an enforcement action, enforcement personnel may forego the inclusion of the benefit component where it appears that the amount of the component is likely to be less than the applicable amount shown in the chart below for <u>all</u> violations alleged in the complaint.

When the gravity-based and multi-day total penalty is:	EBN should be pursued if it totals:
$30,000 or less	at least $3,000
$30,001 to $49,999	at least 10% of the proposed penalty
$50,000 or more	$5,000 or more

In order to determine this, a calculation of economic benefit should be conducted for each violation that is estimated to have an economic benefit penalty of greater than $200 unless it is obvious that the relevant EBN total (from the right side of the above chart) will not be reached. The total economic benefit amount (all violations added together) should be compared to the chart to determine whether an economic benefit component should be included in the proposed penalty. Any decision not to seek an economic benefit penalty and the rationale for such a

- benefit from avoided costs.

Delayed costs are expenditures which have been deferred by the violator's failure to comply with the requirements. The violator eventually will have to spend the money in order to achieve compliance. Delayed costs are either capital costs (essentially equipment) or one-time nondepreciable costs (*e.g.*, cleaning up a spill).[26] Examples of violations which result in savings from delayed costs are:

- failure to timely install groundwater monitoring equipment;
- failure to timely submit a Part B permit application; and
- failure to timely develop a waste analysis plan.

Avoided costs are expenditures which will never be incurred. Avoided costs include the usual operating and maintenance costs which would include any annual periodic costs such as leasing monitoring equipment. Examples of violations which result in savings from avoided costs are:

- failure to perform annual and semi-annual groundwater monitoring sampling and analysis;
- failure to use registered hazardous waste transporters (where the violator will not be responsible for cleaning up the waste);
- failure to perform waste analysis before adding waste to tanks, waste piles, incinerators; and
- failure to install secondary containment around a tank, where such a containment is never installed because the violator chooses closure rather than correction and continued operation.[27]

2. Calculation of Economic Benefit from Delayed and Avoided Costs

Since 1984, it has been Agency policy to use either the BEN computer model or "the rule of thumb" approach to calculate the economic benefit of noncompliance.[28] The rule of thumb approach is a straight forward method to calculate economic savings from delayed and avoided

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[26]See BEN Users Manual for further guidance on this subject at pages 3-9 to 3-10.

[27]While this cost is an avoided one, it does not fit into the annual cost category in the BEN model. This is an avoided one-time nondepreciable expense and requires a slightly modified BEN analysis. See BEN Users Manual for further guidance on this subject at page 3-11.

[28]"Guidance for Calculating the Economic Benefit of Noncompliance for a Civil Penalty Assessment" November 5, 1984 (Codified as Policy Number PT.1-5 of the General Enforcement Policy Compendium) at pages 2-3.

of thumb" approach is appropriate, BEN supersedes previous methodologies used to calculate the economic benefit for civil penalties. Enforcement personnel should also consult the Manual "Estimating Costs for the Economic Benefits of RCRA Noncompliance" (September 1997). When using this RCRA Costs Manual, enforcement personnel should ensure that figures set forth in that Manual reflect current figures given the time elapsed since the Manual was first issued.

The economic benefit component should be calculated initially for the maximum period of noncompliance. Enforcement personnel should then determine whether that amount should be reduced for any reasons (*e.g.*, possible application of statute of limitations)[34]. However, enforcement personnel should be prepared to support the calculation of economic benefit for the entire period of noncompliance if there is any uncertainty regarding potential reductions that may have been identified.

The economic benefit calculation should also take into account the entire period that a violator enjoys the benefit. In almost all cases, the violator will enjoy the financial benefit until the economic benefit penalty is paid. Therefore, this calculation should be based on a penalty payment date corresponding roughly with the relevant hearing date. At the hearing, Agency personnel should be prepared to argue to the Presiding Officer that the violator will continue to enjoy the economic benefit until the penalty is paid and the relevant time period should include any time periods after the hearing prior to penalty payment.

B. ADDITIONAL INFORMATION ON ECONOMIC BENEFIT

In addition to delayed and avoided costs, an economic benefit may accrue to a violator in the form of an illegal competitive advantage. In this type of economic benefit, the illegal activity results in a financial gain that the violator would not otherwise realize if the violation had not been committed. Illegal competitive advantage cases are fundamentally different from those that routinely rely on BEN-type calculations, and they also arise less frequently. Care should be taken to insure that any calculation of illegal competitive advantage does not include profits attributable to lawful operations of the facility or delayed or avoided costs already accounted for in the BEN calculation. In most cases, a violating facility will realize either benefits from

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commercial brochures). If it is disputed, the burden will then shift to the respondent to present cost documentation to the contrary to be entered and run in BEN. Data provided by respondent relating to economic benefit should not be run in BEN unless its accuracy and legitimacy have been verified by the Region. Additionally, OSW's Guidance Manual: Cost Estimates for Closure and Post-Closure Plans, November, 1986, provides information regarding cost estimates for input data for BEN.

[34]Statute of limitations considerations may not be relevant for the calculation of economic benefit where, for example, the benefit results from violations that continue to the time the enforcement action is initiated.

hazardous wastes but it was later determined that only a single container of characteristic hazardous waste was improperly stored, it may be appropriate to recalculate the "potential for harm" component of the gravity-based penalty from "major" to "moderate" or "minor."

On the other hand, if enforcement personnel initially believed a violator had fully complied with a specified requirement but subsequently determine that this is not the case, it would be appropriate to amend the complaint as necessary to add a new count, and revise the total penalty amount upward to account for this previously undiscovered violation. Likewise, if new information shows that a previously known violation is more serious than initially thought, an upward revision of the penalty amount may be required.

Furthermore, if the violator presented new information which established that the work performed was technically inadequate or useless (*e.g.*, the violator drilled wells in the wrong spot or did not dig deep enough), it may be more appropriate to keep the gravity-based penalty as originally calculated and evaluate whether it would be appropriate to mitigate the penalty based on the "good faith efforts" adjustment factor.

When information is presented which makes it clear that the gravity-based or economic benefit penalty component is in error, enforcement personnel may, of course, choose to formally amend the complaint to correct the original penalty component. In all instances, any recalculation of the penalty should be carefully documented on the Penalty Computation Worksheet or the analogous regional office penalty calculation summary in the enforcement file.

3. Application of Adjustment Factors

The adjustment factors can increase, decrease or have no effect on the penalty amount sought from the violator. Adjustments should generally be applied to the sum of the gravity-based and multi-day components of the penalty for a given violation. Note, however, that after all adjustment factors have been applied, the resulting penalty must not exceed the statutory maximum of $27,500 per day of violation. As indicated previously, all supportable upward adjustments of the penalty amount of which EPA is aware ordinarily should be made prior to issuance of the proposed penalty, while downward adjustments (with the exception of those reflecting good faith efforts to comply) should generally not be made until after the proposed penalty has been issued, at which time the burden of persuasion that downward adjustment is proper should be placed on respondent. Enforcement personnel should use whatever reliable information on the violator and violation is readily available at the time of assessment.

Application of the adjustment factors is cumulative, *i.e.*, more than one factor may apply in a case. For example, if the base penalty derived from the gravity-based and multi-day matrices is $109,500, and upward adjustments of 10% will be made for both history of noncompliance and degree of willfulness and/or negligence, the total adjusted penalty would be $131,400 ($109,500 + 20%).

of good faith, on the other hand, can result in an increased penalty.

No downward adjustment should be made if the good faith efforts to comply primarily consist of coming into compliance. Moreover, no downward adjustment should be made because respondent lacks knowledge concerning either applicable requirements or violations committed by respondent. EPA will also apply a presumption against downward adjustment for respondent's efforts to comply or otherwise correct violations after the Agency's detection of violations (failure to undertake such measures may be cause for upward adjustment as well as multi-day penalties), since the amount set in the gravity-based penalty component matrix assumes good faith efforts by a respondent to comply after EPA discovery of a violation.

If a respondent reasonably relies on written statements by the state or EPA that an activity will satisfy RCRA requirements and it later is determined that the activity does not comply with RCRA, a downward adjustment in the penalty may be warranted if the respondent relied on those assurances in good faith. Such claims of reliance should be substantiated by sworn affidavit or some other form of affirmation. On the other hand, claims by a respondent that "it was not told" by EPA or the State that it was out of compliance should not be cause for any downward adjustment of the penalty.

b. Degree of Willfulness and/or Negligence

While "knowing" violations of RCRA will support criminal penalties pursuant to Section 3008(d), there may be instances of heightened culpability which do not meet the criteria for criminal action. In cases where civil penalties are sought for actions of this type, the penalty may be adjusted upward for willfulness and/or negligence. Conversely, although RCRA is a strict liability statute, there may be instances where penalty mitigation may be justified based on the lack of willfulness and/or negligence.

In assessing the degree of willfulness, and/or negligence, the following factors should be considered, as well as any others deemed appropriate:

- how much control the violator had over the events constituting the violation;
- the foreseeability of the events constituting the violation;
- whether the violator took reasonable precautions against the events constituting the violation;
- whether the violator knew or should have known of the hazards associated with the conduct; and
- whether the violator knew or should have known of the legal requirement which was violated.

It should be noted that this last factor, lack of knowledge of the legal requirement, should never be used as a basis to reduce the penalty. To do so would encourage ignorance of the law.

includes any act or omission for which the violator has previously been given written notification, however informal, that the Agency believes a violation exists.

In the case of large corporations with many divisions or wholly-owned subsidiaries, it is sometimes difficult to determine whether a previous instance of noncompliance should trigger the adjustments described in this section. New ownership often raises similar problems. In making this determination, enforcement personnel should attempt to ascertain who in the organization had control and oversight responsibility for compliance with RCRA or other environmental laws. The violation will be considered part of the compliance history of any regulated party whose officers had control or oversight responsibility.

In general, enforcement personnel should begin with the assumption that if the same corporation was involved, the adjustments for history of noncompliance should apply. In addition, enforcement personnel should be wary of a party changing operators or shifting responsibility for compliance to different persons or entities as a way of avoiding increased penalties. The Agency may find a consistent pattern of noncompliance by many divisions or subsidiaries of a corporation even though the facilities are at different geographic locations. This often reflects, at best, a corporate-wide indifference to environmental protection. Consequently, the adjustment for history of noncompliance probably should apply unless the violator can demonstrate that the other violating corporate facilities are independent.

d. Ability to Pay (downward adjustment only)

The Agency generally will not assess penalties that are clearly beyond the means of the violator. Therefore, EPA should consider the ability of a violator to pay a penalty. At the same time, it is important that the regulated community not see the violation of environmental requirements as a way of aiding a financially-troubled business. EPA reserves the option, in appropriate circumstances, to seek penalties that might put a company out of business. It is unlikely, for example, EPA would reduce a penalty where a facility refuses to correct a serious violation. The same could be said for a violator with a long history of previous violations or where the violations of the law are particularly egregious. A long history of noncompliance or gross violations would demonstrate that less severe measures have been ineffective.

Enforcement personnel should conduct a preliminary inquiry into the financial status of the party against whom a proposed penalty is being assessed. This inquiry may include a review of publicly-available information through services such as Dun & Bradstreet. In some circumstances, enforcement personnel should review the financial viability of related entities as those related entities could provide financial support to the respondent.[36]

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[36] *See* In Re New Waterbury, Ltd., 5 E.A.D. 529, 549 (EAB 10/20/94) ("Where, as here, there are several interrelated business entities all involved in the business of the liable party, the Agency may properly look into the assets of those other entities to determine whether a penalty is

that payment of all or a portion of the penalty will preclude the violator from achieving compliance or from carrying out remedial measures which the Agency deems to be more important than the deterrence effect of the penalty (*e.g.*, payment of penalty would preclude proper closure / post-closure), the following options should be considered in the order presented:

- consider an installment payment plan with interest;
- consider a delayed payment schedule with interest (for example, such a schedule might even be contingent upon an increase in sales or some other indicator of improved business; or
- consider straight penalty reductions as a last recourse.

As indicated above, the amount of any downward adjustment of the penalty is dependent on the individual facts of the case regarding the financial capability of the respondent and the nature of the violations at issue.

e. Environmental Projects (downward adjustment only)

Under certain circumstances the Agency may consider adjusting the penalty amount downward in return for an agreement by the violator to undertake an appropriate environmentally beneficial project. All proposals for such projects should be evaluated in accordance with EPA's May 1, 1998, Supplemental Environmental Projects Policy and any subsequent amendments to the SEP Policy.[40]

f. Other Unique Factors

This Policy allows an adjustment for factors which may arise on a case-by-case basis. When developing its settlement position, EPA should evaluate every penalty with a view toward the potential for protracted litigation and attempt to ascertain the maximum civil penalty the court or administrative law judge is likely to award if the case proceeds to hearing or trial. The Agency should take into account, *inter alia*, the inherent strength of the case, considering, for example, the probability of proving violations, the probability that the government's legal arguments will be accepted, the opportunities which exist to establish a useful precedent or send a signal to the regulated community, the availability and potential effectiveness of the government's evidence, including witnesses, and the potential strength of the violator's equitable and legal defenses. Where the Agency determines that significant litigative risks exist, it may also take into account any disproportionate resource outlay involved in litigating a case that it might avoid by entering into a settlement. Downward adjustments of the proposed penalty for settlement purposes may be warranted depending on the Agency's assessment of these litigation considerations. The extent of the adjustments will depend, of course, on the specific litigation considerations presented in any particular case. The Memorandum signed by James Strock on August 9, 1990,

[40]This Policy can be found on the EPA web site at www.epa.gov.

B. EFFECT OF SETTLEMENT

The Consolidated Rules of Practice incorporates the Agency's policy of encouraging settlement of a proceeding at any time as long as the settlement is consistent with the provisions and objectives of RCRA and its regulations. 40 CFR § 22.18(b). If the respondent believes that it is not liable or that the circumstances of its case justify mitigation of the penalty proposed in the complaint, the Consolidated Rules of Practice allow it to request a settlement conference.

In many cases, the fact of a violation will be less of an issue than the amount of the proposed penalty. Once the Agency has established a prima facie case, the burden is always on the violator to justify any mitigation of the proposed penalty. The mitigation, if any, of the proposed penalty should follow the adjustment factors guidelines found in Section IX.A. of this document.

C. EXAMPLE 3 ..... A-40

NARRATIVE DESCRIPTION OF PENALTY CALCULATION..... A-40

VIOLATION 1 -
PENALTY COMPUTATION WORKSHEET - HEARING..... A-45

NARRATIVE EXPLANATION TO SUPPORT HEARING AMOUNT . A-46

PENALTY COMPUTATION WORKSHEET - SETTLEMENT A-48

NARRATIVE EXPLANATION TO SUPPORT SETTLEMENT AMOUNT A-49

VIOLATION 2 -
PENALTY COMPUTATION WORKSHEET - HEARING..... A-51

NARRATIVE EXPLANATION TO SUPPORT HEARING AMOUNT . A-52

PENALTY COMPUTATION WORKSHEET - SETTLEMENT A-54

NARRATIVE EXPLANATION TO SUPPORT SETTLEMENT AMOUNT A-55

A - 2

10. Calculate economic benefit . . . . . _____

11. Add lines 4, 9 and 10 for proposed penalty amount
to be sought at hearing . . . . . _____

16. Adjustment amount for ability-to-pay . . . . . _____

17. Adjustment amount for litigation risk . . . . . _____

18. Add lines 16 and 17 . . . . . _____

19. Subtract line 18 from line 15 for final settlement amount . . . . . _____

This procedure should be repeated for each violation.

_____ (attach additional sheets if necessary)

(b)willfulness/Negligence: _____

_____(attach additional sheets if necessary)

(c) History of Compliance: _____

_____(attach additional sheets if necessary)

(d) Ability to pay: _____

_____ (attach additional sheets if necessary)

(e) Environmental Project: _____

_____ (attach additional sheets if necessary)

BEN WORKSHEET [4]

1. Case Name _____

   Requirement Violated _____

2* Initial Capital Investment/Year Dollars _____
   _____ Check here if costs were avoided, not delayed.

3. One Time Expenditure/Year Dollars _____
   _____ Check here if costs were avoided, not delayed.

   a.. Tax Deductible? YES _____ NO _____

4. Annual Operating and Maintenance (O&M) Expenses Year Dollars _____

5. Date of Noncompliance _____

6. Date of Compliance _____

7. Anticipated Date of Penalty Payment _____

8.* Useful Life of Pollution Control Equipment _____

9*. Marginal Income Tax Rate _____

10. State Where Facility is Located _____

11.* Inflation Rate _____

12.* Discount Rate _____

13. Economic Benefit Penalty Component _____

* See standard value from BEN model

[4] A separate "BEN Worksheet" should be attached to the Penalty Computation Worksheets for both the amount proposed for hearing and settlement amount.

Extent of Deviation: Moderate - Although Company A did notify the EPA it was a generator, it did not notify EPA that it stored hazardous waste, and it did not notify EPA as to all of its activities. Company A significantly deviated from the requirement.

(b) Operating without a permit

Potential for Harm: Major - The fact that the facility generally was well-managed is irrelevant as to the potential for harm for operating without a permit. This situation may pose a substantial risk of exposure, and may have a substantial adverse effect on the statutory purposes for implementing the RCRA program.
Extent of Deviation: Major - Substantial noncompliance with the requirement because Company A did not notify EPA that it stored hazardous waste, and did not submit a Part A application.

(3) Gravity-based Penalty

- Failure to notify: Moderate potential for harm and moderate extent of deviation lead one to the cell with the range of $5,500 to $8,799. Enforcement personnel selected the mid-point, which is $7,150.

- Operating without a permit: Major potential for harm and major extent of deviation lead one to the cell with the range of $22,000 to $27,500. Taking into account case-specific factors, enforcement personnel selected the midpoint, which is $24,750.

- Penalty Subtotal: $7,150 + $24,750 = $31,900

(4) Multi-day Penalty Assessment

(a) Failure to notify: Moderate potential for harm and moderate extent of deviation lead one to presume that multi-day penalties are appropriate. The applicable cell ranges from $275 to $1,760. The mid-point is $1,018. [Based on an assessment of relevant factors (e.g., the seriousness of the violation relative to others falling within the same matrix cell, the degree of cooperation evidenced by the facility, the number of days of violation) the midpoint in the range of available multi-day penalty amounts was selected.] EPA was able to document that the violation continued from February 2, 1998, to the date of the inspection on January 10, 1999, for a total of 343 days (minus 1st day). [The inspection prompted the Company to immediately file a Section 3010(a) notification and Part A permit application.] The Region elected not to place a 180 day cap on multi-day penalties. Penalty Subtotal: $1,018 x 342 = $348,156.

(b) Operating without a permit: Major potential for harm and major extent of deviation result in mandatory multi-day penalties. The applicable cell ranges from $1,100 to $5,500. The mid-point is $3,300. [Based on an assessment of such relevant factors as those noted in (4) (a) , above, the mid-point in the range of available multi-day penalty amounts was selected.] The violation continued from February 2, 1998, to January 10, 1999, for a total of 343 days (minus 1st day). The Region elected not to place a 180 day cap on multi-day penalties.
Total Penalty Subtotal: $3,300 x 342 = $1,128,600.

During settlement discussions, Company A presented information which it felt warranted adjustment of the penalty. After issuance of the proposed penalty, no new information came to light which supported recalculation of the gravity-based, multi-day, or economic benefit components of the penalty.

After consideration of the seriousness of the violations and in order to set penalties at a level which would allow it to achieve compliance quickly (but nevertheless deter future similar violations), the Region elected to place a 180 day cap on multi-day penalties. Multi-day Penalty Subtotal: ($1,018 + $3,300) x 179 =$772,922.

(a) Good faith efforts to comply: At settlement negotiations, Company A presented a written but explicitly non-binding opinion dated October 30, 1997, from the Director of EPA's Office of Solid Waste (OSW) indicating that the waste which Company A stored did not come within the ambit of the regulation listing new wastes, which became effective on November 5, 1997. Other Information indicated that six months later the Assistant Administrator for Solid Waste and Emergency Response formally renounced the view contained in the Director's opinion, that Company A probably was aware of this action, and that the company had failed to provide EPA with either a Section 3010(a) notification or a Part A permit application even after it likely knew that its storage activities were subject to Subtitle C regulation. In view of these unusual facts - *i.e.*, that the company had for roughly a third of the duration of the violation acted in apparent good faith reliance on the opinion of the Director of OSW indicating its stored wastes were not subject to regulation - the Region decided to adjust the penalty for both violations downward by 30%.
($31,900 + $772,922) x 30% = $241,447.

(b) Degree of willfulness and/or negligence: No evidence relative to this factor was presented for consideration.

(c) History of non-compliance: No new information relevant to this adjustment factor came to light after issuance of the proposed penalty.

(d) Ability to pay: Company A raised and documented that it has cash flow problems. It did not convince EPA that the penalty should be mitigated. An installment plan was accepted by both parties as a means of payment. Total penalty remained unchanged.

(e) Environmental Projects: The company did not propose any projects.

(f) Other unique factors: No other unique factors existed in this case.

(9) Final settlement penalty amount:

Gravity base		Multi-day		Downward Adjustment		Economic Benefit	= Total Penalty
$31,900	+	$772,922	-	$241,447	+	$9,000	= $572,375

NARRATIVE EXPLANATION TO SUPPORT HEARING AMOUNT

1. Gravity Based Penalty

(a) Potential for Harm: Moderate - EPA was prevented from knowing that hazardous waste was being stored at the facility. However, because Company A notified EPA that it was a generator, EPA did know that hazardous waste was handled at the facility, but was unaware of the extent of those activities and the risk posed by them. The violation may have a significant adverse effect on the statutory purposes or procedures for implementing the RCRA program.

(attach additional sheets if necessary)

(b) Extent of Deviation: Moderate - Although Company A did notify the Agency that it was a generator, it did not notify EPA that it stored hazardous waste. While there was partial compliance, Company A significantly deviated from the requirement.

(attach additional sheets if necessary)

(c) Multiple/Multi-day: Moderate potential for harm and moderate extent of deviation lead one to presume that multi-day penalties are appropriate. There are no case-specific facts which would overcome the presumption. The applicable cell ranges from $275 to $1,760. The midpoint is $1,018. Based on an assessment of relevant factors. (*e.g.*, the seriousness of the violation relative to others falling within the same matrix cell, the degree of cooperation evidenced by the facility, the number of day of violation), the mid-point in the available range was selected. The violation persisted for 343 days.

(attach additional sheets if necessary)

2. Adjustment Factors (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applicable.)

(a) Good Faith: Neither discussions with the facility nor the inspector's observations indicated any effort had been made to correct violations prior to notification of violations by EPA. Thus no downward adjustment for good faith efforts to comply was made. Similarly, no evidence of lack of good faith was apparent.

(attach additional sheets if necessary)

(b) Willfulness/Negligence: No evidence relative to this factor was presented for consideration.

(attach additional sheets if necessary)

SETTLEMENT PENALTY AMOUNT

Company Name: Company A

Address: 123 Main Street, Anytown, Anystate

Requirement Violated: 40 U.S.C § 6930(a), Failure to notify of waste management activities

1.	Gravity based penalty from matrix	$7,150
	(a) Potential for harm	Moderate
	(b) Extent of Deviation	Moderate
2.	Select an amount from the appropriate multi-day matrix cell	$1,018
3.	Multiply line 2 by number of days of violation minus 1. [$1,018 x (180-1)]	$182,222
4.	Add line 1 and line 3	$189,372
5.	Percent increase/decrease for good faith	-30%
6.	Percent increase/decrease for willfulness/negligence	N/A
7.	Percent increase for history of noncompliance	N/A
8.	Percent increase/decrease for other unique factors	N/A
9.	Add lines 5, 6, 7, and 8	-30%
10.	Multiply line 4 by line 9	$56,812
11.	Add lines 4 and 10.	$132,560
12.	Adjustment amount for environmental project.	0
13.	Subtract line 12 from 11	$132,560
14.	Calculate economic benefit	0
15.	Add lines 13 and 14	$132,560
16.	Adjustment amount for ability-to-pay	0
17.	Adjustment amount for litigation risk	0

NARRATIVE EXPLANATION TO SUPPORT SETTLEMENT AMOUNT

1. Gravity Based Penalty

(a) Potential for Harm: Moderate - EPA was prevented from knowing that hazardous waste was being stored at the facility. However, because Company A notified EPA that it was a generator, EPA did know that hazardous waste was handled at the facility, but was unaware of the extent of those activities and the risk posed by them. The violation may have a significant adverse effect on the statutory purposes or procedures for implementing the RCRA program.

(attach additional sheets if necessary)

(b) Extent of Deviation: Moderate - Although Company A did notify the Agency that it was a generator, it did not notify EPA that it stored hazardous waste. While there was partial compliance, Company A significantly deviated from the requirement.

(attach additional sheets if necessary)

(c) Multiple/Multi-day: Moderate potential for harm and moderate extent of deviation lead one to presume that multi-day penalties are appropriate. There are no case-specific facts which would overcome the presumption. The applicable cell ranges from $275 to $ 1,760. The midpoint is $1,018. Based on an assessment of relevant factors (e.g., the seriousness of the violation relative to others falling within the same matrix cell, the degree of cooperation evidenced by the facility, the number of days of violation), the midpoint in the available range was selected. The violation persisted for 343 days. The Region determined that the total penalty would have sufficient deterrent impact if multi-day penalties were assessed only for the minimum 180 day period presumed under the penalty policy, rather then for the full 343 (minus 1) days of violation. (attach additional sheets if necessary)

2. Adjustment Factors (Good faith, willfulness, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applicable.)

(a) Good Faith: At settlement negotiations Company A presented a written but explicitly non-binding opinion dated October 30, 1997, from the Director of EPA's Office of Solid Waste (OSW), indicating that the waste which Company A stored did not come within the ambit of the regulation listing new wastes, which became effective on November 5, 1999. Other information indicated that 6 months later the Assistant Administrator for Solid Waste and Emergency Response formally renounced the view contained in the Director's opinion, that Company A was probably aware of this action, and that the Company had failed to provide EPA with either a §3010(a) notification or a Part A permit application even after it likely knew that its storage activities were subject to Subtitle C regulation. In view of these unusual facts - *i.e.*, that the company had for roughly a third of the duration of the violation acted in apparent good faith reliance on the opinion of the Director of OSW indicating its stored wastes were not subject to regulation - a downward adjustment of 30% in the amount of the penalty is appropriate.

(attach additional sheets if necessary)

PENALTY AMOUNT FOR PROPOSED FOR HEARING

Company Name: Company A

Address: 101 Water Street, Somecity, Somestate

Requirement Violated: 42 U.S.C. § 6925, Operating without a permit or interim status.

1.	Gravity based penalty from matrix	$24,750
	(a) Potential for harm	Major
	(b) Extent of Deviation	Major
2.	Select an amount from the appropriate multi-day matrix cell	$3,300
3.	Multiply line 2 by number of days of violation minus 1 [$3,300 x (343-1)]	$1,128,600
4.	Add line 1 and line 3	$1,153,350
5.	Percent increase/decrease for good faith	N/A
6.	Percent increase for willfulness/ negligence	N/A
7.	Percent increase for history of noncompliance	N/A
8.*	Total lines 5 thru 7	N/A
9.	Multiply line 4 by line 8	N/A
10.	Calculate Economic Benefit	$9,000
11.	Add lines 4, 9 and 10 for penalty amount to be inserted in the complaint	$1,162,350

* Additional downward adjustments where substantiated by reliable information may be accounted for here.

(d) Ability to pay: No evidence relative to this factor was presented for consideration.

(attach additional sheets if necessary)

(e) Environmental Project:

N/A

(attach additional sheets if necessary)

(f) Other Unique Factors:

N/A

(attach additional sheets if necessary)

3. Economic Benefit: By failing to obtain interim status (the least expensive option available to it under the statute) Company A avoided or delayed the costs of filing a Part A permit application and complying with the regulatory requirements relative to storage of hazardous wastes in containers. In a BEN analysis (copy omitted for purposes of this example), the Region found that these costs amounted to $9,000.

(attach additional sheets if necessary)

4. Recalculation of Penalty Based on New Information:

N/A

(attach additional sheets if necessary)

18.	Add lines 16 and 17	0
19.	Subtract line 18 from line 15 for final settlement amount	$439,815

(b) Willfulness/Negligence: No evidence relative to this factor was presented for consideration.

(attach additional sheets if necessary)

(c) History of Compliance: No new information relevant to this adjustment factor came to light after issuance of the proposed penalty.

(attach additional sheets if necessary)

(d) Ability to Pay: Company A raised and documented that it has cash flow problems. It did not convince EPA that the penalty should be mitigated. An installment plan was accepted by the Agency.

(attach additional sheets if necessary)

(e) Environmental Project:

N/A

(attach additional sheets if necessary)

(f) Other Unique Factors:

N/A

(attach additional sheets if necessary)

3. Economic Benefit: By failing to obtain interim status (the least expensive option available to it under the statute) Company A avoided or delayed the costs of filing a Part A permit application and complying with the regulatory requirements relative to storage of hazardous wastes in containers. In a BEN analysis (copy omitted for purposes of this example) the Region found that these costs amounted to $9,000.

(attach additional sheets if necessary)

4. Recalculation of Penalty Based on New Information:

N/A

(attach additional sheets if necessary)

- 3/1999, the date of the inspection
- 4/2000, the date of compliance
- 6/2000, the anticipated date of penalty payment

The above data was entered into the BEN model which yielded an economic benefit amount of $9,767 (see attached BEN worksheet and printout).

(6) Application of Adjustment Factors For Computation of the Complaint Amount

(a) Good faith efforts to comply: At the time of computation of the amount of the penalty to be proposed in the complaint no information (i) relative to the violator's good faith efforts to comply or (ii) indicative of lack of good faith was available.

(b) Degree of willfulness and/or negligence: Little evidence as to application of this factor was available.

(c) History of non-compliance: Company B had on two previous occasions been cited in writing for failure to prevent public access to the active portion of this facility. While such previous violations had been corrected, they indicate that Company B had not been adequately deterred by prior notice of violations. The sum of the gravity/multi-day penalty components is adjusted upwards by 15% because of the company's history of noncompliance.

($19,250 + $352,755) x 15% = $55,801

(d) Other adjustment factors: Consistent with the general policy of delaying consideration of downward adjustment factors (other than that relating to good faith effort to comply) until the settlement stage, the Region reviewed available information only to see if it supported further upward adjustment of the penalty amount. No information supporting further upward adjustment was uncovered.

(7) Final Complaint Penalty Amount:

Gravity	+	Multi-day	+	Economic Benefit	+	Upward Adjustment	=	Total Penalty
$19,250	+	$352,755	+	$9,767	+	$55,801	=	$437,573

(8) Settlement Adjustments:

During settlement discussions Company B presented information which it felt warranted adjustment of the penalty. After issuance of the complaint no new information came to light which supported recalculation of the gravity-based, multi-day, or economic benefit components of the penalty proposed in the complaint.

(a) Good faith efforts to comply: Company B gave evidence at settlement of labor problems with security officers and reordering and delivery delays for a new fence. After issuance of the complaint, Company B was very cooperative and stated that a new fence would be installed and that security would be provided for by another company in the near future. Even though the company was very cooperative, its efforts to comply were only those required under

PENALTY AMOUNT FOR HEARING

Company Name: Company B

Address: 1201 Sixth Avenue, Seattle, Washington 98101

Requirement Violated: 40 CFR §265.14, Failure to prevent entry

1.	Gravity based penalty from matrix	$19,250
	(a) Potential for harm	Major
	(b) Extent of Deviation	Moderate
2.	Select an amount from the appropriate multi-day matrix cell	$2,613
3.	Multiply line 2 by number of days of violation minus 1 [$2,613 x (136-1)]	$352,755
4.	Add line 1 and line 3	$372,005
5.	Percent increase/decrease for good faith	N/A
6.	Percent increase for willfulness/ negligence	N/A
7.	Percent increase for history of noncompliance	15%
8.	* Total lines 5 thru 7	15%
9.	Multiply line 4 by line 8	$55,801
10.	Calculate Economic Benefit	$9,767
11.	Add lines 4, 9 and 10 for penalty amount to be proposed for hearing	$437,573

* Additional downward adjustments where substantiated by reliable information may be accounted for here.

(d) Ability to pay: N/A

(attach additional sheets if necessary)

(e) Environmental Project: N/A

(attach additional sheets if necessary)

(f) Other Unique Factors: N/A

(attach additional sheets if necessary)

3. Economic Benefit: Company B has gained an economic benefit from failing to install a new fence. See the BEN Worksheet for the data input into the BEN model which calculated an economic benefit of $9,767.

(attach additional sheets if necessary)

4. Recalculation of Penalty Based on New Information: N/A

(attach additional sheets if necessary)

BEN RUN PRINTOUT

Run Name =	Initial Run
Present Values as of Noncompliance Date (NCD)	01-Mar-1999
A) On-Time Capital & One-Time Costs	$92,817
B) Delay Capital & One-Time Costs	$84,249
C) Avoided Annually Recurring Costs	$0
D) Initial Economic Benefit (A-B+C)	$8,568
E) Final Econ. Ben. at Penalty Payment Date,	
01-Jun-2000	**$9,767**
C- Corporation w/ WA tax rates	
Discount/Compound Rate	11.0%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	01-Apr-2000
Capital Investment	
Cost Estimate	$100,000
Cost Estimate Date	01-Feb-2000
Cost Index for Inflation	PCI
# of Replacement Cycles; Useful Life	1; 15
Projected Rate for Future Inflation	N/A
One-Time, Nondepreciable Expenditure:	
Cost Estimate	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Tax Deductible?	N/A
Annual Recurring Costs	
Cost Estimate	$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
User-Customized Specific Cost Estimates	N/A
On-Time Compliance Capital Investment	
Delay Compliance Capital Investment	
On-Time Compliance Replacement Capital	
Delay Compliance Replacement Capital	
One-Time Compliance Nondepreciable	

SETTLEMENT PENALTY AMOUNT

Company Name: Company B

Address: 1201 Sixth Avenue, Seathle, Washington 98101

Requirement Violated: 40 CFR § 265.14, Failure to Prevent Entry

1.	Gravity based penalty from matrix	$19,250
	(a) Potential for harm	Major
	(b) Extent of Deviation	Moderate
2.	Select an amount from the appropriate multi-day matrix cell	$2,613
3.	Multiply line 2 by number of days of violation minus 1 [$2,613 x (136-1)]	$352,755
4.	Add line 1 and line 3	$372,005
5.	Percent increase/decrease for good faith	N/A
6.	Percent increase/decrease for willfulness/negligence	N/A
7.	Percent increase for history of noncompliance	15%
8.	Percent increase/decrease for other unique factors (except litigation risk)	-5%
9.	Add lines 5, 6, 7, and 8	10%
10.	Multiply line 4 by line 9	$37,200
11.	Add lines 4 and 10	$409,205
12.	Adjustment amount for environmental project	0
13.	Subtract line 12 from line 11	$409,205
14.	Calculate economic benefit	$9,767
15.	Add lines 13 and 14	$418,972
16.	Adjustment amount for ability-to-pay	0
17.	Adjustment amount for litigation risk	0

NARRATIVE EXPLANATION TO SUPPORT SETTLEMENT AMOUNT

1. Gravity Based Penalty

(a) Potential for Harm: Major - Some children have already entered the area; potential for harm due to exposure to waste is substantial because of the lack of adequate security around the site.

(attach additional sheets if necessary)

(b) Extent of Deviation: Moderate - There is a fence, but a substantial portion of it has been knocked down. There is a significant degree of deviation, but part of the requirement has been implemented.

(attach additional sheets if necessary)

(c) Multiple/Multi-day: Multi-day penalties are mandatory for major-moderate violations. Based on consideration of relevant factors (e.g., number of days of violation and degree of cooperation evidenced by the facility) the mid-point in the available range the multi-day matrix was selected. The violation can be shown to have persisted for 135 days.

(attach additional sheets if necessary)

2. Adjustment Factors: (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits and other unique factors must be justified, if applied.)

(a) Good Faith: Company B gave evidence of labor problems with security officer and reordering and delivery delays in obtaining a new fence. After issuing the complaint, Company B stated that a new fence would be installed and that security would be provided by another company in the near future. Even though the Company was very cooperative, its actions were only those required under the regulations. No justification for mitigation for good faith efforts to comply exists.

(attach additional sheets if necessary)

(b) Willfulness/Negligence: While the fact that the fence was knocked down accidentally might indicate a lack of willfulness, the Company's failure to take remedial action for 136 days argues against a downward adjustment. The violation may even have become a willful one when left uncorrected. But in the absence of more information about precautionary steps the company may have taken prior to the accident and the extent of the violator's knowledge of the regulations, no adjustment was made.

(additional sheets at necessary)

C. EXAMPLE 3

(1) Violation

Company C, an owner/operator of several permitted commercial treatment facilities, regularly receives a large volume of diverse types of RCRA hazardous wastes at its Evanston facility. Upon receipt of the wastes, Company C's Evanston facility immediately treats them and sends the treatment residues off-site for land disposal at another company's facility, Company Z.

Between December 16, 1998, and December 18, 1999, Company C's Evanston facility received one shipment per month of liquid F002 spent solvent wastes from various generators. Each shipment consisted of two 55-gallon drums, but the composition and concentration level of hazardous constituents in each drum was different due to the highly variable process that generated the waste. The Evanston facility did not test the wastes before or after treating them, and its existing waste analysis plan did not require any such testing or other analysis to determine if wastes are restricted. The Evanston facility properly manifested the 12 monthly shipments of wastes sent off-site to Company Z, but it did not know until June 18, 1999, that it was required by 40 C.F.R. § 268.7 to send a land disposal restrictions (LDR) notification and certification with each shipment of waste. At that time, it began sending § 268.7 forms routinely stating that the treatment residues were eligible for land disposal.

On October 30, 1999, an EPA inspector at Company Z found that 24 drums of Company C's F002 solvents were unlawfully disposed in Company Z's landfill. EPA determined that the unlawfully disposed wastes had been sent to Company Z in 1989 from the Evanston facility. Company Z's landfill did not meet minimum technological requirements and was leaking hazardous constituents into the ground water, the only source of drinking water for the area. The unlawfully disposed drums contained concentration of F002 solvents in excess of the applicable Part 268 LDR treatment standards.

Although four separate violations are identified in (a) through (d) below, only the first two violations (in (2) (a) and (b) below) are discussed for purposes of this Example. Below is a discussion of the methodology used to calculate the penalty amount for the complaint followed by a discussion of the methodology used to calculate the settlement amount.

(2) Seriousness:

(a) Failure to Send Accurate § 268.7(b) Notifications and Certifications:

Potential for Harm: Major - Because Company C did not notify the receiving facility, Company Z, that the waste was prohibited from land disposal, Company Z was unaware that the waste were required to be further treated before land disposal. The violation may have a substantial adverse effect on the purposes or procedures for implementing the RCRA program. The violation may also pose a substantial risk of exposure to hazardous waste.

Extent of Deviation: Major - Initially, Company C did not merely prepare and send deficient § 268.7 notifications/certifications. Rather, it completely failed to prepare and send such forms for the first six months. During the next six months, Company C sent unverified certifications. In each instance, Company C substantially deviated from the applicable requirement.

* * * ERROR REPORT (SEP. 18. 2018 11:23AM) * * *

FAX HEADER 1:
FAX HEADER 2:

FILE	USER NAME	ADDRESS	MODE	TIME	PAGE	RESULT
7492			RD	51'40"	P. 74	E

PAGE NOT RECEIVED	QUICK SERVICE CODE
P. 74	00-00

# :BATCH	C :CONFIDENTIAL	$:TRANSFER	P :POLLING
M :MEMORY TX	L :SEND LATER	@ :FORWARDING	E :ECM
S :STANDARD	D :DETAIL	F :FINE	O :300dpi
U :SUPER FINE	X :EXTRA SUPER FINE	Þ :COLOR	) :REDUCTION
!$:REMOTE TRANSFER	B :FAX ON DEMAND	* :PC	+ :ROUTING
Q :RECEPT. NOTICE REQ.	A :RECEPT. NOTICE		

(4.) Multi-day Penalty Assessment: Because each violation is viewed as independent and noncontinuous, no multi-day assessment was made.

(5) Economic Benefit of Noncompliance: Company C avoided a number of costs in committing the violations noted in (2)(a) and (b) above. These included (i) the costs of forms and labor necessary to complete the forms notifying and certifying to Company Z that the wastes were or were not appropriate for land disposal, and (ii) the costs of waste analysis necessary to determine the eligibility of the wastes for land disposal. A BEN analysis (copy omitted for purposes of this example) of these avoided costs was performed and indicated that Company C reaped an economic benefit of $12,500 from its failure to comply with the two requirements in question ($2,500 for the violations specified in (2) (a) and $10,000 for the violations noted in (2)(b)).[7]

(6) Application of Adjustment Factors for Computation of the Complaint Amount

(a) Good faith efforts to comply: As soon as company C's Evanston facility learned of its obligation to submit 40 CFR § 268.7 forms, it began submitting such forms. However, evidence demonstrates that efforts to comply were weak because Company C made no effort to ensure the accuracy of such submissions . Even if such submissions had been accurate, Company C's actions would have been only those required by the regulations. No justification for mitigation for good faith efforts to comply exists. No change in the $594,000 penalty.

(b) Degree of wilfulness and/or negligence: The prior knowledge of the 40 CFR § 268.7 requirements by Company C's other facilities is evidence of negligence because a prudent company would advise all its facilities of the appropriate requirements, especially after one of the company's other facilities recently had been found liable for similar violations. Based on these facts, an upward adjustment in the amount of the penalty of 10% is justified.

$594,000 x 10% = $59,400

(c) History of noncompliance: No evidence demonstrating that Company C has had any similar previous violations at the Evanston facility has been presented. However, Company C operates other commercial treatment facilities, at least one of which recently has been found liable for similar violations. Based on these factors, an upward adjustment in the penalty is justified. However, because the upward adjustment is accounted for in (6)(b) above, such adjustment will not be duplicated here.

In addition, there was evidence that Company C's Evanston facility received one year earlier a notice of violation from the State Environmental Protection Department regarding violations of the State's authorized Clean Air Act program. The violations related to units used to treat the waste involved in this RCRA action. Based on this prior notice, an upward adjustment of 5% is justified. $594,000 x 5% = $29,700

---

[7] Company C was not itself under a legal obligation to treat the wastes in question to the BDAT levels mandated by the land disposal restrictions, but it nevertheless reaped an economic benefit by misrepresenting to Company Z that these wastes were eligible for land disposal when they were not. Had Company C accurately represented to Company Z the truth --that the wastes needed to be treated before being landfilled - Company Z would undoubtedly have imposed a higher disposal fee on Company C. Enforcement personnel should give serious consideration to the inclusion in the economic benefit calculation those amounts Company C saved in reduced disposal fees as a result of the violations specified in 2(a) and 2(b).

(9) Final Settlement Penalty amount:

Gravity Base	+ Upward Adjustment	+ Upward Adjustment	+	Economic Benefit	- Downward Adjustment	=	Total Penalty
$594,000	+ $59,400	+$29,700	+	$12,500	- $220,000	=	$475,600

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

1. Gravity Based Penalty

(a) Potential for Harm: Major - Because Company C did not notify the receiving facility, Company Z, that the waste was prohibited from land disposal, Company Z was unaware that the wastes were required to be further treated before land disposal. The violation may have a substantial adverse affect on the purposes or procedures for implementing the RCRA program. In addition, the violation creates a potential for harm because it hinders Company Z's ability to adequately characterize the waste in order to assure that it is properly managed. (Note, however, that Company Z has an independent regulatory obligation to characterize and properly manage wastes it receives. Thus, Company C's violation is one factor contributing to the potential for harm, rather than the sole factor creating such risks.)

(attach additional sheets if necessary)

(b) Extent of Deviation: Major - Initially, Company C did not merely prepare and send deficient 40 CFR § 268.7 notifications/certifications. Rather, it completely failed to prepare and send such forms for the first six months. During the next six months Company C sent unverified certifications. In each instance, Company C substantially deviated from the applicable requirement.

(attach additional sheets if necessary)

(c) Multiple/Multi-day: Because each violation is properly viewed as independent and noncontinuous, no multi-day assessment is warranted. Because the violation was repeated 12 times, the gravity-based penalty amount is multiplied by 12.

(attach additional sheets if necessary)

2. Adjustment Factors (Good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applied.)

(a) Good Faith: As soon as Company C's Evanston facility learned of its obligation to submit 40 CFR § 268.7 forms, it began submitting such forms. However, evidence demonstrates that efforts to comply were weak because Company C made no effort to ensure the accuracy of such submissions. Even if such submissions had been accurate, Company C's actions would have been only those required by the regulations. No justification for mitigation for good faith efforts to comply exists.

(attach additional sheets if necessary)

(b) Willfulness/Negligence: No evidence of willfulness has been presented but the prior knowledge of the 40 CFR § 268.7 requirements by Company C's other facilities is evidence of negligence because a prudent company would advise all its facilities of the appropriate requirements, especially after one of the Company's other facilities recently had been found liable for similar violations. Based on these facts, an upward adjustment in the amount of 10% is justified.

SETTLEMENT PENALTY AMOUNT

Company Name: Company C - Evanston Facility

Address: 1001 Yourstreet, Evanston, Illinois 12345

Requirement Violated: 40 CFR § 268.7(b): Failure to send accurate notification and certification.

1.	Gravity based penalty from matrix ($24,750 X 12)	$297,000
	(a) Potential for harm	Major
	(b) Extent of Deviation	Major
2.	Select an amount from the appropriate multi-day matrix cell	N/A
3.	Multiply line 2 by number of days of violation minus 1	N/A
4.	Add line 1 and line 3	$297,000
5.	Percent increase/decrease for good faith	N/A
6.	Percent increase/decrease for willfulness/negligence	10%
7.	Percent increase for history of noncompliance	5%
8	Percent increase/decrease for other unique factors	N/A
9.	Add lines 5, 6, 7, and 8	15%
10.	Multiply line 4 by line 9	$44,500
11.	Add lines 4 and 10	$341,550
12.	Adjustment amount for environmental project	N/A
13.	Subtract line 12 from line 11	$341,550
14.	Calculate economic benefit	$2,500
15.	Add lines 13 and 14	$344,050
16.	Adjustment amount for ability-to-pay	N/A
17.	Adjustment amount for litigation risk	-$110,000
18.	Add lines 16 and 17	-$110,000
19.	Subtract line 18 from line 15 for final settlement amount	$234,050

(c) History of Compliance: No evidence demonstrating that Company C has had any similar previous violations at the Evanston facility has been presented. However, Company C operates other commercial treatment facilities, at least one of which recently has been found liable for similar violations. Based on these factors, an upward adjustment in the penalty is justified. However, because the upward adjustment is accounted for in 2.(b) above, we will not duplicate such adjustment here. The Evanston facility did however recently receive a notice of violation from the State Environmental Protection Department regarding violations of the State's air pollution program. The violations concerned treatment units that are utilized for the same waste that Company C was sending to Company Z. An upward adjustment of 5% is warranted.

(attach additional sheets if necessary)

(d) Ability to pay:

N/A

(attach additional sheets if necessary)

(e) Environmental Project:

N/A

(attach additional sheets if necessary)

(f) Other Unique Factors: Based on the litigation risk posed by (1) the Agency's inability to show (i) that all 24 drums were Company C's and (ii) that all drums contained F002 solvent, the Region decided to accept in settlement a smaller penalty than that proposed in the complaint. Since the aforementioned evidentiary weaknesses adversely affected one third of the 12 counts in the complaint, the Region reduced the proposed penalty amount by roughly one third or $110,000

(attach additional sheets if necessary)

3. Economic Benefit: Company C has reaped an economic benefit by avoiding the costs of materials and labor necessary to send proper notifications/certifications to Company Z. A BEN analysis (copy omitted for purposes of this example) indicates the economic benefit of this violation amounted to $2,500.

(attach additional sheets if necessary)

4. Recalculation of Penalty Based on New Information:

N/A

(attach additional sheets if necessary)

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

1. Gravity Based Penalty

(a) Potential for Harm: Major - Company C's complete failure to test the wastes prevented Company Z from determining that the wastes were ineligible for land disposal, which contributed to the actual disposal in a leaking unit above the area's sole source of drinking water. The violation has a substantial adverse effect on the procedures for implementing the LDR program because testing to assure compliance is critically important.

(attach additional sheets if necessary)

(b) Extent of Deviation: Major - Company C's waste analysis plan is substantially deficient in not explicitly requiring any testing to determine wastes are restricted, as evidenced by the resulting shipments from Company C which failed to identify their waste as restricted. Such deficiency is particularly significant where the wastes are very diverse as is the case here, because it is very difficult, if not impossible, to comply with the 40 CFR § 264.13 requirement that the operation obtain "all of the information which must be known to [manage] the waste in accordance with... Part 268."

(attach additional sheets if necessary)

(c) Multiple/Multi-day: Because each violation is properly viewed as independent and noncontinuous, no multi-day assessment is warranted. Because the violation was repeated 12 times, the gravity-based penalty amount is multiplied by 12.

(attach additional sheets if necessary)

2. Adjustment Factors (good faith, willfulness/negligence, history of compliance, ability to pay, environmental credits, and other unique factors must be justified, if applied.)

(a) Good Faith: No good faith efforts to comply have been made.

(attach additional sheets if necessary)

(b) Willfulness/Negligence: No evidence of willfulness has been presented, but the prior knowledge of the 40 CFR § 268.7 requirements by Company C's other facilities is evidence of negligence because a prudent company would advise all its facilities of the appropriate requirements, especially after one of the company's other facilities recently had been found liable for similar violations. Based on these factors, an upward adjustment in the amount of 10% is justified.

(c) History of Compliance: No evidence demonstrating that Company C has had any similar previous violations at the Evanston facility has been presented. However, Company C operates other commercial treatment facilities, at least one of which recently has been found liable for similar violation. Based on these factors, an upward adjustment in the penalty is justified. However, because the upward adjustment is accounted for in 2.(b) above, we will not duplicate such adjustment here. The Evanston facility did, however, recently receive a notice of violation

SETTLEMENT PENALTY AMOUNT

Company Name: Company C - Evanston Facility

Address: 1001 Yourstreet, Evanston, Illinois 12345

Requirement Violated: 40 CFR § 264.13(a): Failure to test restricted waste.

1.	Gravity based penalty from matrix ($24,750 X 12)	$297,000
	(a) Potential for harm	Major
	(b) Extent of Deviation	Major
2.	Select an amount from the appropriate multi-day matrix cell	N/A
3.	Multiply line 2 by number of days of violation minus 1	N/A
4.	Add line 1 and line 3	$297,000
5.	Percent increase/decrease for good faith	N/A
6.	Percent increase/decrease for willfulness/negligence	10%
7.	Percent increase for history of noncompliance	5%
8.	Percent increase/decrease for other unique factors	N/A
9.	Add lines 5, 6, 7, and 8	15%
10.	Multiply line 4 by line 9	$44,550
11.	Add lines 4 and 10	$341,550
12.	Adjustment amount for environmental project	N/A
13.	Subtract line 12 from line 11	$341,550
14.	Calculate economic benefit	$10,000
15.	Add lines 13 and 14	$351,550
16.	Adjustment amount for ability-to-pay	N/A
17.	Adjustment amount for litigation risk	-$110,000
18.	Add lines 16 and 17	-$110,000
19.	Subtract line 18 from line 15 for final settlement amount	$241,550