Message

From: adm15.arwheeler.email [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6F061A85B2E14828934C1A85CC4D5122-ADM15.ARWHE]
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Subject: NAAQS Denial
Attachments: 20210118 GHG NAAQS Denial w cover letter.docx

Thanks!

Andrew R. Wheeler
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U.S. Environmental Protection Agency
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

January 19, 2021

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Dear Ms. Siegel, Ms. Boeve, Mr. Schwartz, and Mr. Carlesco:

I am responding to a petition from the Center for Biological Diversity, dated December 2, 2009, to set National Ambient Air Quality Standards for greenhouse gases; a petition from the New York University School of Law Institute for Policy Integrity, dated February 19, 2013, to regulate greenhouse gases under Section 115 of the Clean Air Act; and a petition from Food & Water Watch, dated April 3, 2019, to regulate greenhouse gases as hazardous air pollutants under Section 112 of the CAA.

The EPA has reviewed your petitions and the information available on the issues you raised. For the reasons discussed in the enclosed response, the EPA denies your petitions, except as to the portions of the IPI petition identified in footnote 3, as to which the EPA takes no action.

I would like to thank you for your interest in these issues. The EPA looks forward to working with you and other stakeholders as we continue to protect human health and the environment in accordance with law.

Sincerely,

Andrew R. Wheeler

Enclosure

Denial of Petitions to Establish National Ambient Air Quality Standards for Greenhouse Gases, to Regulate Greenhouse Gases under Clean Air Act Section 115, and to Regulate Greenhouse Gases as Hazardous Air Pollutants

This document is in response to a petition from the Center for Biological Diversity (CBD), dated December 2, 2009, to set National Ambient Air Quality Standards (NAAQS) for greenhouse gases (GHG); a petition from the New York University School of Law Institute for Policy Integrity (IPI), dated February 19, 2013, to regulate GHG under Section 115 of the Clean Air Act (CAA); and a petition from Food & Water Watch (FWW), dated April 3, 2019, to regulate GHG as hazardous air pollutants (HAP) under Section 112 of the CAA.

Specifically, CBD requests that EPA list GHG as criteria pollutants pursuant to CAA § 108(a)(1), issue air quality criteria for GHG pursuant to CAA § 108(a)(2), propose primary and secondary NAAQS for GHG pursuant to CAA § 109(a), make available certain information about controlling GHG emissions pursuant to CAA § 108, including 108(f), issue final NAAQS for GHG along with techniques for controlling them pursuant to CAA § 108(b)(1), and aid the states in the State Implementation Plan (SIP) process pursuant to CAA § 110. Center for Biological Diversity & 350.org, Petition to Establish National Pollution Limits for Greenhouse Gases Pursuant to the Clean Air Act (Dec. 2, 2009) (hereinafter "CBD Petition").

IPI requests that EPA find that the prerequisites for controlling international air pollution pursuant to CAA § 115 have been satisfied for GHG, require states to revise SIPs to make reasonable progress toward abatement of GHG pollution, and advise states on implementation options under CAA § 115. Institute for Policy Integrity, Petition for Rulemakings and Call for Information Under Section 115, Title VI, Section 111, and Title II of the Clean Air Act to Regulate GHG Emissions at 12 (2013) (hereinafter "IPI Petition").

FWW requests that EPA list GHG as HAP under CAA § 112 and take steps to set emissions standards pursuant to that section. Food & Water Watch, Petition for Listing and Rulemaking Under Section 112 of the Clean Air Act to Establish Greenhouse Gases as Hazard [sic] Air Pollutants and to Set National Emission Standards for Hazardous Air Pollutant Emissions (Apr. 3, 2019) (hereinafter "FWW Petition").

Because EPA determines that regulation of international pollution pursuant to CAA § 115 is appropriate only for criteria pollutants that are subject to a NAAQS pursuant to CAA § 108, and because all three petitions raise questions of statutory interpretation dealing with GHG, EPA addresses all three petitions together.

Statutory Background

National Ambient Air Quality Standards

"For the purpose of establishing [NAAQS]," CAA § 108 provides that EPA shall publish and from time to time thereafter revise a list of air pollutants known as "criteria pollutants" that meet each of three requirements. First, "emissions of [the pollutant], in [the Administrator's] judgment [must] cause or contribute to air pollution which may reasonably be anticipated to endanger

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public health or welfare." CAA § 108(a)(1)(A). Second, the air pollutant must "result from numerous or diverse . . . sources." CAA § 108(a)(1)(B). Finally, the pollutant must be one "for which [the Administrator] plans to issue air quality criteria under this section." CAA § 108(a)(1)(C). Congress originally identified five criteria pollutants: carbon monoxide, ground-level ozone, particulate matter, nitrogen dioxide, and sulfur dioxide. To date, EPA has added only one to the list: lead.

For each pollutant on the list, EPA develops air quality criteria pursuant to CAA § 108(a)(2). The criteria "shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities." The criteria must include, to the extent practicable, information on variable factors, including other pollutants, that alter the pollutant's health or welfare effects, and "any known or anticipated adverse effects on welfare."

EPA promulgates "primary" and "secondary" NAAQS pursuant to CAA § 109. The primary standards are set such that the attainment and maintenance of the standards, in the judgment of the EPA Administrator, based on the air quality criteria, and allowing for an adequate margin of safety, are requisite to protect the public health. The secondary standards are set such that the attainment and maintenance of the standards are requisite to protect the public welfare from any known or anticipated effects. EPA may not consider the costs of meeting the NAAQS in setting the standards.

Within one year of EPA's promulgation of a new or revised NAAQS, each State must recommend designations of its regions as nonattainment, attainment, or unclassifiable. CAA § 107(d)(1)(A). EPA must finalize designations within two years after the NAAQS are finalized. CAA § 107(d)(1)(B)(i). Within three years from the NAAQS promulgation, States are required to adopt and submit to EPA State implementation plans (SIPs), pursuant to CAA § 110, providing for the implementation, maintenance, and enforcement of the NAAQS. The Act's requirements for SIPs are more detailed and stringent for areas not meeting the standards (nonattainment areas) than for areas meeting the standards (attainment areas).

States can petition EPA to exclude emissions data resulting from certain "exceptional events" pursuant to CAA § 319(b).

States are required to bring nonattainment areas into attainment with the NAAQS as expeditiously as practicable, but no later than attainment dates that are at most "10 years from the date of designation as nonattainment." CAA § 172(a)(2)(A).

States must address interstate transport of a pollutant that significantly contributes to another state's nonattainment or interferes with another state's maintenance of the NAAQS. CAA § 110(a)(2)(D)(i)(I).

If a nonattainment area fails to attain the NAAQS by the deadline, EPA publishes a notice of failure to attain. One year after the notice of failure to attain is published, a state is required to submit a revision to the applicable implementation plan for the area that includes "all measures that can be feasibly implemented in the area in light of technological achievability, costs, and

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any nonair quality and other air quality-related health and environmental impacts." CAA §§ 179(d)(1), 181(b)(2), 186(b)(2) & 188(b)(2).

A SIP must be revised whenever the Administrator finds that the plan is "substantially inadequate to attain the [NAAQS] which it implements or to otherwise comply with any additional requirements established under this chapter." CAA § 110(a)(2)(H)(ii).

A state that fails to submit a complete SIP, has its SIP disapproved by EPA, or fails to implement a required SIP is subject to sanctions. EPA may prohibit the Department of Transportation from awarding highway grants to noncompliant states. CAA § 179(b)(1). And new sources in such a state are subject to a requirement to obtain two tons of emissions reduction from other sources in the same nonattainment area for every one ton of emissions from the new source. CAA § 179(c)(1).

EPA is required to promulgate a federal implementation plan within two years of disapproving a SIP or finding that a state has failed to submit a required SIP. CAA § 110(c)(1).

Listing a criteria pollutant pursuant to CAA § 108 precludes regulation of that air pollutant from existing sources as a hazardous air pollutant under CAA § 112, *see* CAA § 112(b)(2), or under CAA § 111(d), which is intended to provide for regulation of air pollutants not otherwise subject to the major regulatory programs under the Act, *see* CAA § 111(d)(1)(A).

International Pollution

SIP revision can also be triggered under CAA § 115, which requires the Administrator to notify a state governor if the Administrator believes, based on information from an international agency, that "any air pollutant or pollutants" from that state "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country," but only if the Administrator determines that the foreign country has given the United States "essentially the same rights" as § 115 gives to the foreign country. CAA § 115(c). A notice to the state pursuant to § 115(a) is deemed to be a finding pursuant to § 110(a)(2)(H)(ii), "which requires a plan revision with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment to a foreign country." CAA § 115(b).

Hazardous Air Pollutants

CAA § 112(b)(1) provides a list of substances that Congress identified as hazardous air pollutants (HAP) in the 1990 CAA Amendments. These HAP have been associated with a wide variety of adverse health effects, including cancer, neurological effects, reproductive effects, and developmental effects.

The CAA directs the EPA to identify and list source categories that emit HAP and then to set emission standards for those listed source categories. Standards promulgated under CAA section 112(d) are commonly referred to as National Emission Standards for Hazardous Air Pollutants (NESHAP).

CAA § 112(b)(2) gives the Administrator authority to add to the CAA § 112(b)(1) list "pollutants which present, or may present through inhalation or other routes of exposure, a threat

of adverse human health effects (including, but not limited to, substances, which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition or otherwise." CAA § 302(k) defines an air pollutant as "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive . . . substance or matter which is emitted into or otherwise enters the ambient air." CAA § 112(a)(7) defines the term "adverse environmental effect" as "any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas."

CAA § 112(b)(3)(A) specifies that any person may petition the Administrator to modify the list of HAP contained in CAA § 112(b)(1) by adding or deleting a substance. CAA § 112(b)(3)(B) sets out the substantive criteria for granting a petition. It calls for the Administrator to add a substance to the CAA section 112(b)(1) list "upon a showing by the petitioner or on the Administrator's own determination that the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects." The Administrator is required under CAA § 112(b)(3)(A) to either grant or deny a petition within 18 months of the receipt of a complete petition by publishing a written explanation of the reasons for the Administrator's decision. The Administrator may not deny a petition solely on the basis of inadequate resources or time for review. CAA § 112(b)(3)(A).

Under CAA § 112, new regulated sources must meet HAP emission standards that are no less stringent than the emission limitation achieved by the best controlled similar source. CAA § 112(d)(3). Existing regulated sources must meet emission standards that are no less stringent than the average emission limitation achieved by a specified subset of the best performing existing sources. CAA § 112(d)(3)(A) & (B).

Once a pollutant is listed as a HAP under CAA § 112, EPA is obligated to regulate all "major sources" of that pollutant. And, once a source qualifies as a "major source" of any hazardous air pollutant, EPA must regulate all HAP from that source. CAA § 112(c)(2).

Listing and regulating a pollutant as a HAP precludes regulation of that pollutant under CAA § 111(d). *See* CAA § 111(d)(1); *see also* Affordable Clean Energy Rule, Response to Comments, Chapter 1, Docket Item # EPA-HQ-OAR-2017-0355-26741, at 11 (confirming EPA's position on the section 112 exclusion as stated in Clean Power Plan Final Rule); Clean Power Plan Final Rule, 80 Fed Reg 64,662, 64,710 (Oct. 23, 2015) ("CAA section 111(d) contains an exclusion that limits the regulation under CAA section 111(d) of air pollutants that are regulated under CAA section 112.").

<u>EPA's Response to CBD's Petition to Establish a GHG NAAQS</u>

Upon consideration of CBD's petition, EPA has determined that a NAAQS for GHG would be inconsistent with the text and structure of the Clean Air Act. The NAAQS regime is designed for

local pollutants that state-level regulation can meaningfully control. GHG is a global pollutant that is dispersed evenly throughout the global atmosphere. No state implementation plan could possibly have any measurable effect on the concentration of GHG within its own borders, and no state could ever come into attainment, on the basis of state-level action, with CBD's preferred level of 350 parts per million (ppm) CO_2 or any other standard set below current global concentrations. The statutory devices that incentivize SIP submission and NAAQS attainment within specific geographic areas would serve no useful function in a circumstance of nationwide and perpetual nonattainment. For these reasons, EPA determines that it would be unreasonable and inappropriate to establish a NAAQS for GHG. It follows that EPA could not reasonably plan to issue air quality criteria for GHG and therefore could not reasonably list GHG as a criteria pollutant.

Statutory Text

As CBD acknowledges, before EPA can set a national pollution standard for a new pollutant pursuant to CAA § 109, the Agency must first list the new pollutant pursuant to § 108(a)(1), and then issue air quality criteria for the pollutant pursuant to § 108(a)(2). That statute leaves no ambiguity about the reason for the creation and revision of the list of criteria pollutants. It is "[f]or the purpose of establishing national primary and secondary ambient air quality standards" that the Administrator is required to publish and revise the list. The rest of the provision must be interpreted through the lens of this express statutory purpose. *See Herman & MacLean v. Huddleston*, 459 U.S. 375, 387 (1983) ("[C]ourts will construe the details of an act in conformity with its dominating general purpose." (quoting *SEC v. C. M. Joiner Leasing Corp.*, 320 U.S. 344, 350-51 (1943))). It would be illogical therefore to list a criteria pollutant that could not reasonably be regulated pursuant to a NAAQS.

The third statutory condition that must be satisfied before a pollutant may be listed makes clear that a pollutant should not be listed unless it is an appropriate subject for NAAQS regulation. That condition provides that a pollutant should only be listed if it is one "for which [the Administrator] plans to issue air quality criteria under this section." CAA § 108(a)(1)(C); *see St. Joe Minerals Corp. v. EPA*, 508 F.2d 743, 744 (3d Cir. 1975), *vacated as moot*, 425 U.S. 987 (1976) ("The Administrator is to include in the list of pollutants all substances for which air quality criteria had previously been established and any others which, in the Administrator's opinion, (1) detracted from the public health or welfare; (2) originated from numerous sources; and (3) *merited controls*.") (emphasis added).

CBD's petition effectively reads the third condition out of the statute. CBD argues that "[w]hen the provisions of subpart (A) and (B) have been met, listing the pollutant and proceeding with the additional requirements of sections 108-110 is mandatory, and EPA lacks any discretion to decline to regulate." CBD Petition at 15. CBD's only basis for this position is a single judicial decision from the 1970s. In *Natural Res. Def. Council v. Train*, the United States Court of Appeal for the Second Circuit ignored the text of CAA § 108(a)(1)(C). Instead of interpreting the statutory language actually enacted by Congress, the court overlooked the text and turned immediately to legislative history:

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> The EPA contention that the language of § 108(a)(1)(C) "for which (the Administrator) plans to issue air quality criteria" is a separate and third criterion to be met before § 108 requires listing lead and issuing air quality standards, thereby leaving the decision to list lead within the discretion of the Administrator, finds no support in the legislative history of the 1970 Amendments to the Act.

545 F.2d 320, 325 (2d Cir. 1976).

Only after its foray into legislative history did the court turn to "the literal language of § 108(a)(1)(C)," which it set aside as "somewhat ambiguous" in a two-sentence analysis:

> While the literal language of § 108(a)(1)(C) is somewhat ambiguous, this ambiguity is resolved when this section is placed in the context of the Act as a whole and in its legislative history. The deliberate inclusion of a specific timetable for the attainment of ambient air quality standards incorporated by Congress in §§ 108-110 would become an exercise in futility if the Administrator could avoid listing pollutants simply by choosing not to issue air quality criteria.

545 F.2d at 327.

If there were any ambiguity about § 108(a)(1)(C), the Supreme Court's subsequent decision in *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984), would require that it be resolved in favor of the agency's reasonable interpretation, not a court's. But there is no ambiguity to resolve. The third condition of CAA § 108 plainly turns on whether the Administrator "plans to issue air quality criteria under this section." CAA § 108(a)(1)(C). A pollutant that cannot plausibly be controlled under the NAAQS regime should not be the subject of air quality criteria, and when the Administrator does not plan to issue criteria for a pollutant, it should not be listed, according to the plain language of the statute.

The kind of statutory interpretation employed by the Second Circuit in *Train* that looks for meaning first in legislative history and only secondarily in the words of the statute has fallen out of favor with the courts in the intervening decades as inconsistent with the judicial role. *See Morley v. CIA*, 719 F.3d 689, 693 (D.C. Cir. 2013) (Kavanaugh, J., concurring) ("[W]e should not reflexively cling to FOIA decisions that were decided on the basis of legislative history during an era when statutory text was less central to statutory interpretation.").

Moreover, the Second Circuit misread the legislative history. The Senate Report that the court quoted observes that what is now § 108 "*directs* the Secretary to publish" the initial list. S. Rep. on S. 4358, 91st Cong., 2d Sess. By contrast, when speaking of revision, the Report says only that "[h]e *can* add to the list periodically." *Id.* (emphasis added); *see also id.* ("Others *may* be added to this group as knowledge increases"). This non-mandatory language reflects the discretion inherent in the decision whether to "plan[] to issue air quality criteria." CAA § 108(a)(1)(C). And although the legislative history reflects the assumptions of some legislators that EPA would issue a long list of criteria pollutants ("fluorides, nitrogen oxides, polynuclear organic matter, lead, and odors") within 30 days of passage, a legislator's expectations about the application of a law are not dispositive of the law's meaning. *See Oncale v. Sundowner Offshore Servs., Inc.*, 523

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U.S. 75, 79 (1998) ("[I]t is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed."), *quoted in Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1749 (2020).

The Second Circuit's assumption in 1976 about how the Clean Air Act—still relatively new at the time—would work in practice has proven incorrect in the intervening decades. Lead remains the only criteria pollutant EPA has added to the original list of five. It is clearly not the case that every dangerous pollutant that originates from multiple sources must be added to the list of criteria pollutants. The various pollution control mechanisms of the Act work in tandem with each other to protect public health.

The Second Circuit's "structural" argument also fails. EPA's reading does not render the "the mandatory language of § 108(a)(1)(A) . . . mere surplusage." 545 F.2d at 325. The phrase "shall . . . revise" in CAA § 108(a)(1) has meaning under EPA's reading. The word "shall" makes the listing mechanism mandatory. Because of this mandatory language, the Administrator cannot bypass it simply by issuing criteria for a pollutant that has not been listed, a result that would undermine the public notice benefit of the listing process. And the statutory timetable for attainment is not an "exercise in futility," 545 F.2d at 327, but continues to drive state and federal action in response to EPA's increasingly stringent NAAQS for the six existing criteria pollutants.

The court of appeals adopted without analysis the district court's argument that the phrase "for which he plans to issue air quality criteria" applies only to the initial list of criteria pollutants. *See Natural Res. Def. Council, Inc. v. Train*, 411 F. Supp. 864, 868 (S.D.N.Y. 1976), *endorsed by* 545 F.2d at 325. This interpretation has no basis in the text of the statute, and it ignores that "and" is conjunctive. The entire series of three conditions, joined by "and," applies by the rules of grammar to the phrase that precedes it—"each air pollutant." 42 U.S.C. § 108(a)(1). Therefore, all three of the conditions must be met to trigger the listing requirement.

Structure

EPA's statutory interpretation of CAA § 108(a)(1) is supported by the structure of the CAA. It would not be reasonable to set a NAAQS for GHG for the same reason it would make no sense to "plan to issue air quality criteria" for GHG: The NAAQS regime's cooperative federalism approach to air pollution control is designed for local pollution that can be remedied by local action, not pollutants like GHG that are dispersed globally throughout the atmosphere and cannot be remedied by local controls.

The absurdity of setting a NAAQS for GHG is evident in the utter futility of the prospect. As the Department of Energy observed, "A GHG NAAQS standard would put the entire United States in either attainment or non-attainment, and it would be virtually impossible for an individual State to control or reduce GHG concentrations in its area and, thus, to make significant strides toward remaining in or reaching attainment." ANPRM, 73 Fed. Reg. at 44,367; *see also id.* ("There is little or nothing that a single State or region can do that will appreciably alter the atmospheric GHG concentration level in that particular State or region. Thus it is hard to see how a GHG NAAQS, which required States to take action to reduce their emissions to meet a

particular air quality standard, would actually work."); *id.* at 44,363 (DOT). EPA will not presume that Congress intended to legislate a meaningless exercise. *See Jackson v. The Archimedes*, 275 U.S. 463, 468 (1928) ("[A] purpose so wholly futile is not to be attributed to Congress.").

The prospect of perpetual nationwide nonattainment is inconsistent with the structure of the NAAQS regime, which is built around statutory deadlines enforced with statutory penalties designed to incentivize attainment and maintenance of the NAAQS. As EPA has previously observed, "it would appear to be an inescapable conclusion that the maximum 10-year horizon for attaining the primary NAAQS is ill-suited to pollutants such as greenhouse gases with long atmospheric residence times. . . . Thus, despite active control efforts to meet a NAAQS, the entire United States would remain in nonattainment for an unknown number of years." ANPRM, 73 Fed. Reg. at 44,481; *see also id.* at 44,381 (White House CEA and OSTP) ("Activities currently proposed for regulation will have no impact on public welfare for decades.").

States might try in vain to exempt themselves from the obligation to attain the NAAQS by a date certain by proving that timely attainment is impossible due to foreign GHG emissions. Under CAA § 179B, EPA may approve a SIP that does not demonstrate attainment by the deadline under specified circumstances. But no State would be able to make the required showing that its SIP "would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date . . . but for emissions emanating from outside of the United States." CAA § 179B(a)(2). Even if all the foreign countries of the world were to immediately cease anthropogenic emissions of GHG, it is unlikely that a hypothetical NAAQS would be attained by the attainment date, due to the long atmospheric lifetime of GHG[1] and the comparatively high contribution of GHG from natural sources.[2]

Perpetual nationwide nonattainment would yield a regulatory morass as nonattainment triggers new transportation conformity burdens. As the Department of Transportation explained, "[i]f the entire Nation were found to be in nonattainment for carbon dioxide or multiple greenhouse gases, and transportation and general conformity requirements applied to Federal activities, a broad range of those activities would be severely disrupted. For example, application of transportation conformity requirements to all metropolitan area transportation plans would add layers of additional regulations onto an already arduous Federal approval process and expand transportation-related litigation." ANPRM, 73 Fed. Reg. at 44,363.

If EPA were to adopt a GHG NAAQS, "controls on specific source categories would flow from independent state-level decisions, and could result in a patchwork of regulations requiring different types and levels of controls in different states." ANPRM, 73 Fed. Reg. at 44,483. Although state-by-state variation makes sense for local air pollutants that have area-specific sources and effects, it would be inefficient in the extreme for a pollutant that is present everywhere in the same concentrations. Eventually, the cooperative federalism framework of the NAAQS regime would collapse as ineffectual SIPs would give rise to ineffectual federal

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[1] *See* IPCC, Climate Change 2007: The Physical Science Basis, at 33-34, Table TS.2, Table 2.14, https://www.ipcc.ch/site/assets/uploads/2018/05/ar4_wg1_full_report-1.pdf.
[2] *Id.* at 2-3.

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implementation plans (FIPs). In the meantime, states would be forced to play a meaningless regulatory charade with no hope of having any measurable effect on the GHG levels within their borders.

Other features of the Clean Air Act's NAAQS regime would make no sense applied to GHG:

- States must "provide for establishment and operation" of air quality monitoring devices. CAA 110(a)(2)(A). This requirement has no relevance to a global air pollutant like GHG that is dispersed around the world. It has no location-specific effect that could be measured by an air quality monitor.
- Under certain circumstances, when determining their attainment status, States may be able to exclude certain monitored air quality exceedances or violations if the State demonstrates, and EPA concurs, that the exceedance or violation was caused by some types of "exceptional events" that are natural events or unlikely to recur. But this statutory feature is designed for local pollutants that trigger exceedances at specific air quality monitors. GHG's status as a long-term pollutant that is dispersed globally would make it difficult if not impossible for a state to make the required demonstration that a particular "exceptional event caused a specific air pollution concentration at a particular air quality monitoring location." CAA § 319(b)(3)(B)(ii).
- The CAA's interstate transport and "good neighbor" provisions are likewise designed for local pollutants. *See* CAA § 126 (interstate transport) (cited in CAA § 110(A)(2)(D)(ii)); CAA § 110(a)(2)(D)(i)(I) (good neighbor). The globally dispersed quality of GHG is such that every emission from one state affects all other states equally. Given the far greater contributions from foreign sources that have the exact same effect (ton for ton) on any given state's nonattainment, and given that every state is upwind of every other state when it comes to a globally dispersed pollutant, the interstate transport and good neighbor provisions would not function as intended if applied to a hypothetical GHG NAAQS.

Policy Considerations

The plain meaning and structure of the Clean Air Act precludes regulation of greenhouse gas as a criteria pollutant pursuant to NAAQS. But this outcome is also supported by several policy considerations that confirm the reasonableness of EPA's interpretation. In the alternative, these considerations reasonably support the Administrator's discretionary decision not to "plan[] to issue air quality criteria under this section." CAA § 108(a)(1)(C).

A GHG NAAQS would reduce America's bargaining power and undermine international cooperation. Even petitioner CBD recognizes that the "global problems" of climate change "cannot be solved unless each nation limits its own emissions sufficiently to achieve its share of the reductions necessary to stabilize atmospheric greenhouse gas concentrations." CBD Petition at iii. But a GHG NAAQS would regulate only the United States. It would have no direct beneficial effect on the GHG reductions of other countries, nor could a NAAQS be made contingent on the actions of foreign countries. As the White House Council of Economic Advisers and the White House Office of Science and Technology Policy have recognized,

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unilateral adoption of a GHG NAAQS would undermine the United States' ability to negotiate with foreign countries for a fair and effective global GHG regime: The CAA "does not permit regulations to depend on mitigation actions taken by other countries. The failure to allow for contingencies of this sort removes an important tool for inducing other countries to take actions that benefit Americans and the rest of the world." ANPRM 73 Fed. Reg. at 44,383.

A GHG NAAQS would damage American competitiveness and worsen pollution. Adopting a GHG NAAQS would drive carbon-intensive industries overseas to less regulated jurisdictions, increasing pollution and damaging the U.S. economy. As the Department of Commerce explained, "embrac[ing] emissions reductions outside of an international agreement with the world's major emitters . . . would put U.S. firms at a competitive disadvantage by raising their input costs compared to foreign competitors, likely resulting in emissions leakage outside of the United States and energy-intensive firms relocating to less regulated countries. Such an outcome would not be beneficial to the environment or the U.S. economy." ANPRM, 73 Fed. Reg. at 44,376; *see generally id.* at 44,413-14. The White House Council of Economic Advisers agreed that "acting in a globally uncoordinated fashion will put the United States at a competitive disadvantage, will induce economic distortions, and may actually be counter productive in reducing GHGs. . . . If businesses in other countries do not suffer the penalty for emitting GHGs, production has an incentive to move abroad, even when producing in the U.S. would be more economically efficient." *Id.* at 44,383. CBD's petition claims that a nationwide GHG standard would help to "address[] interstate leakage concerns by requiring the participation of those states that have yet to take action." CBD Petition at ii; 32. But CBD neglects the much larger leakage problem that would occur if the United States were to adopt a GHG standard unilaterally.

A GHG NAAQS would be inefficient. When setting a NAAQS, EPA may not consider the cost of compliance but must set the standard at the level that is "sufficient, but not more than necessary" to "protect public health from the adverse effects of the pollutant" with an "adequate margin of safety." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 465, 473 (2001) (quoting CAA § 109(b)(1)). As the Department of Energy has observed, "[t]his limitation inhibits a rational balancing of factors in determining and setting a GHG NAAQS based on the science available, the availability and cost of emission controls, the resulting impact on the U.S. economy, the emissions of other nations, etc." ANPRM, 73 Fed. Reg. at 44,367. This precludes rational regulations. As the White House Council of Economic Advisers has explained, "[t]o obtain economic efficiency, it is necessary to equalize marginal abatement costs across sources, which is extremely unlikely to occur if states are required to meet the same standard." ANPRM, 73 Fed. Reg. at 44,382.

A GHG NAAQS would hurt American agriculture. Clean Air Act programs, including the NAAQS "were neither designed for, nor are they suitable to, regulation of greenhouse gases from agricultural sources." ANPRM, 73 Fed. Reg. at 44,376 (USDA). The Department of Agriculture has explained that "[u]nder a NAAQS regulatory program, agricultural sources may need to employ Reasonably Available Control Measures ('RACM') or, at a minimum, include the use of Reasonable Available Control Technologies ('RACT')," but "agriculture is primarily dependent on biological processes which are not readily re-engineered. Given the nature of many

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agricultural source emissions, RACM and RACT may not exist or may be cost prohibitive." *Id.* at 44,377.

A GHG NAAQS would hurt America's small businesses. Given the uniform distribution of GHG and the resulting nationwide nonattainment, the Small Business Administration has explained that small entities would bear a disproportionate share of the costs of implementing a GHG NAAQS:

> [E]stablishing a GHG NAAQS would set in motion a number of statutory control measures that would be costly, inefficient, and ineffective. Small entities could have to contend with new barriers to construction and expansion, new restrictions on operating cars and trucks, and the potential for having to retrofit their existing buildings with GHG controls or to purchase equivalent credits. These NAAQS control measures would subject vast numbers of small entities across the country to standardized, inflexible, GHG control requirements for the first time. The full impact of these new burdens on these small entities could be devastating.

ANPRM 73 Fed. Reg. at 44,393.

EPA's Response to IPI's Petition to Regulate GHG under CAA § 115[3]

Because the text and structure of the Clean Air Act preclude a NAAQS for GHG, *see supra*, it also precludes the use of CAA § 115's mechanism for regulating foreign effects of domestic emissions of the pollutant. That is because § 115 depends upon the existence of a NAAQS SIP that is controlling the pollutant at issue. CAA § 115 operates by requiring the Administrator, when a reciprocity requirement is satisfied, to compel a state to revise its SIP when the state's pollution is endangering public health or welfare in a foreign country. (The Administrator's notice to the state under § 115 operates as a finding pursuant to § 110(a)(2)(H)(ii) that the SIP is inadequate.) The statutory remedy is for the State to revise its plan so that it adequately protects human health and welfare in the foreign country. If the state does not have a SIP that covers the relevant pollutant, then neither the Administrator's notice nor the statutory remedy makes any sense. Thus, EPA has previously acknowledged that "Section 115 could not be used to require states to incorporate into their SIPs measures unrelated to attainment or maintenance of a NAAQS." ANPRM, 73 Fed. Reg. at 44,483; *see id.* at 44,482 ("The Administrator could exercise his authority under [Section 115] *if* EPA were to promulgate a NAAQS for GHG." (emphasis added)).

EPA has previously rejected a request to regulate GHG under CAA § 115, because that provision applies only to criteria pollutants:

[3] IPI also asks EPA to regulate GHG under section 111, Title II, and Title VI of the CAA. This denial does not address those portions of IPI's petition. EPA notes that it is already regulating GHG under these provisions. *See, e.g.*, Affordable Clean Energy Rule, 84 Fed. Reg. 32,520 (July 8, 2019); Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, 85 Fed. Reg. 24,174 (April 30, 2020); Determination 36 for Significant New Alternatives Policy Program, 85 Fed. Reg. 79,863 (Dec. 11, 2020).

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> [C]onsistent with the authority in section 110 of the CAA under which SIPs are approved, only measures that are related to attainment and maintenance of the NAAQS (including procedural and interim requirements) should be approved by EPA as part of a federally enforceable implementation plan. *See, e.g.*, 67 Fed. Reg. 17,368 (April 2, 2004) ("An important element of [the SIP approval] process is not to include in the SIP portions of those regulations that are not related to attainment or maintenance of the NAAQS or to the requirements for SIPs under the Act."). In fact, on numerous occasions in the past twelve years, EPA has acted to remove from state SIPs provisions that were not reasonably related to the NAAQS. . . . It would be inconsistent with this long standing interpretation for EPA to issue notices requiring states to revise their SIPs to address CO_2 emissions and climate change issues. . . . The CAA does not authorize the Administrator to require states, as your submittal requests, to adopt SIP provisions regarding CO_2 emissions in order to reduce any impact on climate change, as such provisions would not be reasonably related to attainment and maintenance of the NAAQS.

Letter from Brian McLean, Dir., Office of Atmospheric Programs, EPA, to Albert Kochl, Staff Attorney, Ecojustice Canada (Feb. 29, 2008).

Petitioner IPI admits that "Section 110 does facially appear exclusive to the NAAQS program due to its title, 'State Implementation Plans for National Primary and Secondary Ambient Air Quality Standards.'" Institute for Policy Integrity, Petition for Rulemakings and Call for Information Under Section 115, Title VI, Section 111, and Title II of the Clean Air Act to Regulate GHG Emissions at 12 (2013) (hereinafter "IPI Petition"). Yet IPI argues that regulation of GHG under CAA § 115 is not limited to criteria pollutants for which a NAAQS has been established. IPI points to the phrase "any air pollutant" in § 115 as evidence that the statute must apply beyond criteria pollutants. *Id.* But this argument is unavailing.

The Supreme Court has instructed that the phrase "any air pollutant" must be interpreted in context. Thus "any air pollutant" for purpose of PSD and Title V permitting is limited to "*regulated* air pollutants." *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 316 (2014) (citing 43 Fed. Reg. 26403, *codified as amended*, 40 C.F.R. § 52.21(b)(1)-(2), (50)). In the context of new source performance standards, "any air pollutant" is limited to "air pollutants *for which EPA has promulgated new source performance standards.*" *Id.* at 317 (citing CAA § 111(a)(2), (4); 36 Fed. Reg. 24877 (1971), *codified as amended*, 40 C.F.R. § 60.2; 40 Fed. Reg. 58419 (1975), *codified as amended*, 40 C.F.R. § 60.14(a)). And in the context of permitting a major source to operate in a nonattainment area, "any air pollutant" is limited to "pollutants *for which the area is designated nonattainment.*" *Id.* at 317 (citing CAA § 172(c)(5), 302(j); 45 Fed. Reg. 52745 (1980), *promulgating* 40 C.F.R. § 51.18(j)(2), *as amended*, § 51.165(a)(2)).

Likewise, in the context of CAA § 115, in which Congress has expressly incorporated the NAAQS/SIP regime by reference, "any air pollutant" must be limited to air pollutants whose emissions are controlled pursuant to a NAAQS SIP. The Administrator's notice under CAA § 115(a) operates as a finding that a NAAQS SIP is "substantially inadequate to attain the [NAAQS] which it implements or otherwise comply with any additional requirements established under this chapter." CAA § 110(a)(2)(H)(ii). And Section 115 can only be

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effectuated by "a plan *revision* with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment" to public health or welfare in a foreign country. CAA § 115(b) (emphasis added). State plans exist to attain and maintain standards for criteria pollutants; it would not be reasonable to require their revision for other pollutants that are not controlled by the NAAQS.

IPI points out that CAA § 110(a)(2)(D)(ii) requires a SIP to "contain adequate provisions . . . insuring compliance with the applicable requirements of [CAA §§ 126 and 115]." IPI infers from this that SIPs may therefore govern non-criteria pollutants. But this reasoning is question begging. The more natural reading of CAA § 110(a)(2)(D)(ii) is that it governs international transport of criteria pollutants—the same pollutants covered by the NAAQS that the SIP implements.

During the Carter Administration, in an effort to control international acid rain pollution, Administrator Costle took a broader view of CAA § 115. He stated in private correspondence and without explanation that Section 115 "is broadly drafted to encompass all forms of air pollution-related endangerment to public health or welfare and is not limited to interference with U.S. air quality standards or significant deterioration programs." Letter from Douglas M. Costle, Admin. EPA, Sen. George Mitchell (Jan. 13, 1981), *reprinted in New York v. Thomas*, 613 F.Supp. at 1472, 1488. But EPA never acted on this interpretation, and the D.C. Circuit rejected a claim that the letter compelled the Agency to issue SIP notices to states producing pollution that caused acid rain deposition in Canada. *Thomas v. State of N.Y.*, 802 F.2d 1443, 1447 (D.C. Cir. 1986) (Scalia, J.) ("We conclude that if Administrator Costle's findings left the EPA no alternative but to issue SIP notices ultimately causing the termination or restriction of the operations of many utilities and manufacturers—if they *forced* the EPA to take direct and substantial regulatory actions—they could not be promulgated without notice-and-comment procedures.").

Any bilateral reciprocal agreement on GHG emissions with another country would be inadequate to substantially reduce GHG accumulation in the atmosphere, because all the nations of the world contribute to GHG pollution. Indeed, regional efforts at GHG control could be counter-productive, because, as described above, they may cause emitters to relocate to less-regulated jurisdictions. And the EPA does not believe that Congress would have given it authority to regulate on a global scale one of the present day's most contentious political questions with the most profound economic and geopolitical implications, through a statutory mechanism designed to deal with cross-border emissions of local air pollutants through state-level regulation. *See generally Whitman*, 531 U.S. at 468 ("Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.").

<u>EPA's Response to FWW's Petition to List GHG as a Hazardous Air Pollutant</u>

FWW's petition to list GHG as a hazardous air pollutant pursuant to CAA § 112 is based on a projection of GHG's indirect effects on human health and the environment. FWW points to EPA's 2009 finding that elevated concentrations of greenhouse gases in the atmosphere may

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reasonably be anticipated to endanger the public health and to endanger the public welfare of current and future generations" through climate change. FWW Petition at 3. FWW cites IPCC projections that GHG will cause "a mean surface temperature increase of 3.7°C to 4.8°C by 2100." FWW Petition at 7 (citing IPCC, "Summary for Policymakers," Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (2014)). Specifically, FWW alleges that climate change is causing or will cause the following environmental and welfare effects: harm to food production and forestry, impaired access to water, sea level rise, increased energy demand, infrastructure damage, and changes in wildlife habitat that hurt biodiversity. FWW Petition at 10. FWW also alleges that climate change will cause the following public health effects: increased mortality from heat waves, flooding, and storm surge; aggravated respiratory illness and asthma from increased ground-level ozone and plant growth; and increased food-, water-, and insect-borne diseases. FWW Petition at 11.

All of these circumstances are secondary effects of climate change to which GHG emissions are a contributing factor. They are not direct effects of exposure to GHG molecules.

The EPA concludes that it would be improper to list a substance as a hazardous air pollutant based on its *indirect* effects on human health or the environment. The text of CAA § 112 demonstrates that the statute is concerned with substances that themselves cause immediate harm to health and the environment. CAA § 112(b)(2) gives the Administrator the power to add to the list of HAP "pollutants which present, or may present, through inhalation or other routes of *exposure*, a threat of adverse human health effects . . . or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise." The parallel phrases "through . . . exposure" and "through ambient concentrations, bioaccumulation, deposition or otherwise" are best interpreted to require immediate, not secondary, health and environmental effects to justify a hazardous air pollutant listing. To be sure, the phrase "or otherwise" could be read broadly in another context to allow consideration of indirect environmental effects. But in this context, coming as it does after a list of direct means of environmental harm, "or otherwise" is best interpreted to refer to other direct mechanisms by which a HAP may cause environmental harm. *See United States v. Williams*, 553 U.S. 285, 294 (2008) ("[T]he commonsense canon of *noscitur a sociis* . . . counsels that a word is given more precise content by the neighboring words with which it is associated.").

CAA § 112's focus on direct effects distinguishes it from other provisions of the Clean Air Act that are silent as to the mechanisms by which a pollutant causes harm. For example, CAA § 202(a)(1) requires the Administrator to set emissions standards for "any air pollutant from any class . . . of new motor vehicles . . . which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." Thus, the 2009 Endangerment Finding under § 202(a)(1) did not require EPA to conclude that GHG itself directly endangers health or welfare. It was enough to find that GHG emissions would contribute to elevated temperatures, which would in turn contribute to climate change, which would in turn contribute to secondary effects, which would in turn harm health and welfare. By contrast to CAA § 202(a)(1), § 112 requires that the pollutant itself directly cause the harm—whether by

inhalation or other routes of exposure (in the case of human health effects) or by concentration, bioaccumulation, deposition, or other direct mechanisms (in the case of the environmental effects).

Although petitions to modify the HAP list are treated in the statute's succeeding paragraph, which does not use the term "exposure," *see* CAA § 112(b)(3)(B), the statute is best interpreted as a whole to require direct harm whether the Administrator is revising the list on his own initiative pursuant to CAA § 112(b)(2) or in response to a petition pursuant to CAA § 112(b)(3). A petition to modify the HAP list is a petition "under this subsection," CAA § 112(b)(3), so the Administrator's evaluation of a pollutant's causation of adverse effects should be the same in either circumstance. *See* 82 Fed. Reg. 2357 ("CAA section 112(b)(2) provides additional guidance on how the Administrator's decision [on a petition under CAA § 112(b)(3)(B)] is to be formed by identifying carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, reproductive dysfunction, and acute or chronic toxicity as types of adverse health effects."). Thus, it would not be reasonable for the Administrator to list a substance in response to a petition under CAA § 112(b)(3)(B) that he could not list on his own initiative under CAA § 112(b)(2).

Read in this light, CAA § 112 does not permit the Administrator to list GHG as a HAP. Greenhouse gas is not emitted in concentrations that could cause direct adverse effect on human health via exposure. Human beings inhale and ingest CO_2 and other GHG in relatively high concentrations without ill effect, so no plausible exposure to these substances at the concentrations in which they operate as GHG would threaten adverse health effects. Likewise, GHG does not have a direct environmental effect "through ambient concentrations, bioaccumulation, deposition, or otherwise." GHG's adverse effects are indirect: In FWW's account, GHG traps heat in the atmosphere, which contributes to climate change, which in turn contributes to adverse environmental effects.

Further, GHG could not be regulated based on its *environmental* effects without reference to *health* effects. CAA § 112(b)(2) prohibits listing on the basis of adverse environmental effects alone any substance that is already regulated under Title VI: "No substance, practice, process or activity regulated under subchapter VI of this chapter shall be subject to regulation under this section solely due to its adverse effects on the environment." Hydrofluorocarbons (HFCs) are a subset of well-mixed GHG that are currently regulated under some sections of Title VI. Accordingly, even if FWW could identify direct (as opposed to indirect) environmental effects of GHG, EPA would be unable to list the "mix of six long-lived and directly-emitted greenhouse gases" under CAA § 112 as FWW requests,[4] because of the lack of exposure-based health effects.

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[4] FWW Petition at 1. The predicate for FWW's petition is the 2009 Endangerment Finding, which assessed the harm from these GHG collectively as a single pollutant. *See* Endangerment Finding, 74 Fed. Reg. 66,496, 66,497 (2009) ("Specifically, the Administrator is defining the 'air pollution' referred to in CAA section 202(a) to be the mix of six long-lived and directly-emitted greenhouse gases: carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6)."); *id.* at 66,516 ("In this final action, the Administrator finds that the air pollution is the combined mix of six key directly-emitted, long-lived and well-mixed greenhouse gases (henceforth 'well-mixed greenhouse gases'), which together, constitute the root cause of human-induced climate change and the resulting impacts on public health and welfare.").

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FWW's interpretation of CAA § 112 to allow listing GHG as HAP is at odds with the best evidence of Congress's intent—the list of HAP it codified with the passage of CAA § 112. Congress included in that list pollutants that present direct adverse health and environmental effects, it did not list either well-mixed GHG or individual GHG. If Congress had intended EPA to have the authority to regulate climate-forcing agents under section 112, it could have given EPA that authority expressly, similar to the direct authority given to EPA to regulate substances that cause harmful effects to the ozone layer. *See* Title VI, 104 Stat. 2649, 42 U. S. C. §§7671–7671q.

The practical consequences of FWW's interpretation further demonstrate its unreasonableness. CAA § 112 obligates EPA to regulate HAP from all major sources. The term "major source" is defined as a stationary source that emits "10 tons per year or more of any hazardous air pollutant." CAA § 112(a)(1), (c)(2). Many thousands of sources currently unregulated under CAA § 112 emit ten tons or more per year of CO_2, including buildings like schools, small apartment complexes, and hospitals. *Cf. UARG v. EPA*, 573 U.S. 302, 324 (2014). Subjecting these sources to regulation for the first time under CAA § 112 would bring about an extraordinary expansion and transformation of the CAA § 112 regulatory scheme. As the Supreme Court said in rejecting the Agency's effort to let GHG emissions trigger PSD and Title V regulation, "The fact that EPA's greenhouse-gas-inclusive interpretation . . . would place plainly excessive demands on limited governmental resources is alone a good reason for rejecting it." *UARG*, 573 U.S. at 323-24.

And as with the Agency's interpretation in *UARG*, the Petitioners' interpretation of EPA's authority under § 112 "is also unreasonable because it would bring about an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization." *UARG*, 573 U.S. at 324; *see also id.* (citing *Brown & Williamson*, 529 U.S., at 159-60 (requiring a clear statement from Congress when an agency claims to discover in a long-extant statute an unheralded power to regulate "a significant portion of the American economy"); *MCI Telecommunications Corp. v. American Telephone & Telegraph Co.*, 512 U.S. 218, 231 (1994); *Industrial Union Dept., AFL–CIO v. American Petroleum Institute*, 448 U.S. 607, 645–46 (1980) (plurality opinion)).

Other Considerations

In addition to the statutory reasons discussed above, and even if the EPA were authorized to list and regulate GHG as criteria pollutants under CAA §§ 108 and 115 and to regulate GHG as a HAP under CAA § 112, EPA is also denying these petitions as an exercise of its discretion to prioritize the allocation of its limited agency resources.

As is true for all federal agencies, the EPA has a limited budget and limited staff resources, and so has to prioritize its actions when deciding what actions to take and what actions to defer or decline to take. To illustrate how this need to prioritize limited resources impacts our decision here, we will focus on three points.

First, the EPA is required to conduct numerous actions that have mandatory statutory deadlines under the CAA, some of which are further governed by court orders and consent decrees

imposed as the result of mandatory duty claims. For example, the EPA must review (and revise if appropriate) the NAAQS for each of the six currently listed criteria pollutants (ozone, sulfur dioxide, nitrogen dioxide, carbon monoxide, lead, and fine and course particulate matter) every five years. 42 U.S.C. § 7409(d)(1). With regards to HAP, EPA must review and revise the emission standards for each of the dozens of listed source categories every eight years. *Id.* § 7412(d)(6). Under the D.C. Circuit's recent decision in *Louisiana Environmental Action Network v. EPA*, 955 F.3d 1088 (D.C. Cir. 2020), this duty also includes filling gaps in emission standards for previously unregulated HAP and emissions units. EPA has little or no discretion to lower the priority of those actions. Based on EPA's past experience, listing and regulating GHG as criteria pollutants and HAP under CAA §§ 108, 115, and 112 would be a lengthy and resource-intensive set of tasks and would divert resources from the aforementioned mandatory reviews of existing NAAQS and NESHAP, as well as EPA's GHG regulations under CAA § 111 and other high-priority actions.

Second, even focusing just on the EPA's regulation of GHG emissions, the Agency must decide which sources of GHG to regulate first, and how to achieve that regulation. To that end, EPA has chosen to regulate GHG emissions from stationary sources under CAA § 111. *See, e.g.*, 84 Fed. Reg. 32,520 (July 9, 2019) (promulgating CAA § 111(d) emission guidelines for existing coal-fired power plants); 80 Fed. Reg. 64,510 (Oct. 23, 3015) (setting CAA § 111(b) standards of performance for new, modified, and reconstructed coal- and gas-fired power plants); 81 Fed. Reg. 59,322 & 81 Fed. Reg. 59,276 (Aug. 29, 2016) (setting CAA § 111(b) standards of performance and issuing CAA § 111(d) emission guidelines for municipal solid waste landfills). EPA, as the expert agency, is in the best position to select the appropriate statutory authority for addressing a given environmental challenge and has done so in this instance.

Further, it is important to recognize that the EPA's ongoing regulation of GHG under CAA § 111(d) would have to be halted and reversed if the EPA were to list and regulate GHG as criteria pollutants under CAA § 108 or as HAP under CAA § 112, due to the exclusions stated in CAA § 111(d)(1)(A). This would both undo significant aspects of EPA's regulation of GHG emissions to date and be a poor use of EPA's limited resources.

Conclusion

The Clean Air Act's NAAQS regime and § 115 are well suited to local pollutants that have the greatest effect on—and can be meaningfully controlled by the localities where they are emitted. That is not true of GHG, which are dispersed throughout the global atmosphere. Likewise, § 112 is designed to address HAP that cause direct health and environmental effects by exposure, concentration, or otherwise in relatively low concentrations by a few sources. These provisions are not designed to handle globally dispersed pollutants that are emitted in great amounts by myriad sources and have only indirect health and environmental effects.

Congress has the power to craft a comprehensive solution to the problem of greenhouse gas emissions, but such a solution will necessarily involve equitable participation by the other nations that emit significant amounts of GHG. EPA cannot create such a solution unilaterally, and it has not been given the statutory tools that would be necessary. Because the text and

structure of the CAA preclude the regulation of GHG under these statutory provisions, EPA denies the petitions of CBD, IPI, and FWW, except as to the portions of the IPI petition identified in footnote 3, as to which the EPA takes no action.

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Message

From: Fotouhi, David [Fotouhi.David@epa.gov]
Sent: 1/19/2021 1:41:30 PM
To: adm15.arwheeler.email [adm15.arwheeler.email@epa.gov]
CC: Gunasekara, Mandy [gunasekara.Mandy@epa.gov]; Moor, Karl [Moor.Karl@epa.gov]; Gustafson, Adam [Gustafson.Adam@epa.gov]; Molina, Michael [molina.michael@epa.gov]; Scott, Corey [scott.corey@epa.gov]
Subject: For your signature--CAA Petition Denials
Attachments: 20210118d GHG Endangerment Denial w cover letter.docx; 20210118 GHG NAAQS Denial w cover letter.docx

Sir:

The following two documents are attached to this email in Word format for your signature:

- Denial of Petitions to Reconsider the EPA's Greenhouse Gas Endangerment Finding
- Denial of Petitions to Establish National Ambient Air Quality Standards for Greenhouse Gases, to Regulate Greenhouse Gases under Clean Air Act Section 115, and to Regulate Greenhouse Gases as Hazardous Air Pollutants

Please let me know if you have any questions. If you need the documents sent to you in PDF format, let me know and I would be happy to do so. Once you have signed the documents, OGC will work with OAR to post the denials to the EPA OAR webpage and send them to the petitioners. **Ex. 5 Attorney Client (AC)**

Best,

David

David Fotouhi

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

THE ADMINISTRATOR

January 19, 2021

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Dear Ms. Siegel, Ms. Boeve, Mr. Schwartz, and Mr. Carlesco:

I am responding to a petition from the Center for Biological Diversity, dated December 2, 2009, to set National Ambient Air Quality Standards for greenhouse gases; a petition from the New York University School of Law Institute for Policy Integrity, dated February 19, 2013, to regulate greenhouse gases under Section 115 of the Clean Air Act; and a petition from Food & Water Watch, dated April 3, 2019, to regulate greenhouse gases as hazardous air pollutants under Section 112 of the CAA.

The EPA has reviewed your petitions and the information available on the issues you raised. For the reasons discussed in the enclosed response, the EPA denies your petitions, except as to the portions of the IPI petition identified in footnote [NOTEREF _Ref61907614 \h], as to which the EPA takes no action.

I would like to thank you for your interest in these issues. The EPA looks forward to working with you and other stakeholders as we continue to protect human health and the environment in accordance with law.

Sincerely,

Andrew R. Wheeler

Enclosure

Denial of Petitions to Establish National Ambient Air Quality Standards for Greenhouse Gases, to Regulate Greenhouse Gases under Clean Air Act Section 115, and to Regulate Greenhouse Gases as Hazardous Air Pollutants

This document is in response to a petition from the Center for Biological Diversity (CBD), dated December 2, 2009, to set National Ambient Air Quality Standards (NAAQS) for greenhouse gases (GHG); a petition from the New York University School of Law Institute for Policy Integrity (IPI), dated February 19, 2013, to regulate GHG under Section 115 of the Clean Air Act (CAA); and a petition from Food & Water Watch (FWW), dated April 3, 2019, to regulate GHG as hazardous air pollutants (HAP) under Section 112 of the CAA.

Specifically, CBD requests that EPA list GHG as criteria pollutants pursuant to CAA § 108(a)(1), issue air quality criteria for GHG pursuant to CAA § 108(a)(2), propose primary and secondary NAAQS for GHG pursuant to CAA § 109(a), make available certain information about controlling GHG emissions pursuant to CAA § 108, including 108(f), issue final NAAQS for GHG along with techniques for controlling them pursuant to CAA § 108(b)(1), and aid the states in the State Implementation Plan (SIP) process pursuant to CAA § 110. Center for Biological Diversity & 350.org, Petition to Establish National Pollution Limits for Greenhouse Gases Pursuant to the Clean Air Act (Dec. 2, 2009) (hereinafter "CBD Petition").

IPI requests that EPA find that the prerequisites for controlling international air pollution pursuant to CAA § 115 have been satisfied for GHG, require states to revise SIPs to make reasonable progress toward abatement of GHG pollution, and advise states on implementation options under CAA § 115. Institute for Policy Integrity, Petition for Rulemakings and Call for Information Under Section 115, Title VI, Section 111, and Title II of the Clean Air Act to Regulate GHG Emissions at 12 (2013) (hereinafter "IPI Petition").

FWW requests that EPA list GHG as HAP under CAA § 112 and take steps to set emissions standards pursuant to that section. Food & Water Watch, Petition for Listing and Rulemaking Under Section 112 of the Clean Air Act to Establish Greenhouse Gases as Hazard [sic] Air Pollutants and to Set National Emission Standards for Hazardous Air Pollutant Emissions (Apr. 3, 2019) (hereinafter "FWW Petition").

Because EPA determines that regulation of international pollution pursuant to CAA § 115 is appropriate only for criteria pollutants that are subject to a NAAQS pursuant to CAA § 108, and because all three petitions raise questions of statutory interpretation dealing with GHG, EPA addresses all three petitions together.

Statutory Background

National Ambient Air Quality Standards

"For the purpose of establishing [NAAQS]," CAA § 108 provides that EPA shall publish and from time to time thereafter revise a list of air pollutants known as "criteria pollutants" that meet each of three requirements. First, "emissions of [the pollutant], in [the Administrator's] judgment [must] cause or contribute to air pollution which may reasonably be anticipated to endanger

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public health or welfare." CAA § 108(a)(1)(A). Second, the air pollutant must "result from numerous or diverse . . . sources." CAA § 108(a)(1)(B). Finally, the pollutant must be one "for which [the Administrator] plans to issue air quality criteria under this section." CAA § 108(a)(1)(C). Congress originally identified five criteria pollutants: carbon monoxide, ground-level ozone, particulate matter, nitrogen dioxide, and sulfur dioxide. To date, EPA has added only one to the list: lead.

For each pollutant on the list, EPA develops air quality criteria pursuant to CAA § 108(a)(2). The criteria "shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities." The criteria must include, to the extent practicable, information on variable factors, including other pollutants, that alter the pollutant's health or welfare effects, and "any known or anticipated adverse effects on welfare."

EPA promulgates "primary" and "secondary" NAAQS pursuant to CAA § 109. The primary standards are set such that the attainment and maintenance of the standards, in the judgment of the EPA Administrator, based on the air quality criteria, and allowing for an adequate margin of safety, are requisite to protect the public health. The secondary standards are set such that the attainment and maintenance of the standards are requisite to protect the public welfare from any known or anticipated effects. EPA may not consider the costs of meeting the NAAQS in setting the standards.

Within one year of EPA's promulgation of a new or revised NAAQS, each State must recommend designations of its regions as nonattainment, attainment, or unclassifiable. CAA § 107(d)(1)(A). EPA must finalize designations within two years after the NAAQS are finalized. CAA § 107(d)(1)(B)(i). Within three years from the NAAQS promulgation, States are required to adopt and submit to EPA State implementation plans (SIPs), pursuant to CAA § 110, providing for the implementation, maintenance, and enforcement of the NAAQS. The Act's requirements for SIPs are more detailed and stringent for areas not meeting the standards (nonattainment areas) than for areas meeting the standards (attainment areas).

States can petition EPA to exclude emissions data resulting from certain "exceptional events" pursuant to CAA § 319(b).

States are required to bring nonattainment areas into attainment with the NAAQS as expeditiously as practicable, but no later than attainment dates that are at most "10 years from the date of designation as nonattainment." CAA § 172(a)(2)(A).

States must address interstate transport of a pollutant that significantly contributes to another state's nonattainment or interferes with another state's maintenance of the NAAQS. CAA § 110(a)(2)(D)(i)(I).

If a nonattainment area fails to attain the NAAQS by the deadline, EPA publishes a notice of failure to attain. One year after the notice of failure to attain is published, a state is required to submit a revision to the applicable implementation plan for the area that includes "all measures that can be feasibly implemented in the area in light of technological achievability, costs, and

any nonair quality and other air quality-related health and environmental impacts." CAA §§ 179(d)(1), 181(b)(2), 186(b)(2) & 188(b)(2).

A SIP must be revised whenever the Administrator finds that the plan is "substantially inadequate to attain the [NAAQS] which it implements or to otherwise comply with any additional requirements established under this chapter." CAA § 110(a)(2)(H)(ii).

A state that fails to submit a complete SIP, has its SIP disapproved by EPA, or fails to implement a required SIP is subject to sanctions. EPA may prohibit the Department of Transportation from awarding highway grants to noncompliant states. CAA § 179(b)(1). And new sources in such a state are subject to a requirement to obtain two tons of emissions reduction from other sources in the same nonattainment area for every one ton of emissions from the new source. CAA § 179(c)(1).

EPA is required to promulgate a federal implementation plan within two years of disapproving a SIP or finding that a state has failed to submit a required SIP. CAA § 110(c)(1).

Listing a criteria pollutant pursuant to CAA § 108 precludes regulation of that air pollutant from existing sources as a hazardous air pollutant under CAA § 112, *see* CAA § 112(b)(2), or under CAA § 111(d), which is intended to provide for regulation of air pollutants not otherwise subject to the major regulatory programs under the Act, *see* CAA § 111(d)(1)(A).

International Pollution

SIP revision can also be triggered under CAA § 115, which requires the Administrator to notify a state governor if the Administrator believes, based on information from an international agency, that "any air pollutant or pollutants" from that state "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country," but only if the Administrator determines that the foreign country has given the United States "essentially the same rights" as § 115 gives to the foreign country. CAA § 115(c). A notice to the state pursuant to § 115(a) is deemed to be a finding pursuant to § 110(a)(2)(H)(ii), "which requires a plan revision with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment to a foreign country." CAA § 115(b).

Hazardous Air Pollutants

CAA § 112(b)(1) provides a list of substances that Congress identified as hazardous air pollutants (HAP) in the 1990 CAA Amendments. These HAP have been associated with a wide variety of adverse health effects, including cancer, neurological effects, reproductive effects, and developmental effects.

The CAA directs the EPA to identify and list source categories that emit HAP and then to set emission standards for those listed source categories. Standards promulgated under CAA section 112(d) are commonly referred to as National Emission Standards for Hazardous Air Pollutants (NESHAP).

CAA § 112(b)(2) gives the Administrator authority to add to the CAA § 112(b)(1) list "pollutants which present, or may present through inhalation or other routes of exposure, a threat

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of adverse human health effects (including, but not limited to, substances, which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition or otherwise." CAA § 302(k) defines an air pollutant as "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive . . . substance or matter which is emitted into or otherwise enters the ambient air." CAA § 112(a)(7) defines the term "adverse environmental effect" as "any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas."

CAA § 112(b)(3)(A) specifies that any person may petition the Administrator to modify the list of HAP contained in CAA § 112(b)(1) by adding or deleting a substance. CAA § 112(b)(3)(B) sets out the substantive criteria for granting a petition. It calls for the Administrator to add a substance to the CAA section 112(b)(1) list "upon a showing by the petitioner or on the Administrator's own determination that the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects." The Administrator is required under CAA § 112(b)(3)(A) to either grant or deny a petition within 18 months of the receipt of a complete petition by publishing a written explanation of the reasons for the Administrator's decision. The Administrator may not deny a petition solely on the basis of inadequate resources or time for review. CAA § 112(b)(3)(A).

Under CAA § 112, new regulated sources must meet HAP emission standards that are no less stringent than the emission limitation achieved by the best controlled similar source. CAA § 112(d)(3). Existing regulated sources must meet emission standards that are no less stringent than the average emission limitation achieved by a specified subset of the best performing existing sources. CAA § 112(d)(3)(A) & (B).

Once a pollutant is listed as a HAP under CAA § 112, EPA is obligated to regulate all "major sources" of that pollutant. And, once a source qualifies as a "major source" of any hazardous air pollutant, EPA must regulate all HAP from that source. CAA § 112(c)(2).

Listing and regulating a pollutant as a HAP precludes regulation of that pollutant under CAA § 111(d). *See* CAA § 111(d)(1); *see also* Affordable Clean Energy Rule, Response to Comments, Chapter 1, Docket Item # EPA-HQ-OAR-2017-0355-26741, at 11 (confirming EPA's position on the section 112 exclusion as stated in Clean Power Plan Final Rule); Clean Power Plan Final Rule, 80 Fed Reg 64,662, 64,710 (Oct. 23, 2015) ("CAA section 111(d) contains an exclusion that limits the regulation under CAA section 111(d) of air pollutants that are regulated under CAA section 112.").

<u>EPA's Response to CBD's Petition to Establish a GHG NAAQS</u>

Upon consideration of CBD's petition, EPA has determined that a NAAQS for GHG would be inconsistent with the text and structure of the Clean Air Act. The NAAQS regime is designed for

local pollutants that state-level regulation can meaningfully control. GHG is a global pollutant that is dispersed evenly throughout the global atmosphere. No state implementation plan could possibly have any measurable effect on the concentration of GHG within its own borders, and no state could ever come into attainment, on the basis of state-level action, with CBD's preferred level of 350 parts per million (ppm) CO_2 or any other standard set below current global concentrations. The statutory devices that incentivize SIP submission and NAAQS attainment within specific geographic areas would serve no useful function in a circumstance of nationwide and perpetual nonattainment. For these reasons, EPA determines that it would be unreasonable and inappropriate to establish a NAAQS for GHG. It follows that EPA could not reasonably plan to issue air quality criteria for GHG and therefore could not reasonably list GHG as a criteria pollutant.

Statutory Text

As CBD acknowledges, before EPA can set a national pollution standard for a new pollutant pursuant to CAA § 109, the Agency must first list the new pollutant pursuant to § 108(a)(1), and then issue air quality criteria for the pollutant pursuant to § 108(a)(2). That statute leaves no ambiguity about the reason for the creation and revision of the list of criteria pollutants. It is "[f]or the purpose of establishing national primary and secondary ambient air quality standards" that the Administrator is required to publish and revise the list. The rest of the provision must be interpreted through the lens of this express statutory purpose. *See Herman & MacLean v. Huddleston*, 459 U.S. 375, 387 (1983) ("[C]ourts will construe the details of an act in conformity with its dominating general purpose." (quoting *SEC v. C. M. Joiner Leasing Corp.*, 320 U.S. 344, 350-51 (1943))). It would be illogical therefore to list a criteria pollutant that could not reasonably be regulated pursuant to a NAAQS.

The third statutory condition that must be satisfied before a pollutant may be listed makes clear that a pollutant should not be listed unless it is an appropriate subject for NAAQS regulation. That condition provides that a pollutant should only be listed if it is one "for which [the Administrator] plans to issue air quality criteria under this section." CAA § 108(a)(1)(C); *see St. Joe Minerals Corp. v. EPA*, 508 F.2d 743, 744 (3d Cir. 1975), *vacated as moot*, 425 U.S. 987 (1976) ("The Administrator is to include in the list of pollutants all substances for which air quality criteria had previously been established and any others which, in the Administrator's opinion, (1) detracted from the public health or welfare; (2) originated from numerous sources; and (3) *merited controls*.") (emphasis added).

CBD's petition effectively reads the third condition out of the statute. CBD argues that "[w]hen the provisions of subpart (A) and (B) have been met, listing the pollutant and proceeding with the additional requirements of sections 108-110 is mandatory, and EPA lacks any discretion to decline to regulate." CBD Petition at 15. CBD's only basis for this position is a single judicial decision from the 1970s. In *Natural Res. Def. Council v. Train*, the United States Court of Appeal for the Second Circuit ignored the text of CAA § 108(a)(1)(C). Instead of interpreting the statutory language actually enacted by Congress, the court overlooked the text and turned immediately to legislative history:

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> The EPA contention that the language of § 108(a)(1)(C) "for which (the Administrator) plans to issue air quality criteria" is a separate and third criterion to be met before § 108 requires listing lead and issuing air quality standards, thereby leaving the decision to list lead within the discretion of the Administrator, finds no support in the legislative history of the 1970 Amendments to the Act.

545 F.2d 320, 325 (2d Cir. 1976).

Only after its foray into legislative history did the court turn to "the literal language of § 108(a)(1)(C)," which it set aside as "somewhat ambiguous" in a two-sentence analysis:

> While the literal language of § 108(a)(1)(C) is somewhat ambiguous, this ambiguity is resolved when this section is placed in the context of the Act as a whole and in its legislative history. The deliberate inclusion of a specific timetable for the attainment of ambient air quality standards incorporated by Congress in §§ 108-110 would become an exercise in futility if the Administrator could avoid listing pollutants simply by choosing not to issue air quality criteria.

545 F.2d at 327.

If there were any ambiguity about § 108(a)(1)(C), the Supreme Court's subsequent decision in *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984), would require that it be resolved in favor of the agency's reasonable interpretation, not a court's. But there is no ambiguity to resolve. The third condition of CAA § 108 plainly turns on whether the Administrator "plans to issue air quality criteria under this section." CAA § 108(a)(1)(C). A pollutant that cannot plausibly be controlled under the NAAQS regime should not be the subject of air quality criteria, and when the Administrator does not plan to issue criteria for a pollutant, it should not be listed, according to the plain language of the statute.

The kind of statutory interpretation employed by the Second Circuit in *Train* that looks for meaning first in legislative history and only secondarily in the words of the statute has fallen out of favor with the courts in the intervening decades as inconsistent with the judicial role. *See Morley v. CIA*, 719 F.3d 689, 693 (D.C. Cir. 2013) (Kavanaugh, J., concurring) ("[W]e should not reflexively cling to FOIA decisions that were decided on the basis of legislative history during an era when statutory text was less central to statutory interpretation.").

Moreover, the Second Circuit misread the legislative history. The Senate Report that the court quoted observes that what is now § 108 "*directs* the Secretary to publish" the initial list. S. Rep. on S. 4358, 91st Cong., 2d Sess. By contrast, when speaking of revision, the Report says only that "[h]e *can* add to the list periodically." *Id.* (emphasis added); *see also id.* ("Others *may* be added to this group as knowledge increases"). This non-mandatory language reflects the discretion inherent in the decision whether to "plan[] to issue air quality criteria." CAA § 108(a)(1)(C). And although the legislative history reflects the assumptions of some legislators that EPA would issue a long list of criteria pollutants ("fluorides, nitrogen oxides, polynuclear organic matter, lead, and odors") within 30 days of passage, a legislator's expectations about the application of a law are not dispositive of the law's meaning. *See Oncale v. Sundowner Offshore Servs., Inc.*, 523

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U.S. 75, 79 (1998) ("[I]t is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed."), *quoted in Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1749 (2020).

The Second Circuit's assumption in 1976 about how the Clean Air Act—still relatively new at the time—would work in practice has proven incorrect in the intervening decades. Lead remains the only criteria pollutant EPA has added to the original list of five. It is clearly not the case that every dangerous pollutant that originates from multiple sources must be added to the list of criteria pollutants. The various pollution control mechanisms of the Act work in tandem with each other to protect public health.

The Second Circuit's "structural" argument also fails. EPA's reading does not render the "the mandatory language of § 108(a)(1)(A) . . . mere surplusage." 545 F.2d at 325. The phrase "shall . . . revise" in CAA § 108(a)(1) has meaning under EPA's reading. The word "shall" makes the listing mechanism mandatory. Because of this mandatory language, the Administrator cannot bypass it simply by issuing criteria for a pollutant that has not been listed, a result that would undermine the public notice benefit of the listing process. And the statutory timetable for attainment is not an "exercise in futility," 545 F.2d at 327, but continues to drive state and federal action in response to EPA's increasingly stringent NAAQS for the six existing criteria pollutants.

The court of appeals adopted without analysis the district court's argument that the phrase "for which he plans to issue air quality criteria" applies only to the initial list of criteria pollutants. *See Natural Res. Def. Council, Inc. v. Train*, 411 F. Supp. 864, 868 (S.D.N.Y. 1976), *endorsed by* 545 F.2d at 325. This interpretation has no basis in the text of the statute, and it ignores that "and" is conjunctive. The entire series of three conditions, joined by "and," applies by the rules of grammar to the phrase that precedes it—"each air pollutant." 42 U.S.C. § 108(a)(1). Therefore, all three of the conditions must be met to trigger the listing requirement.

Structure

EPA's statutory interpretation of CAA § 108(a)(1) is supported by the structure of the CAA. It would not be reasonable to set a NAAQS for GHG for the same reason it would make no sense to "plan to issue air quality criteria" for GHG: The NAAQS regime's cooperative federalism approach to air pollution control is designed for local pollution that can be remedied by local action, not pollutants like GHG that are dispersed globally throughout the atmosphere and cannot be remedied by local controls.

The absurdity of setting a NAAQS for GHG is evident in the utter futility of the prospect. As the Department of Energy observed, "A GHG NAAQS standard would put the entire United States in either attainment or non-attainment, and it would be virtually impossible for an individual State to control or reduce GHG concentrations in its area and, thus, to make significant strides toward remaining in or reaching attainment." ANPRM, 73 Fed. Reg. at 44,367; *see also id.* ("There is little or nothing that a single State or region can do that will appreciably alter the atmospheric GHG concentration level in that particular State or region. Thus it is hard to see how a GHG NAAQS, which required States to take action to reduce their emissions to meet a

particular air quality standard, would actually work."); *id.* at 44,363 (DOT). EPA will not presume that Congress intended to legislate a meaningless exercise. *See Jackson v. The Archimedes*, 275 U.S. 463, 468 (1928) ("[A] purpose so wholly futile is not to be attributed to Congress.").

The prospect of perpetual nationwide nonattainment is inconsistent with the structure of the NAAQS regime, which is built around statutory deadlines enforced with statutory penalties designed to incentivize attainment and maintenance of the NAAQS. As EPA has previously observed, "it would appear to be an inescapable conclusion that the maximum 10-year horizon for attaining the primary NAAQS is ill-suited to pollutants such as greenhouse gases with long atmospheric residence times. . . . Thus, despite active control efforts to meet a NAAQS, the entire United States would remain in nonattainment for an unknown number of years." ANPRM, 73 Fed. Reg. at 44,481; *see also id.* at 44,381 (White House CEA and OSTP) ("Activities currently proposed for regulation will have no impact on public welfare for decades.").

States might try in vain to exempt themselves from the obligation to attain the NAAQS by a date certain by proving that timely attainment is impossible due to foreign GHG emissions. Under CAA § 179B, EPA may approve a SIP that does not demonstrate attainment by the deadline under specified circumstances. But no State would be able to make the required showing that its SIP "would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date . . . but for emissions emanating from outside of the United States." CAA § 179B(a)(2). Even if all the foreign countries of the world were to immediately cease anthropogenic emissions of GHG, it is unlikely that a hypothetical NAAQS would be attained by the attainment date, due to the long atmospheric lifetime of GHG[1] and the comparatively high contribution of GHG from natural sources.[2]

Perpetual nationwide nonattainment would yield a regulatory morass as nonattainment triggers new transportation conformity burdens. As the Department of Transportation explained, "[i]f the entire Nation were found to be in nonattainment for carbon dioxide or multiple greenhouse gases, and transportation and general conformity requirements applied to Federal activities, a broad range of those activities would be severely disrupted. For example, application of transportation conformity requirements to all metropolitan area transportation plans would add layers of additional regulations onto an already arduous Federal approval process and expand transportation-related litigation." ANPRM, 73 Fed. Reg. at 44,363.

If EPA were to adopt a GHG NAAQS, "controls on specific source categories would flow from independent state-level decisions, and could result in a patchwork of regulations requiring different types and levels of controls in different states." ANPRM, 73 Fed. Reg. at 44,483. Although state-by-state variation makes sense for local air pollutants that have area-specific sources and effects, it would be inefficient in the extreme for a pollutant that is present everywhere in the same concentrations. Eventually, the cooperative federalism framework of the NAAQS regime would collapse as ineffectual SIPs would give rise to ineffectual federal

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[1] *See* IPCC, Climate Change 2007: The Physical Science Basis, at 33-34, Table TS.2, Table 2.14, https://www.ipcc.ch/site/assets/uploads/2018/05/ar4_wg1_full_report-1.pdf.
[2] *Id.* at 2-3.

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implementation plans (FIPs). In the meantime, states would be forced to play a meaningless regulatory charade with no hope of having any measurable effect on the GHG levels within their borders.

Other features of the Clean Air Act's NAAQS regime would make no sense applied to GHG:

- States must "provide for establishment and operation" of air quality monitoring devices. CAA 110(a)(2)(A). This requirement has no relevance to a global air pollutant like GHG that is dispersed around the world. It has no location-specific effect that could be measured by an air quality monitor.
- Under certain circumstances, when determining their attainment status, States may be able to exclude certain monitored air quality exceedances or violations if the State demonstrates, and EPA concurs, that the exceedance or violation was caused by some types of "exceptional events" that are natural events or unlikely to recur. But this statutory feature is designed for local pollutants that trigger exceedances at specific air quality monitors. GHG's status as a long-term pollutant that is dispersed globally would make it difficult if not impossible for a state to make the required demonstration that a particular "exceptional event caused a specific air pollution concentration at a particular air quality monitoring location." CAA § 319(b)(3)(B)(ii).
- The CAA's interstate transport and "good neighbor" provisions are likewise designed for local pollutants. *See* CAA § 126 (interstate transport) (cited in CAA § 110(A)(2)(D)(ii)); CAA § 110(a)(2)(D)(i)(I) (good neighbor). The globally dispersed quality of GHG is such that every emission from one state affects all other states equally. Given the far greater contributions from foreign sources that have the exact same effect (ton for ton) on any given state's nonattainment, and given that every state is upwind of every other state when it comes to a globally dispersed pollutant, the interstate transport and good neighbor provisions would not function as intended if applied to a hypothetical GHG NAAQS.

Policy Considerations

The plain meaning and structure of the Clean Air Act precludes regulation of greenhouse gas as a criteria pollutant pursuant to NAAQS. But this outcome is also supported by several policy considerations that confirm the reasonableness of EPA's interpretation. In the alternative, these considerations reasonably support the Administrator's discretionary decision not to "plan[] to issue air quality criteria under this section." CAA § 108(a)(1)(C).

A GHG NAAQS would reduce America's bargaining power and undermine international cooperation. Even petitioner CBD recognizes that the "global problems" of climate change "cannot be solved unless each nation limits its own emissions sufficiently to achieve its share of the reductions necessary to stabilize atmospheric greenhouse gas concentrations." CBD Petition at iii. But a GHG NAAQS would regulate only the United States. It would have no direct beneficial effect on the GHG reductions of other countries, nor could a NAAQS be made contingent on the actions of foreign countries. As the White House Council of Economic Advisers and the White House Office of Science and Technology Policy have recognized,

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unilateral adoption of a GHG NAAQS would undermine the United States' ability to negotiate with foreign countries for a fair and effective global GHG regime: The CAA "does not permit regulations to depend on mitigation actions taken by other countries. The failure to allow for contingencies of this sort removes an important tool for inducing other countries to take actions that benefit Americans and the rest of the world." ANPRM 73 Fed. Reg. at 44,383.

A GHG NAAQS would damage American competitiveness and worsen pollution. Adopting a GHG NAAQS would drive carbon-intensive industries overseas to less regulated jurisdictions, increasing pollution and damaging the U.S. economy. As the Department of Commerce explained, "embrac[ing] emissions reductions outside of an international agreement with the world's major emitters . . . would put U.S. firms at a competitive disadvantage by raising their input costs compared to foreign competitors, likely resulting in emissions leakage outside of the United States and energy-intensive firms relocating to less regulated countries. Such an outcome would not be beneficial to the environment or the U.S. economy." ANPRM, 73 Fed. Reg. at 44,376; *see generally id.* at 44,413-14. The White House Council of Economic Advisers agreed that "acting in a globally uncoordinated fashion will put the United States at a competitive disadvantage, will induce economic distortions, and may actually be counter productive in reducing GHGs. . . . If businesses in other countries do not suffer the penalty for emitting GHGs, production has an incentive to move abroad, even when producing in the U.S. would be more economically efficient." *Id.* at 44,383. CBD's petition claims that a nationwide GHG standard would help to "address[] interstate leakage concerns by requiring the participation of those states that have yet to take action." CBD Petition at ii; 32. But CBD neglects the much larger leakage problem that would occur if the United States were to adopt a GHG standard unilaterally.

A GHG NAAQS would be inefficient. When setting a NAAQS, EPA may not consider the cost of compliance but must set the standard at the level that is "sufficient, but not more than necessary" to "protect public health from the adverse effects of the pollutant" with an "adequate margin of safety." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 465, 473 (2001) (quoting CAA § 109(b)(1)). As the Department of Energy has observed, "[t]his limitation inhibits a rational balancing of factors in determining and setting a GHG NAAQS based on the science available, the availability and cost of emission controls, the resulting impact on the U.S. economy, the emissions of other nations, etc." ANPRM, 73 Fed. Reg. at 44,367. This precludes rational regulations. As the White House Council of Economic Advisers has explained, "[t]o obtain economic efficiency, it is necessary to equalize marginal abatement costs across sources, which is extremely unlikely to occur if states are required to meet the same standard." ANPRM, 73 Fed. Reg. at 44,382.

A GHG NAAQS would hurt American agriculture. Clean Air Act programs, including the NAAQS "were neither designed for, nor are they suitable to, regulation of greenhouse gases from agricultural sources." ANPRM, 73 Fed. Reg. at 44,376 (USDA). The Department of Agriculture has explained that "[u]nder a NAAQS regulatory program, agricultural sources may need to employ Reasonably Available Control Measures ('RACM') or, at a minimum, include the use of Reasonable Available Control Technologies ('RACT')," but "agriculture is primarily dependent on biological processes which are not readily re-engineered. Given the nature of many

agricultural source emissions, RACM and RACT may not exist or may be cost prohibitive." *Id.* at 44,377.

A GHG NAAQS would hurt America's small businesses. Given the uniform distribution of GHG and the resulting nationwide nonattainment, the Small Business Administration has explained that small entities would bear a disproportionate share of the costs of implementing a GHG NAAQS:

> [E]stablishing a GHG NAAQS would set in motion a number of statutory control measures that would be costly, inefficient, and ineffective. Small entities could have to contend with new barriers to construction and expansion, new restrictions on operating cars and trucks, and the potential for having to retrofit their existing buildings with GHG controls or to purchase equivalent credits. These NAAQS control measures would subject vast numbers of small entities across the country to standardized, inflexible, GHG control requirements for the first time. The full impact of these new burdens on these small entities could be devastating.

ANPRM 73 Fed. Reg. at 44,393.

EPA's Response to IPI's Petition to Regulate GHG under CAA § 115[3]

Because the text and structure of the Clean Air Act preclude a NAAQS for GHG, *see supra*, it also precludes the use of CAA § 115's mechanism for regulating foreign effects of domestic emissions of the pollutant. That is because § 115 depends upon the existence of a NAAQS SIP that is controlling the pollutant at issue. CAA § 115 operates by requiring the Administrator, when a reciprocity requirement is satisfied, to compel a state to revise its SIP when the state's pollution is endangering public health or welfare in a foreign country. (The Administrator's notice to the state under § 115 operates as a finding pursuant to § 110(a)(2)(H)(ii) that the SIP is inadequate.) The statutory remedy is for the State to revise its plan so that it adequately protects human health and welfare in the foreign country. If the state does not have a SIP that covers the relevant pollutant, then neither the Administrator's notice nor the statutory remedy makes any sense. Thus, EPA has previously acknowledged that "Section 115 could not be used to require states to incorporate into their SIPs measures unrelated to attainment or maintenance of a NAAQS." ANPRM, 73 Fed. Reg. at 44,483; *see id.* at 44,482 ("The Administrator could exercise his authority under [Section 115] *if* EPA were to promulgate a NAAQS for GHG." (emphasis added)).

EPA has previously rejected a request to regulate GHG under CAA § 115, because that provision applies only to criteria pollutants:

[3] IPI also asks EPA to regulate GHG under section 111, Title II, and Title VI of the CAA. This denial does not address those portions of IPI's petition. EPA notes that it is already regulating GHG under these provisions. *See, e.g.*, Affordable Clean Energy Rule, 84 Fed. Reg. 32,520 (July 8, 2019); Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, 85 Fed. Reg. 24,174 (April 30, 2020); Determination 36 for Significant New Alternatives Policy Program, 85 Fed. Reg. 79,863 (Dec. 11, 2020).

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> [C]onsistent with the authority in section 110 of the CAA under which SIPs are approved, only measures that are related to attainment and maintenance of the NAAQS (including procedural and interim requirements) should be approved by EPA as part of a federally enforceable implementation plan. *See, e.g.*, 67 Fed. Reg. 17,368 (April 2, 2004) ("An important element of [the SIP approval] process is not to include in the SIP portions of those regulations that are not related to attainment or maintenance of the NAAQS or to the requirements for SIPs under the Act."). In fact, on numerous occasions in the past twelve years, EPA has acted to remove from state SIPs provisions that were not reasonably related to the NAAQS. . . . It would be inconsistent with this long standing interpretation for EPA to issue notices requiring states to revise their SIPs to address CO_2 emissions and climate change issues. . . . The CAA does not authorize the Administrator to require states, as your submittal requests, to adopt SIP provisions regarding CO_2 emissions in order to reduce any impact on climate change, as such provisions would not be reasonably related to attainment and maintenance of the NAAQS.

Letter from Brian McLean, Dir., Office of Atmospheric Programs, EPA, to Albert Kochl, Staff Attorney, Ecojustice Canada (Feb. 29, 2008).

Petitioner IPI admits that "Section 110 does facially appear exclusive to the NAAQS program due to its title, 'State Implementation Plans for National Primary and Secondary Ambient Air Quality Standards.'" Institute for Policy Integrity, Petition for Rulemakings and Call for Information Under Section 115, Title VI, Section 111, and Title II of the Clean Air Act to Regulate GHG Emissions at 12 (2013) (hereinafter "IPI Petition"). Yet IPI argues that regulation of GHG under CAA § 115 is not limited to criteria pollutants for which a NAAQS has been established. IPI points to the phrase "any air pollutant" in § 115 as evidence that the statute must apply beyond criteria pollutants. *Id.* But this argument is unavailing.

The Supreme Court has instructed that the phrase "any air pollutant" must be interpreted in context. Thus "any air pollutant" for purpose of PSD and Title V permitting is limited to "*regulated* air pollutants." *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 316 (2014) (citing 43 Fed. Reg. 26403, *codified as amended*, 40 C.F.R. § 52.21(b)(1)-(2), (50)). In the context of new source performance standards, "any air pollutant" is limited to "air pollutants *for which EPA has promulgated new source performance standards.*" *Id.* at 317 (citing CAA § 111(a)(2), (4); 36 Fed. Reg. 24877 (1971), *codified as amended*, 40 C.F.R. § 60.2; 40 Fed. Reg. 58419 (1975), *codified as amended*, 40 C.F.R. § 60.14(a)). And in the context of permitting a major source to operate in a nonattainment area, "any air pollutant" is limited to "pollutants *for which the area is designated nonattainment.*" *Id.* at 317 (citing CAA § 172(c)(5), 302(j); 45 Fed. Reg. 52745 (1980), *promulgating* 40 C.F.R. § 51.18(j)(2), *as amended*, § 51.165(a)(2)).

Likewise, in the context of CAA § 115, in which Congress has expressly incorporated the NAAQS/SIP regime by reference, "any air pollutant" must be limited to air pollutants whose emissions are controlled pursuant to a NAAQS SIP. The Administrator's notice under CAA § 115(a) operates as a finding that a NAAQS SIP is "substantially inadequate to attain the [NAAQS] which it implements or otherwise comply with any additional requirements established under this chapter." CAA § 110(a)(2)(H)(ii). And Section 115 can only be

effectuated by "a plan *revision* with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment" to public health or welfare in a foreign country. CAA § 115(b) (emphasis added). State plans exist to attain and maintain standards for criteria pollutants; it would not be reasonable to require their revision for other pollutants that are not controlled by the NAAQS.

IPI points out that CAA § 110(a)(2)(D)(ii) requires a SIP to "contain adequate provisions . . . insuring compliance with the applicable requirements of [CAA §§ 126 and 115]." IPI infers from this that SIPs may therefore govern non-criteria pollutants. But this reasoning is question begging. The more natural reading of CAA § 110(a)(2)(D)(ii) is that it governs international transport of criteria pollutants—the same pollutants covered by the NAAQS that the SIP implements.

During the Carter Administration, in an effort to control international acid rain pollution, Administrator Costle took a broader view of CAA § 115. He stated in private correspondence and without explanation that Section 115 "is broadly drafted to encompass all forms of air pollution-related endangerment to public health or welfare and is not limited to interference with U.S. air quality standards or significant deterioration programs." Letter from Douglas M. Costle, Admin. EPA, Sen. George Mitchell (Jan. 13, 1981), *reprinted in New York v. Thomas*, 613 F.Supp. at 1472, 1488. But EPA never acted on this interpretation, and the D.C. Circuit rejected a claim that the letter compelled the Agency to issue SIP notices to states producing pollution that caused acid rain deposition in Canada. *Thomas v. State of N.Y.*, 802 F.2d 1443, 1447 (D.C. Cir. 1986) (Scalia, J.) ("We conclude that if Administrator Costle's findings left the EPA no alternative but to issue SIP notices ultimately causing the termination or restriction of the operations of many utilities and manufacturers—if they *forced* the EPA to take direct and substantial regulatory actions—they could not be promulgated without notice-and-comment procedures.").

Any bilateral reciprocal agreement on GHG emissions with another country would be inadequate to substantially reduce GHG accumulation in the atmosphere, because all the nations of the world contribute to GHG pollution. Indeed, regional efforts at GHG control could be counter-productive, because, as described above, they may cause emitters to relocate to less-regulated jurisdictions. And the EPA does not believe that Congress would have given it authority to regulate on a global scale one of the present day's most contentious political questions with the most profound economic and geopolitical implications, through a statutory mechanism designed to deal with cross-border emissions of local air pollutants through state-level regulation. *See generally Whitman*, 531 U.S. at 468 ("Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.").

<u>EPA's Response to FWW's Petition to List GHG as a Hazardous Air Pollutant</u>

FWW's petition to list GHG as a hazardous air pollutant pursuant to CAA § 112 is based on a projection of GHG's indirect effects on human health and the environment. FWW points to EPA's 2009 finding that elevated concentrations of greenhouse gases in the atmosphere may

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reasonably be anticipated to endanger the public health and to endanger the public welfare of current and future generations" through climate change. FWW Petition at 3. FWW cites IPCC projections that GHG will cause "a mean surface temperature increase of 3.7°C to 4.8°C by 2100." FWW Petition at 7 (citing IPCC, "Summary for Policymakers," Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (2014)). Specifically, FWW alleges that climate change is causing or will cause the following environmental and welfare effects: harm to food production and forestry, impaired access to water, sea level rise, increased energy demand, infrastructure damage, and changes in wildlife habitat that hurt biodiversity. FWW Petition at 10. FWW also alleges that climate change will cause the following public health effects: increased mortality from heat waves, flooding, and storm surge; aggravated respiratory illness and asthma from increased ground-level ozone and plant growth; and increased food-, water-, and insect-borne diseases. FWW Petition at 11.

All of these circumstances are secondary effects of climate change to which GHG emissions are a contributing factor. They are not direct effects of exposure to GHG molecules.

The EPA concludes that it would be improper to list a substance as a hazardous air pollutant based on its *indirect* effects on human health or the environment. The text of CAA § 112 demonstrates that the statute is concerned with substances that themselves cause immediate harm to health and the environment. CAA § 112(b)(2) gives the Administrator the power to add to the list of HAP "pollutants which present, or may present, through inhalation or other routes of *exposure*, a threat of adverse human health effects . . . or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise." The parallel phrases "through . . . exposure" and "through ambient concentrations, bioaccumulation, deposition or otherwise" are best interpreted to require immediate, not secondary, health and environmental effects to justify a hazardous air pollutant listing. To be sure, the phrase "or otherwise" could be read broadly in another context to allow consideration of indirect environmental effects. But in this context, coming as it does after a list of direct means of environmental harm, "or otherwise" is best interpreted to refer to other direct mechanisms by which a HAP may cause environmental harm. *See United States v. Williams*, 553 U.S. 285, 294 (2008) ("[T]he commonsense canon of *noscitur a sociis* . . . counsels that a word is given more precise content by the neighboring words with which it is associated.").

CAA § 112's focus on direct effects distinguishes it from other provisions of the Clean Air Act that are silent as to the mechanisms by which a pollutant causes harm. For example, CAA § 202(a)(1) requires the Administrator to set emissions standards for "any air pollutant from any class . . . of new motor vehicles . . . which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." Thus, the 2009 Endangerment Finding under § 202(a)(1) did not require EPA to conclude that GHG itself directly endangers health or welfare. It was enough to find that GHG emissions would contribute to elevated temperatures, which would in turn contribute to climate change, which would in turn contribute to secondary effects, which would in turn harm health and welfare. By contrast to CAA § 202(a)(1), § 112 requires that the pollutant itself directly cause the harm—whether by

inhalation or other routes of exposure (in the case of human health effects) or by concentration, bioaccumulation, deposition, or other direct mechanisms (in the case of the environmental effects).

Although petitions to modify the HAP list are treated in the statute's succeeding paragraph, which does not use the term "exposure," *see* CAA § 112(b)(3)(B), the statute is best interpreted as a whole to require direct harm whether the Administrator is revising the list on his own initiative pursuant to CAA § 112(b)(2) or in response to a petition pursuant to CAA § 112(b)(3). A petition to modify the HAP list is a petition "under this subsection," CAA § 112(b)(3), so the Administrator's evaluation of a pollutant's causation of adverse effects should be the same in either circumstance. *See* 82 Fed. Reg. 2357 ("CAA section 112(b)(2) provides additional guidance on how the Administrator's decision [on a petition under CAA § 112(b)(3)(B)] is to be formed by identifying carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, reproductive dysfunction, and acute or chronic toxicity as types of adverse health effects."). Thus, it would not be reasonable for the Administrator to list a substance in response to a petition under CAA § 112(b)(3)(B) that he could not list on his own initiative under CAA § 112(b)(2).

Read in this light, CAA § 112 does not permit the Administrator to list GHG as a HAP. Greenhouse gas is not emitted in concentrations that could cause direct adverse effect on human health via exposure. Human beings inhale and ingest CO_2 and other GHG in relatively high concentrations without ill effect, so no plausible exposure to these substances at the concentrations in which they operate as GHG would threaten adverse health effects. Likewise, GHG does not have a direct environmental effect "through ambient concentrations, bioaccumulation, deposition, or otherwise." GHG's adverse effects are indirect: In FWW's account, GHG traps heat in the atmosphere, which contributes to climate change, which in turn contributes to adverse environmental effects.

Further, GHG could not be regulated based on its *environmental* effects without reference to *health* effects. CAA § 112(b)(2) prohibits listing on the basis of adverse environmental effects alone any substance that is already regulated under Title VI: "No substance, practice, process or activity regulated under subchapter VI of this chapter shall be subject to regulation under this section solely due to its adverse effects on the environment." Hydrofluorocarbons (HFCs) are a subset of well-mixed GHG that are currently regulated under some sections of Title VI. Accordingly, even if FWW could identify direct (as opposed to indirect) environmental effects of GHG, EPA would be unable to list the "mix of six long-lived and directly-emitted greenhouse gases" under CAA § 112 as FWW requests,[4] because of the lack of exposure-based health effects.

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[4] FWW Petition at 1. The predicate for FWW's petition is the 2009 Endangerment Finding, which assessed the harm from these GHG collectively as a single pollutant. *See* Endangerment Finding, 74 Fed. Reg. 66,496, 66,497 (2009) ("Specifically, the Administrator is defining the 'air pollution' referred to in CAA section 202(a) to be the mix of six long-lived and directly-emitted greenhouse gases: carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6)."); *id.* at 66,516 ("In this final action, the Administrator finds that the air pollution is the combined mix of six key directly-emitted, long-lived and well-mixed greenhouse gases (henceforth 'well-mixed greenhouse gases'), which together, constitute the root cause of human-induced climate change and the resulting impacts on public health and welfare.").

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FWW's interpretation of CAA § 112 to allow listing GHG as HAP is at odds with the best evidence of Congress's intent—the list of HAP it codified with the passage of CAA § 112. Congress included in that list pollutants that present direct adverse health and environmental effects, it did not list either well-mixed GHG or individual GHG. If Congress had intended EPA to have the authority to regulate climate-forcing agents under section 112, it could have given EPA that authority expressly, similar to the direct authority given to EPA to regulate substances that cause harmful effects to the ozone layer. *See* Title VI, 104 Stat. 2649, 42 U. S. C. §§7671–7671q.

The practical consequences of FWW's interpretation further demonstrate its unreasonableness. CAA § 112 obligates EPA to regulate HAP from all major sources. The term "major source" is defined as a stationary source that emits "10 tons per year or more of any hazardous air pollutant." CAA § 112(a)(1), (c)(2). Many thousands of sources currently unregulated under CAA § 112 emit ten tons or more per year of CO_2, including buildings like schools, small apartment complexes, and hospitals. *Cf. UARG v. EPA*, 573 U.S. 302, 324 (2014). Subjecting these sources to regulation for the first time under CAA § 112 would bring about an extraordinary expansion and transformation of the CAA § 112 regulatory scheme. As the Supreme Court said in rejecting the Agency's effort to let GHG emissions trigger PSD and Title V regulation, "The fact that EPA's greenhouse-gas-inclusive interpretation . . . would place plainly excessive demands on limited governmental resources is alone a good reason for rejecting it." *UARG*, 573 U.S. at 323-24.

And as with the Agency's interpretation in *UARG*, the Petitioners' interpretation of EPA's authority under § 112 "is also unreasonable because it would bring about an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization." *UARG*, 573 U.S. at 324; *see also id.* (citing *Brown & Williamson*, 529 U.S., at 159-60 (requiring a clear statement from Congress when an agency claims to discover in a long-extant statute an unheralded power to regulate "a significant portion of the American economy"); *MCI Telecommunications Corp. v. American Telephone & Telegraph Co.*, 512 U.S. 218, 231 (1994); *Industrial Union Dept., AFL–CIO v. American Petroleum Institute*, 448 U.S. 607, 645–46 (1980) (plurality opinion)).

<u>Other Considerations</u>

In addition to the statutory reasons discussed above, and even if the EPA were authorized to list and regulate GHG as criteria pollutants under CAA §§ 108 and 115 and to regulate GHG as a HAP under CAA § 112, EPA is also denying these petitions as an exercise of its discretion to prioritize the allocation of its limited agency resources.

As is true for all federal agencies, the EPA has a limited budget and limited staff resources, and so has to prioritize its actions when deciding what actions to take and what actions to defer or decline to take. To illustrate how this need to prioritize limited resources impacts our decision here, we will focus on three points.

First, the EPA is required to conduct numerous actions that have mandatory statutory deadlines under the CAA, some of which are further governed by court orders and consent decrees

imposed as the result of mandatory duty claims. For example, the EPA must review (and revise if appropriate) the NAAQS for each of the six currently listed criteria pollutants (ozone, sulfur dioxide, nitrogen dioxide, carbon monoxide, lead, and fine and course particulate matter) every five years. 42 U.S.C. § 7409(d)(1). With regards to HAP, EPA must review and revise the emission standards for each of the dozens of listed source categories every eight years. *Id.* § 7412(d)(6). Under the D.C. Circuit's recent decision in *Louisiana Environmental Action Network v. EPA*, 955 F.3d 1088 (D.C. Cir. 2020), this duty also includes filling gaps in emission standards for previously unregulated HAP and emissions units. EPA has little or no discretion to lower the priority of those actions. Based on EPA's past experience, listing and regulating GHG as criteria pollutants and HAP under CAA §§ 108, 115, and 112 would be a lengthy and resource-intensive set of tasks and would divert resources from the aforementioned mandatory reviews of existing NAAQS and NESHAP, as well as EPA's GHG regulations under CAA § 111 and other high-priority actions.

Second, even focusing just on the EPA's regulation of GHG emissions, the Agency must decide which sources of GHG to regulate first, and how to achieve that regulation. To that end, EPA has chosen to regulate GHG emissions from stationary sources under CAA § 111. *See, e.g.*, 84 Fed. Reg. 32,520 (July 9, 2019) (promulgating CAA § 111(d) emission guidelines for existing coal-fired power plants); 80 Fed. Reg. 64,510 (Oct. 23, 3015) (setting CAA § 111(b) standards of performance for new, modified, and reconstructed coal- and gas-fired power plants); 81 Fed. Reg. 59,322 & 81 Fed. Reg. 59,276 (Aug. 29, 2016) (setting CAA § 111(b) standards of performance and issuing CAA § 111(d) emission guidelines for municipal solid waste landfills). EPA, as the expert agency, is in the best position to select the appropriate statutory authority for addressing a given environmental challenge and has done so in this instance.

Further, it is important to recognize that the EPA's ongoing regulation of GHG under CAA § 111(d) would have to be halted and reversed if the EPA were to list and regulate GHG as criteria pollutants under CAA § 108 or as HAP under CAA § 112, due to the exclusions stated in CAA § 111(d)(1)(A). This would both undo significant aspects of EPA's regulation of GHG emissions to date and be a poor use of EPA's limited resources.

Conclusion

The Clean Air Act's NAAQS regime and § 115 are well suited to local pollutants that have the greatest effect on—and can be meaningfully controlled by the localities where they are emitted. That is not true of GHG, which are dispersed throughout the global atmosphere. Likewise, § 112 is designed to address HAP that cause direct health and environmental effects by exposure, concentration, or otherwise in relatively low concentrations by a few sources. These provisions are not designed to handle globally dispersed pollutants that are emitted in great amounts by myriad sources and have only indirect health and environmental effects.

Congress has the power to craft a comprehensive solution to the problem of greenhouse gas emissions, but such a solution will necessarily involve equitable participation by the other nations that emit significant amounts of GHG. EPA cannot create such a solution unilaterally, and it has not been given the statutory tools that would be necessary. Because the text and

structure of the CAA preclude the regulation of GHG under these statutory provisions, EPA denies the petitions of CBD, IPI, and FWW, except as to the portions of the IPI petition identified in footnote [NOTEREF _Ref61907614 \h], as to which the EPA takes no action.

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Appointment

From: Marks, Matthew [Marks.Matthew@epa.gov]
Sent: 1/5/2021 4:09:15 PM
To: Marks, Matthew [Marks.Matthew@epa.gov]; Anderson, Lea [anderson.lea@epa.gov]; Orlin, David [Orlin.David@epa.gov]; Jordan, Scott [Jordan.Scott@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Okoye, Winifred [Okoye.Winifred@epa.gov]

Subject: GHG Petition Denials Discussion
Attachments: 20210105 Draft GHG NAAQS Petition Denial.docx
Location: Microsoft Teams Meeting

Start: 1/6/2021 4:00:00 PM
End: 1/6/2021 4:45:00 PM
Show Time As: Busy

Required Attendees: Lea Anderson; Orlin, David; Jordan, Scott; Srinivasan, Gautam; Okoye, Winifred

Lea/David – As discussed, here is Adam's draft of the GHG petition denials. This meeting is to discuss next steps in reviewing it before circling back with Adam.

Scott, I'll give you a call later today to explain what this is about. Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC) Do not forward or discuss. Thanks!

Microsoft Teams meeting

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Or call in (audio only)
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This document has been withheld in its entirety under Ex. 5 - Attorney Client (ACP), Ex. 5 - Attorney Work Product (AWP), Ex. 5 - Deliberative Process (DPP).

Message

From: Greenfield, Meghan (ENRD) [Meghan.Greenfield@usdoj.gov]
Sent: 5/21/2020 6:43:13 PM
To: Anderson, Lea [anderson.lea@epa.gov]; Jordan, Scott [Jordan.Scott@epa.gov]
CC: Marks, Matthew [Marks.Matthew@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: RE: ACE - EPA Brief - 112 Exclusion Text
Attachments: caa_112_ghg_petition.pdf

Lea

Ex. 5 AC/AWP/DP

Meghan

Meghan E. Greenfield
ENRD/EDS
(T) 202-514-2795
(C) 202-598-5791
Meghan.Greenfield@usdoj.gov

From: Anderson, Lea <anderson.lea@epa.gov>
Sent: Thursday, May 21, 2020 2:38 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>; Greenfield, Meghan (ENRD) <MGreenfiel@ENRD.USDOJ.GOV>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: RE: ACE - EPA Brief - 112 Exclusion Text

For the discussion of 112, Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP I added a few edits/comments on the attached document.

From: Jordan, Scott <Jordan.Scott@epa.gov>
Sent: Thursday, May 21, 2020 9:56 AM
To: Meghan Greenfield <Meghan.Greenfield@usdoj.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>
Subject: ACE - EPA Brief - 112 Exclusion Text

Meghan – I think your draft 112 exclusion text looks very good. I have no major comments, but I have marked some wordsmithing suggestions in the attached in redline/strikeout.

Matt – I have only one thing to flag for you: Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP Please give that a quick look and let us know if you have any different or additional edits.

Lea – For your awareness: Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP don't have any specific issues to flag for you but if you have any comments or concerns, please let us know.

Scott Jordan
Air and Radiation Law Office
Office of General Counsel
202-564-7508

I am an EPA LGBTQ+ Ally
Pronouns: he/him/his

From: Greenfield, Meghan (ENRD) <Meghan.Greenfield@usdoj.gov>
Sent: Wednesday, May 20, 2020 3:25 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: ENV_DEFENSE-#919711-v1-ENV_DEFENSE-ACE_111_112_Revised.docx

Scott

The draft of the 111/112 section is attached. I look forward to your feedback.

Meghan

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PETITION TO THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Petition for Listing and Rulemaking Under Section 112 of the Clean Air Act to Establish Greenhouse Gases as Hazard Air Pollutants and to Set National Emission Standards for Hazardous Air Pollutant Emissions	) *Submitted via U.S. Mail and*) *E-mail to the Administrator and*) *Assistant Administrator of the*) *Office of Air and Radiation,*) *U.S. Environmental Protection*) *Agency*

April 3, 2019

EPA MUST LIST GREENHOUSE GASES AS CLEAN AIR ACT SECTION 112 HAZARDOUS AIR POLLUTANTS AND SET NATIONAL AIR TOXICS STANDARDS TO PROTECT PUBLIC HEALTH AND THE AMBIENT ENVIRONMENT

EXECUTIVE SUMMARY

In accordance with 42 U.S.C. §7412(b)(3), Food & Water Watch ("FWW") submits this petition on behalf of petitioner organizations listed herein who are concerned about the health effects and adverse environmental impacts of unregulated carbon dioxide, methane and other climate impact emissions (collectively "greenhouse gases" or "GHGs") released by industries throughout the nation. This petition requests that the U.S. Environmental Protection Agency ("EPA" or "Agency") fulfill its statutory requirement to regulate a mix of six long-lived and directly-emitted greenhouse gases – carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6) (collectively "GHGs"), the primary gases responsible for observed and future global climate change – as Hazardous Air Pollutants ("HAPs"). This is especially necessary given that EPA has previously declared that such emissions pose a threat to human health and its mandate to regulate GHGs as a pollutant that has been firmly established by the U.S. Judiciary.[1]

The United Nations Intergovernmental Panel on Climate Change ("IPCC") and the U.S. Global Change Research Program ("USGCRP")[2] have stated unequivocally that emissions of GHGs are the primary driver of potentially catastrophic global climate change which threatens human health, ecosystem integrity, and the very underpinnings of human civilization, the effects of which we are beginning to see across the planet.[3] Petitioners request the listing of GHGs under § 112 of the Clean Air Act ("CAA") as the Agency, based upon a voluminous body of scientific research, has established in other proceedings that these six well-mixed long-lasting

[1] *Massachusetts v. EPA*, 549 U.S. 497 (2007); *Coalition for Responsible Regulation, et al. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012); *Util. Air Regulatory Group v. EPA*, 573 U.S. 302 (2014).

[2] A government wide research initiative consisting of the EPA and 12 other federal agencies.

[3] USGCRP (2017) *Climate Science Special Report: Fourth National Climate Assessment, Volume I*; USGCRP (2018) *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II*; IPCC (2013-2014) *Fifth Assessment Report of the Intergovernmental Panel on Climate Change (2013-2014).*

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GHGs cause or contribute to the endangerment of public health and welfare.[4] Such a finding, along with the voluminous evidence of the dire impacts of GHGs cited herein and elsewhere, has demonstrated that GHGs meet the statutory definition of a HAP under the Act. EPA must, therefore, list GHGs as HAPs under § 112 of the Act and immediately begin to take steps to establish strong emissions standards as required by these provisions.

LEGAL HISTORY OF U.S. GHG REGULATION

Recognizing the imminent threat that unregulated emissions of GHGs poses to human health and the continued habitability of the planet, a coalition of nineteen organizations filed a rulemaking petition in 1999 requesting EPA regulate GHG emissions from new motor vehicles under § 202 of the CAA.[5] Relying upon a 1998 legal opinion from EPA's General Counsel which stated that CO_2 emissions clearly met the definition of "air pollutant" under § 302(g) of the CAA, Petitioners argued that GHG emissions threatened public health and that it was technically feasible to reduce GHG emissions from light-duty vehicles; as such EPA must regulate GHG emissions.

After four years of consideration and public comment, on September 8, 2003, EPA published a notice denying the petition for rulemaking.[6] Within its denial, EPA asserted that the CAA did not authorize regulation of GHGs to deal with global climate change, and even if GHG regulation were permissible, the Agency had a number of policy reasons why it did not believe regulation of GHG emissions under the CAA was appropriate. Almost immediately following this denial, fourteen environmental organizations, twelve states, three cities and one U.S. territory filed a petition for review with the U.S. Court of Appeals on October 18, 2003. On July 15, 2005, the D.C. Circuit issued a split decision upholding EPA's denial of the petition. This decision was appealed to the U.S. Supreme Court.

On April 2, 2007, the Supreme Court issued its opinion in *Massachusetts v. EPA*, which held in a 5-4 vote that the appellants had standing, that EPA had authority to regulate GHG emissions from new motor vehicles under the Clean Air Act, that the reasons EPA gave for not regulating these emissions were "divorced from the statutory text" and that the EPA acted in an arbitrary and capricious manner in denying the 1999 Petition.[7] The Court stated that the CAA contained a "sweeping definition" of what constitutes an air pollutant that "embraces all airborne compounds of whatever stripe," and CO_2 and other GHGs "without a doubt" fit the statutory definition of "air pollutant" in the Act.[8] The decision further held that EPA "must ground its reasons for action or inaction in the statute," however, EPA had only provided "a laundry list of reasons not to regulate . . . [and] it is evident they have nothing to do with whether [GHG] emissions contribute to climate change."[9] EPA was strictly limited to determining whether GHG

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[4] U.S. EPA, *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, 74 Fed. Reg. 66,496 (Dec. 15, 2009) (hereinafter "Endangerment Finding").
[5] Specifically, the petition sought regulation of emissions of carbon dioxide, methane, nitrous oxide and hydrofluorocarbons.
[6] EPA, *Control of Emissions from New Highway Vehicles and Engines*, 68 Federal Register 52922, Sept. 8, 2003.
[7] 549 U.S. 497 (2007).
[8] *Id.*
[9] *Id.*

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emissions contribute to climate change and whether sufficient information existed to make a finding that climate change "may reasonably be anticipated to endanger public health and welfare," as provided in CAA § 202(a)(1).[10] These same restrictions on EPA discretion stand today for its determinations related to the listing of GHGs as HAPs.

Following the adverse Supreme Court ruling and a prolonged period of public comment, EPA, through issuance of its December 2009 Endangerment Finding, determined that GHGs endanger both the public health and the public welfare of current and future generations. This finding was based upon a significant body of scientific literature that existed at the time. Research in the decade since that finding has established broad scientific consensus and agreement that communities and economies need to decarbonize within the next two decades to arrest global warming at 1.5°C, as a global average.[11] Warming has already reached 1.0°C since pre-industrial times.[12]

Within the Agency's 2009 Endangerment Finding, the EPA stated that "[t]he Administrator finds that elevated concentrations of greenhouse gases in the atmosphere *may reasonably be anticipated to endanger the public health and to endanger the public welfare of current and future generations*. The Administrator is making this finding specifically with regard to six key directly-emitted, long-lived and well-mixed greenhouse gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride."[13]

Under EPA's interpretation of the CAA, once GHGs became a regulated pollutant under the Act, then Prevention of Significant Deterioration ("PSD") and Title V permitting provisions immediately apply to GHG emissions from stationary sources.[14] As a result, given that the statutory emissions limits for when a stationary source would require permitting were significantly lower than the large volume of GHGs emitted by regulated industries, EPA issued a series of regulations to address these issues – the "Timing Rule" which extended compliance times and the "Tailoring Rule" which raised the statutory threshold for when a major source would require permitting. These regulations were promptly challenged by many industry petitioners. However, on June 26, 2012, the U.S. Court of Appeals for the D.C. Circuit issued a consolidated opinion rejecting all challenges and upholding all of EPA's GHG regulations.[15] The court concluded that the Endangerment Finding was neither arbitrary nor capricious and that EPA had correctly interpreted the applicable CAA provisions. Petitioners promptly sought a Writ of Certiorari with the U.S. Supreme Court; this appeal was rejected in 2013.

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[10] *Id.*

[11] *See* IPCC (2018) *Global Warming of 1.5°C,* Chapter 2 at 2-5. Pathways not inconsistent with 1.5°C (using tightest budget in parentheses) must have net-zero emissions within 25 +/- 15-20 years. More localized warming varies considerably across seasons and regions, globally and within the United States; *see* Figure Annex 1.A.1; *see also* Appendix A attached.

[12] *See* IPCC (2018) *Global Warming of 1.5°C.*

[13] Endangerment Finding at 66,516. (emphasis added)

[14] EPA's PSD regulations define a regulated New Source Review pollutant to include "[a]ny pollutant that otherwise is subject to regulation under the Act" and requires Best Available Control Technology ("BACT") for "each regulated NSR pollutant," 40 C.F.R. 52.21(b)(50) and (j). The Clean Air Act requires BACT for "each pollutant subject to regulation under this [Act]," CAA §§ 165(a)(4) and 169.

[15] *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102 (2012).

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However, in October 2013, the Supreme Court consolidated a number of GHG-related challenges into one proceeding and issued its opinion in *Util. Air Regulatory Group v. EPA* on June 23, 2014, which upheld in part and reversed in part the June 2012 holding of the D.C. Circuit in *Coalition for Responsible Regulation*.[16] This decision ultimately upheld EPA's mandate to regulate GHG emissions, but narrowed the scope of PSD permitting on GHGs and vacated the "Tailoring Rule". While holding that the CAA's statutory emissions limits were unambiguous, the Supreme Court held that the CAA neither compelled nor permitted EPA's interpretation that a source might be required to obtain a permit under the PSD program and Title V of the CAA on the sole basis of its potential GHG emissions above the statutory threshold for these air pollutants. However, the court continued, EPA reasonably interpreted the Act to require best available control technology ("BACT") for GHGs emitted by sources that were otherwise subject to PSD review because of their emission of other more conventional pollutants.

Following this series of cases and having already established regulations for mobile sources of GHGs under § 202 of the CAA, EPA turned its attention towards reducing emissions within the bulk electric grid. The Clean Power Plan was announced by President Obama in a speech at the White House on August 3, 2015 and published on October 23, 2015; it was meant to serve as the first standard aimed at cutting carbon emissions from the power sector – the second largest source of U.S. emissions after the transportation sector.[17]

However, this regulation was immediately met with litigation by industry and a number of states. On February 9, 2016, the U.S. Supreme Court ordered the EPA to halt enforcement of the plan until a lower court ruled in the lawsuit against the plan – an unusual move by the Court and the first time the Supreme Court had ever stayed a regulation before a judgment by the lower Court of Appeals.[18] Currently, the D.C. Circuit Court case[19] is held in abeyance, pending repeal and replacement of the Clean Power Plan by the Agency in accordance with an Executive Order directing EPA to review the rule while considering certain new policies.[20] Shortly thereafter, Administrator Scott Pruitt announced EPA's review of the Rule in accordance with the Executive Order.[21] Following this review, on October 16, 2017, EPA issued a proposed rule that would repeal the Clean Power Plan.[22]

Despite the proposed repeal, to this date, the Clean Power Plan has not been repealed by the EPA. The Agency has continually sought for legal challenges to the rule be held in abeyance while it develops a replacement rather than a straight repeal of the policy.[23] To serve as a replacement of the Clean Power Plan, EPA has recently proposed the Affordable Clean Energy

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[16] 573 U.S. 302 (2014)
[17] EPA, *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 80 Fed. Reg. 64,661, Dec. 22, 2015. (hereafter "Clean Power Plan")
[18] *Chamber of Commerce, et al. v. EPA, et al.*, 136 S.Ct. 999 (2016).
[19] D.C. Dist. Case No. 15-cv-1363.
[20] Executive Office of the President, *Promoting Energy Independence and Economic Growth*, 82 Fed. Reg. 16,093, 16,095 (March 28, 2017); E.O. 13783 of Mar 28, 2017.
[21] EPA, *Review of the Clean Power Plan*, 82 Fed. Reg. 16,329 (Apr. 4, 2017).
[22] EPA, *Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 82 Fed. Reg. 48035 (Oct. 16, 2017).
[23] *State of West. Va. v. U.S. EPA*, D.C. Cir., No. 15-1363, Doc. #1756867, Oct. 24, 2018.

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("ACE") Rule for public comment.[24] Whereas the Clean Power Plan sought to cut emissions from the electricity sector by an estimated 32 percent below 2005 levels by 2030 — a tremendously modest first step[25] – the ACE Rule proposes to reduce emissions by 2030 to only 1.5% less than if there *were no Clean Power Plan at all.*

The ACE Rule essentially amounts to codifying the status quo as a means of preventing coal plant retirements despite calls by the UN's IPCC and the USGCRP for the nation to drastically reduce its emissions by 2030 to prevent the worst effects of climate change. This is particularly significant given that the U.N. Environment Programme has recently released a report stating that there is a significant gap between necessary emissions reductions to avoid the worst effects of global climate change and the achieved reductions by member nations,[26] a gap that would only be widened by EPA's adoption of the ACE Rule, since the proposed emissions initiative is severely lacking the necessary efforts needed to prevent the worst effects of a changing climate.

EPA IS REQUIRED TO REGULATE THE EMISSIONS OF GREENHOUSE GASES AS HAZARDOUS AIR POLLUTANTS.

Through a series of court cases,[27] an endangerment finding,[28] and subsequent EPA regulations,[29] it has been clearly established that (1) GHGs pose a clear and imminent threat to human health and adverse environmental effects, (2) EPA is mandated to regulate GHGs as a pollutant under the CAA, and (3) that EPA must list GHGs as HAPs in accordance with the definition of such within § 112(b) of the Clean Air Act, 42 U.S.C. § 7412(b).

Under CAA § 112(b), the EPA "Administrator shall periodically review" the HAP list and "where appropriate, revise such list by rule, adding pollutants which present, or may present, through inhalation *or other routes of exposure*, a threat of adverse human health effects… or *adverse environmental effects* whether through ambient concentrations, bioaccumulation, deposition, or otherwise…" (emphasis added). By employing the verb "shall," Congress vested a

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[24] EPA, *Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program*, 83 Fed. Reg. 44746 (Aug. 31, 2018).

[25] According to the IPCC, limiting global warming to 1.5°C would require "rapid and far-reaching" transitions in land, energy, industry, buildings, transport, and cities. Global net human-caused emissions of carbon dioxide (CO_2) would need to fall by about 45 percent from 2010 levels by 2030, reaching 'net zero' around 2050. This means that any remaining emissions would need to be balanced by removing CO2 from the air. This is something the ACE rule fails to facilitate by a tremendous margin. Intergovernmental Panel on Climate Change ("IPCC") (2018) *Global Warming of 1.5°C*, IPCC, Switzerland. Available at http://www.ipcc.ch/pdf/special-reports/sr15/sr15_spm_final.pdf

[26] UNEP (2018) *The Emissions Gap Report 2018*. United Nations Environment Programme, Nairobi. https://www.unenvironment.org/resources/emissions-gap-report-2018

[27] *Massachusetts v. EPA*, 549 U.S. 497 (2007); *Coalition for Responsible Regulation, et al. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012); *Util. Air Regulatory Group v. EPA*, 573 U.S. 302 (2014)

[28] U.S. EPA, *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, 74 Fed. Reg. 66,496 (Dec. 15, 2009) (hereafter "Endangerment Finding").

[29] EPA, *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 80 Fed. Reg. 64,661, Dec. 22, 2015; EPA, NHSTA, *2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards*, 77 Fed. Reg. 62624, Oct. 15, 2012.

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non-discretionary duty in EPA, requiring the Agency, where appropriate, to revise its list of HAPs and add air pollutants that endanger public health and threaten adverse environmental effects.[30]

This is significant because the CAA further defines an "adverse environmental effect" as "any significant and widespread adverse effect, which may reasonably be anticipated, *to wildlife, aquatic life, or other natural resources*, including adverse impacts on *populations of endangered or threatened species or significant degradation of environmental quality over broad areas*."[31] It is evident through the Endangerment Finding, and an overwhelming and undisputable body of scientific literature,[32] that GHGs pose a significant and widespread threat of adverse effects to human health, wildlife, aquatic life, natural resources, and global ecological systems over broad areas. As such, the EPA is charged with a non-discretionary duty to list GHGs as HAPs under § 112 of the CAA.

1. GHGs pose a clear and imminent threat to human health and adverse environmental effects, per 42 U.S.C. §7412(b)

Several CAA provisions authorize or require action if EPA finds that air pollutants from a specific type or category of sources cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare and cause adverse environmental effects.[33] As the EPA has admitted itself in its Advanced Notice of Proposed Rulemaking for its Endangerment Finding, an "endangerment finding for GHG emissions under one provision of the Act could have a significant and direct impact on decisions under other CAA sections containing similar endangerment language."[34] It is evident from the EPA's own Endangerment Finding and the compiled scientific literature that GHGs meet the statutory definition of a HAP since the unregulated emission of these gases present the threat of adverse human health and environmental effects.

As demonstrated in Figures 1, 2, and 3, historical data obtained through ice core samples and modern air sampling from around the world show that current atmospheric concentrations of the two most important directly emitted, long-lived greenhouse gases (carbon dioxide and methane) are well above the natural range of atmospheric concentrations compared to at least the last 650,000 years.[35] Such an elevated concentration of heat trapping gases in the atmosphere has never been seen by anatomically modern *Homo sapiens*.[36] These concentrations continue to grow

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[30] *Sierra Club v. Jackson*, 648 F.3d 848, 856 (D.C. Cir. 2011) ("As we have repeatedly noted, 'shall' is usually interpreted as 'the language of command.'").
[31] 42 U.S.C. § 7412(a)(7) (emphasis added).
[32] *See* Appendix A.
[33] 42 U.S.C. §§ 7408, 7411, 7412, 7521
[34] EPA, *Regulating Greenhouse Gas Emission Under the Clean Air Act*, 73 Fed. Reg. 44354, 44420, July 30, 2008.
[35] Cook J, et al. (2016) *Consensus on consensus: a synthesis of consensus estimates on human-caused global warming*, Environmental Research Letters, Vol. 11 No. 4. DOI:10.1088/1748-9326/11/4/048002; Dlugokencky E J, Steele LP, Lang PM, Masarie KA (1994), *The growth rate and distribution of atmospheric methane*, J. Geophys. Res., Vol. 99, pp. 17021– 17043. https://doi.org/10.1029/94JD01245.
[36] Smithsonian *National Museum of Natural History, The Age of Humans: Evolutionary Perspectives on the Anthropocene*. http://humanorigins.si.edu/research/age-humans-evolutionary-perspectives-anthropocene#footnotev_l2ch4o0

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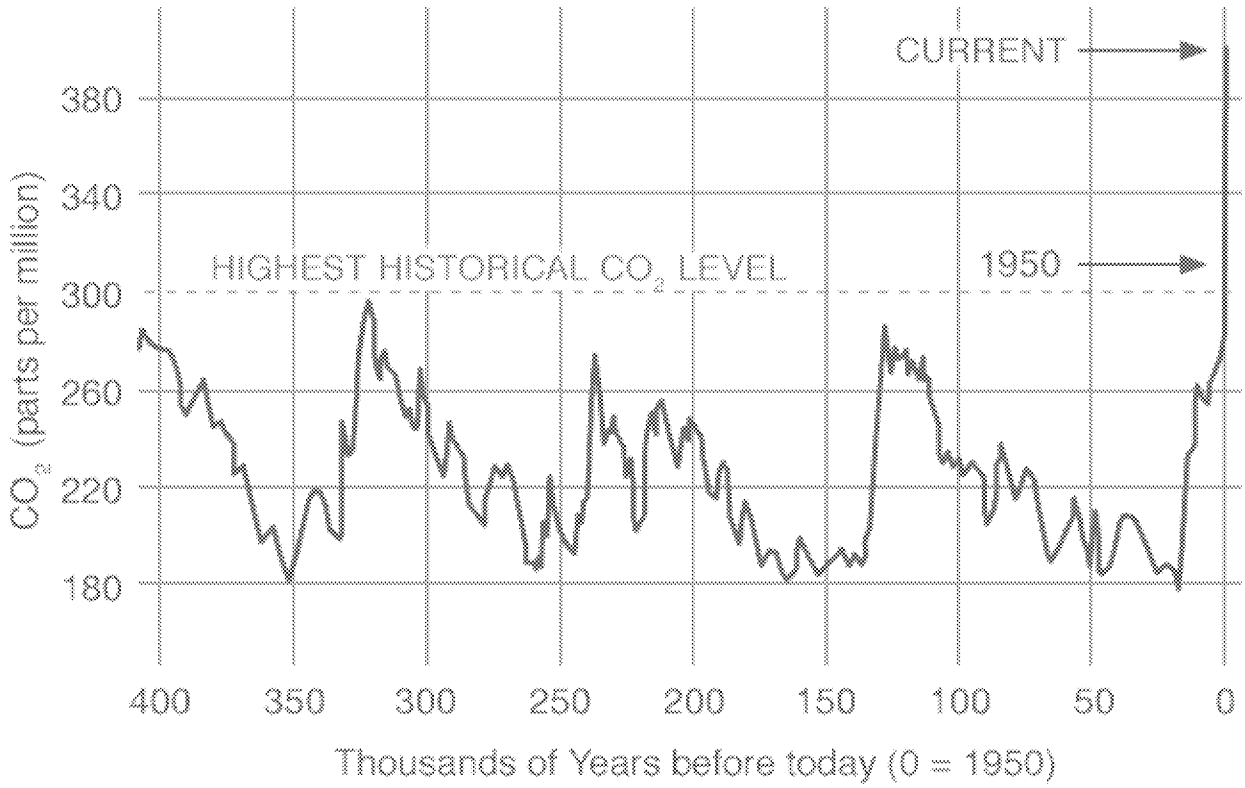
at a significant pace due to the fact that anthropogenic emissions are outpacing the rate at which greenhouse gases are removed from the atmosphere by natural processes over timescales of decades to centuries.[37] Furthermore, EPA has definitively found that "these high atmospheric concentrations of greenhouse gases are the unambiguous result of human activities"[38] with the EPA further stating that "almost all of this increase [in carbon dioxide and methane] is due to human activities."[39] If drastic action is not taken promptly, IPCC projections estimate a mean surface temperature increase of 3.7°C to 4.8°C by 2100[40] – which is hotter than Earth has been since the Miocene, over 14 million years ago.[41]

Figure 1[42]

NOAA data shows that anatomically modern *Homo sapiens* have never seen CO_2 concentrations at this level. Present CO_2 levels fall outside of normal geologic fluctuation.



[37] Endangerment Finding at 66,517
[38] *Id.*
[39] EPA, *Climate Change Indicators: Atmospheric Concentrations of Greenhouse Gases.*
[40] IPCC. "Summary for Policymakers." *Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change.* (2014)
[41] Millennium Alliance for Humanity and Biosphere (2013) *Scientific Consensus on Maintaining Humanity's Life Support Systems in the 21st Century Information for Policy Makers.*
[42] Data source: Reconstruction from ice cores. Credit: NOAA. Available at https://climate.nasa.gov/vital-signs/carbon-dioxide/

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Figure 2[43]

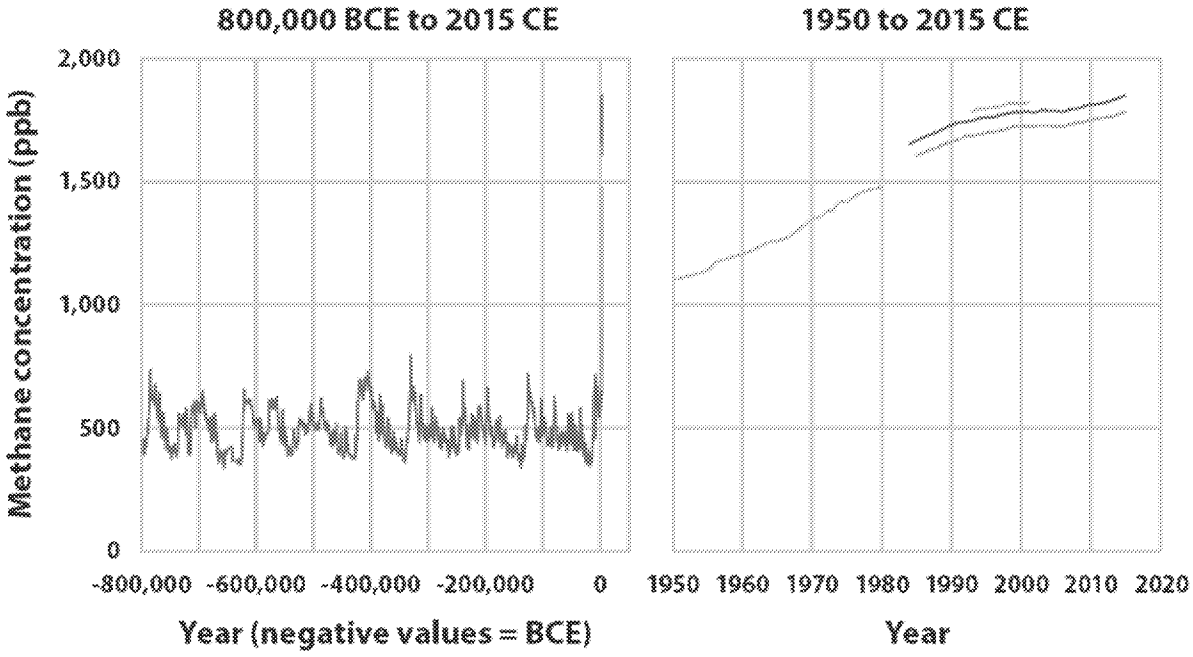
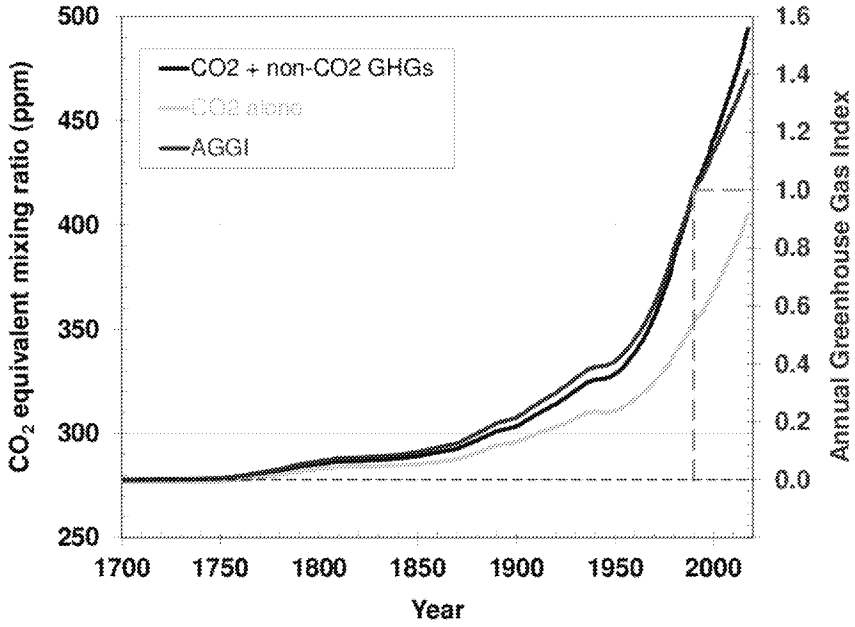


Figure 3[44]



[43] This figure shows concentrations of methane in the atmosphere from 800,000 years ago through 2015, measured in parts per billion (ppb). The data come from a variety of historical ice core studies and recent air monitoring sites around the world. EPA, *Global Atmospheric Concentrations of Methane Over Time*, available at https://www.epa.gov/climate-indicators/climate-change-indicators-atmospheric-concentrations-greenhouse-gases#ref6.

[44] NOAA data shows that GHG emissions directly coincide with global industrialization. *See* NOAA, Annual Greenhouse Gas Inventory, https://www.esrl.noaa.gov/gmd/aggi/.

This exponential rise in GHG emissions since the dawn of the industrial revolution poses an existential threat to human civilization and the continued existence of numerous species and ecosystems.[45] Moreover, EPA has already acknowledged that the unregulated emission of GHGs into the atmosphere poses a direct and imminent threat to human health and the environment, stating that "[a]fter compiling and considering a considerable body of scientific evidence", research clearly demonstrates that greenhouse gases trap heat on earth that would otherwise dissipate into space and that the "root cause" of the recently observed climate change is "very likely" the observed increase in anthropogenic greenhouse gas emissions.[46] Moreover, EPA found that the "emissions of these [GHGs] contribute to the total greenhouse gas air pollution, and thus to the climate change problem, which is reasonably anticipated to endanger public health and welfare."[47]

These EPA findings have been echoed by the USGCRP, a collaborative effort of 13 federal agencies which includes EPA, stating that "[t]he global warming of the past 50 years is due primarily to human-induced increases in heat-trapping gases [GHGs]. Human 'fingerprints' also have been identified in many other aspects of the climate system, including changes in ocean heat content, precipitation, atmospheric moisture, and Arctic sea ice."[48] The findings of these many agency scientists and experts in climate science counter, and render meaningless, recent comments by former EPA Administrator Scott Pruitt baselessly refuting the scientific consensus of anthropogenic climate change. To date, the Agency has not produced any scientific evidence to support his, or anyone's, contention that climate change is not impacted by anthropogenic GHG emissions.[49]

In light of the dangers posed by the emission of GHGs, in 2009 EPA found that "the changes taking place in our atmosphere as a result of the well-documented buildup of greenhouse gases due to human activities are changing the climate at a pace and in a way that *threatens human health, society, and the natural environment*."[50] The EPA did not make this finding of endangerment lightly, as it relied upon "a very large and comprehensive base of scientific information that has been developed over many years through a global consensus process involving numerous scientists from many countries and representing many disciplines."[51] Moreover, since EPA made its Endangerment Finding in 2009, additional scientific evidence has continued to improve our understanding of climate change and its impacts, and has further reinforced the EPA's conclusion that GHG emissions pose a grave danger to current and future generations.[52]

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[45] IPCC (2018) *Global Warming of 1.5°C.* http://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf

[46] *Coalition for Responsible Regulation, et al. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012), *citing* Endangerment Finding at 66,518.

[47] Endangerment Finding at 66,499.

[48] USGCRP (2009) *Global Climate Change Impacts in the United States*, available at https://downloads.globalchange.gov/usimpacts/pdfs/climate-impacts-report.pdf.

[49] Miranda Green, *EPA: Pruitt didn't rely on science when making comment about climate change*, The Hill, August 7, 2018, https://thehill.com/policy/energy-environment/400707-epa-admits-pruitt-didnt-rely-on-science-when-making-comment-about

[50] Endangerment Finding at 66,499. [emphasis added]

[51] *Id*. at 66,506.

[52] "Our understanding of how global warming influences the odds of heat waves, droughts, heavy precipitation, storm surge flooding, and wildfires has increased dramatically in the last decade, as has our understanding of the

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The EPA, on its own and as part of a broader federal initiative, has already concluded that greenhouse gas pollution endangers the public welfare, which includes the basic infrastructure of a developed human civilization. The environmental and welfare effects demonstrating this endangerment include:[53]

- Food production and forestry: Climate change impacts—including increased temperatures, droughts and precipitation patterns, and extreme storms and unseasonable events—are causing adverse effects on U.S. agriculture. Climate change further endangers U.S. forestry by increasing the size and frequency of wildfires, insect outbreaks, migration of climate-sensitive species, and tree mortality, and will continue to contribute to these effects.
- Access to water: Climate change is reducing snowpack and precipitation, which threatens the adequacy of water supplies across large areas of the United States, particularly in the arid West. Rising water temperatures and more frequent flood events exacerbate water pollution events, like algal blooms in water supplies, increasing risks to public health and ecosystems.
- Sea level rise: The sea level along much of the U.S. coast is rising, and the rate of change is expected to increase. Sea level rise increases the risk of storm surge and flooding and causes erosion and loss of wetlands, threatening coastal communities. Sea level rise is also already threatening the U.S. Naval Station in Norfolk, Virginia.[54]
- Energy and infrastructure: Climate change is expected to affect energy demand for cooling and adversely impact energy production that relies on water for cooling capacity and hydropower generation.[55] U.S. infrastructure—including energy transmission, water infrastructure, roads, bridges, airports, and homes—is vulnerable to extreme weather events, permafrost melt, sea level rise, and coastal erosion associated with climate change.
- Ecosystems and wildlife: Climate change is already affecting natural environments by causing changes in plant life cycles and shifting the habitat ranges and migration patterns of animals. These changes will fundamentally alter U.S. and global ecosystems, resulting in collapsing global biodiversity and devastating the ecosystem goods and services on which current and future generations depend.

The public health effects supporting this determination include:[56]

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related impacts, such as how hot conditions affect mental health, violence, and economic productivity." Woods Hole Research Center, *New study says scientific basis for EPA's Endangerment Finding is stronger than ever*. Phys.org, Dec. 13, 2018. https://phys.org/news/2018-12-scientific-basis-epa-endangerment-stronger.html. *See also* Duffy PB, Field CB, Diffenbaugh, et al. (2018) *Strengthened scientific support for the Endangerment Finding for atmospheric greenhouse gases*. Science, Pub. Online. http://doi.org/10.1126/science.aat5982. *See also* Appendix A.

[53] *See* Appendix A.

[54] Union of Concerned Scientists, *The US Military on the Front Lines of Rising Seas: Exposure to Coastal Flooding at Naval Station Norfolk, Virginia*, July 2017. Available at https://www.ucsusa.org/sites/default/files/attach/2016/07/front-lines-of-rising-seas-naval-station-norfolk.pdf

[55] U.S. EPA, *Climate Impacts on Energy*, https://19january2017snapshot.epa.gov/climate-impacts/climate-impacts-energy_.html

[56] *See* Appendix A.

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- Direct temperature effects: Extremely hot days and heat waves are becoming more frequent, and are projected to intensify. Heat causes the most weather-related deaths in the United States, and projected warming is expected to increase heat-related mortality.
- Air quality effects: There is consistent evidence that climate change will increase ground-level ozone pollution (*i.e.*, smog), which causes respiratory illnesses and aggravates asthma.
- Extreme weather events: Heavy precipitation events and severe storms are expected to become more frequent and intense. The resulting flooding and storm surge will put more people at risk of death or injury and increase risks of infectious diseases.
- Pathogenic and allergenic effects: Warmer temperatures are likely to increase the spread of food- and waterborne illnesses and insect-borne diseases. Climate change may also affect the prevalence and severity of allergy symptoms by increasing pollen and altering the distribution of aeroallergens and the plants that produce them.

Most recently, the USGCRP released the second volume of its Fourth National Climate Assessment on November 23, 2018. Whereas the first volume of this report concluded that there is "no convincing alternative explanation" for the changing climate other than "human activities, especially emissions of greenhouse gases",[57] the second volume delved deeper into the financial and public health effects of projected climate change.[58] The report stated that "[s]cientists have understood the fundamental physics of climate change for almost 200 years" and that "observations collected around the world provide significant, clear, and compelling evidence that global average temperature is much higher, and is rising more rapidly, than anything modern civilization has experienced, with widespread and growing impacts."[59]

These growing impacts include threats to aquatic life, with the USGCRP stating that the shellfish industry may expect to lose $230 million by the end of the century due to ocean acidification, which is already killing off shellfish and corals.[60] Algal blooms that deplete dissolved oxygen which can lead to large-scale fish die-offs, cities cutting off water to residents, or states having to close fisheries – like those that triggered a state of emergency in Florida in August 2018 and led to a "do not drink advisory" in Toledo, Ohio in 2014[61] – will become more frequent due to climate change.[62] Along the US coasts, public infrastructure and $1 trillion in national wealth held in real estate are threatened by rising sea levels, flooding, and storm

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[57] U.S. Global Change Research Program (2017) *Climate Science Special Report: Fourth National Climate Assessment, Volume I* [Wuebbles, D.J., D.W. Fahey, K.A. Hibbard, D.J. Dokken, B.C. Stewart, and T.K. Maycock (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, 470 pp., https://doi.org/10.7930/J0J964J6

[58] USGCRP (2018) *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II* [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA. https://doi.org/10.7930/NCA4.2018.CH1.

[59] *Id.* at Ch. 1: Overview

[60] *Id.* at Ch. 2: Our Changing Climate; Ch. 3: Water; Ch. 9: Oceans and Marine Resources; Ch. 11: Built Environment, Urban Systems, and Cities.

[61] Tryggvi Adalbjornsson and Melissa Gomez, *A Toxic Tide Is Killing Florida Wildlife,* The New York Times, July 30, 2018, https://www.nytimes.com/2018/07/30/climate/florida-red-tide-algae.html; Jane J. Lee, *Driven by Climate Change, Algae Blooms Behind Ohio Water Scare Are New Normal*, National Geographic, August 6, 2014. https://news.nationalgeographic.com/news/2014/08/140804-harmful-algal-bloom-lake-erie-climate-change-science/

[62] USGCRP (2018) *Impacts, Risks, and Adaptation in the United States,* at Ch. 9: Oceans and Marine Resources; Ch. 14: Human Health.

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surges.[63] Moreover, "many impacts, including losses of unique coral reef and sea ice ecosystems, can only be avoided by significantly reducing global emissions of carbon dioxide and other greenhouse gases."[64]

Meanwhile land impacts loom large as the number of days over 100°F are expected to multiply; Chicago, where these days are currently rare, could start to resemble Phoenix or Las Vegas, with up to 60 days of these dangerous temperatures annually.[65] This in turn will impact U.S. agricultural production, as farms in parts of the Midwest will be able to produce less than 75% of the corn they produce today, and the southern part of the region could lose more than 25% of its soybean yield.[66] This heat will also further exacerbate the wildfire season, which could consume up to six times more forested area annually by 2050 in some parts of the U.S.[67]

The increased frequency and scale of wildfires and the rise in average temperatures will "increase the risk of unhealthy air quality in the future across the Nation in the absence of further air pollution control efforts."[68] However, the increase in air pollution is not unavoidable, as the USGCRP states that "[c]ontrolling these common [GHG] emission sources would both mitigate climate change and have immediate benefits for air quality and human health."[69] This is "because methane is both a [GHG] and an ozone precursor," as such "reductions of methane emissions have the potential to simultaneously mitigate climate change and improve air quality."[70] Moreover, "mitigating GHGs can lower emissions of PM [particulate matter], ozone and PM precursors, and other hazardous pollutants, reducing the risks to human health from air pollution."[71]

It is made glaringly clear by the findings of the USGCRP and through the attached scientific research[72] that climate change caused by human GHG emissions "threat[ens]… adverse human health effects… [and] adverse environmental effects", which cause include "significant and widespread adverse effect[s]… to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas."[73] Given the extensive body of evidence demonstrating the existential threat GHG emissions pose to human health, welfare, environmental quality and even the basic underpinnings of human civilization, it is *imperative* that EPA adopt this rulemaking petition.

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[63] *Id.* at Ch. 8: Coastal Effects.
[64] *Id.* at Ch. 7: Ecosystems and Ecosystem Services.
[65] *Id.* at Ch. 21: Midwest
[66] *Id.* at Ch. 10: Agriculture and Rural Communities
[67] *Id.* at Ch. 6: Forests.
[68] *Id.* at Ch. 13: Air Quality
[69] *Ibid.*
[70] *Ibid.*
[71] *Ibid.*
[72] *See* Appendix A
[73] 42 U.S.C. § 7412(a)(7); 42 U.S.C. § 7412(b).

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2. EPA has a mandate to regulate GHGs under §112 of the Clean Air Act

The U.S. Supreme Court held in *Massachusetts v. EPA* that EPA had a "statutory obligation" to regulate harmful GHG emissions as an air pollutant if they were determined to endanger human health.[74] "Under the clear terms of the Clean Air Act," the Court concluded, "EPA can avoid taking further action only if it determines that greenhouse gases *do not* contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do."[75] In this instance, EPA, both by itself and jointly with the USGCRP, has fully established that GHGs contribute to climate change and that such change poses a direct threat to human health and the environment, therefore they must regulate said emissions.

Moreover, the Supreme Court observed that "[w]hile the Congresses that drafted [the Clean Air Act] might not have appreciated the possibility that burning fossil fuels could lead to global warming,[76] they did understand that without regulatory flexibility, changing circumstances and scientific developments would soon render the Clean Air Act obsolete." As such, the Court found that the broad language within the Act "reflects an intentional effort to confer the flexibility necessary to forestall such obsolescence."[77]

In direct response to the Supreme Court's directive, EPA quickly began working with the Department of Energy and the Department of Agriculture to draft proposed regulations that would reduce GHGs emitted from motor vehicles. Shortly thereafter, the Agencies issued an Advanced Notice of Proposed Rulemaking Endangerment Finding for GHGs which noted that if the EPA issued a finding of endangerment under § 202(a) of the CAA, then "language similarities of various sections of the CAA likely would require EPA also to regulate GHG emissions from stationary sources."[78] One such regulatory avenue acknowledged by the Agencies was listing GHGs as HAPs under § 112 of the CAA.[79] While the Agencies felt that regulation of GHGs under §112 would be overly burdensome on industry, the D.C. Circuit Court of Appeals has held that the plain language of the CAA "does not leave room for EPA to consider as part of the endangerment inquiry the stationary-source regulation triggered by an endangerment finding, even if the degree of regulation triggered might at a later stage be characterized as 'absurd.'"[80] Given that the determination of whether GHGs meet the statutory definition of HAPs would constitute a finding of endangerment, EPA may not consider the resulting regulatory burdens within its listing determination.

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[74] 549 U.S. 497, 534 (2007).
[75] *Id.* at 533. (emphasis added)
[76] Despite the Court's statement, every U.S. President since 1961 has been warned about the potential harm of climate change. For example, in 1965 President Johnson was told that "[c]arbon dioxide is being added to the earth's atmosphere by the burning of coal, oil and natural gas at the rate of 6 billion tons a year… This will modify the heat balance of the atmosphere to such an extent that marked changes in climate, not controllable through local or even national efforts, could occur." *See* Benjamin Hulac, *Every president since 1961 was warned about climate change*, E&E News, Nov. 6, 2018; *see also* White House, President Johnson's Science Advisory Committee (1965) *Restoring the Quality of Our Environment*, pp 112-127.
[77] 549 U.S. at 532.
[78] EPA, *Regulating Greenhouse Gas Emissions Under the Clean Air Act; Advanced Notice of Proposed Rulemaking*, 73 Fed. Reg. 44367 (July 30, 2008).
[79] *Ibid.*
[80] *Coalition for Responsible Regulation, et al. v. EPA*, 684 F.3d 102, 119 (D.C. Cir. 2012), quoting *Mass. v. EPA*.

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The EPA's statutory mandate to regulate GHGs was only further solidified by the D.C. Circuit's opinion in *Coalition for Responsible Regulation, et al. v. EPA*, an industry challenge to EPA's regulation of GHGs under § 202 of the CAA. Given that permitting of major emitters of GHGs was required under the Title V requirements and the PSD program when the Agency issued its 2009 Endangerment Finding, the Court went on to state that "Congress made perfectly clear that the PSD program was meant to protect against precisely the types of harms caused by greenhouse gases."[81] The Court found this to be the case because the PSD "Congressional declaration of purpose" provision provides, in relevant part, that the purpose of this section is "to protect public health and welfare from any actual or potential adverse effect which in the Administrator's judgment may reasonably be anticipated to occur from air pollution."[82] The CAA further provides that "[a]ll language referring to effects on welfare includes, but is not limited to, *effects on ... weather ... and climate*."[83] The D.C. Circuit further concluded that EPA had properly employed its agency expertise in declaring that "anthropogenically induced climate change" was likely to threaten the public welfare through, among other things, "extreme weather events."[84] Thus, one express purpose of the program is to protect against the harms caused by GHGs.

While the Supreme Court has vacated certain permitting provisions for GHG regulations at issue in *Coalition for Responsible Regulation*, EPA's mandate to regulate GHG emissions pursuant to the PSD program and Title V of the CAA still stands and was reinforced by the Court's decision in *Util. Air Regulatory Group v. EPA*.[85]

Therefore, given that GHGs meet the statutory definition of a HAP and EPA has the explicit requirement to regulate GHGs, for EPA to deny this petition would be to intentionally disregard non-discretionary language within the CAA, ignore judicial decrees to address such air pollution, and would be in direct contravention of Congressional intent.

3. EPA must list GHGs as HAPs in accordance with §112 of the Clean Air Act

Under CAA § 112, "the Administrator *shall*[86] periodically review the list" of HAPs and "where appropriate, revise such list by rule, adding pollutants which present, or may present, through inhalation *or other routes of exposure*, a threat of adverse human health effects … or *adverse environmental effects* whether through ambient concentrations, bioaccumulation, deposition, or otherwise[.]"[87] The statute further allows for any member of the public to petition for listing of new pollutants to the list of HAPs by presenting a "showing … that there is adequate data on the health or environmental defects of the pollutant or other evidence adequate to support the petition."[88] Upon receipt of this petition, the Administrator has 18 months to

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[81] *Id.* at 135.
[82] *Id.* at 135-6, citing 42 U.S.C. § 7470(1).
[83] *Ibid.*, citing 42 U.S.C. § 7602(h) (emphasis added).
[84] *Ibid.*
[85] 573 U.S. 302 (2014).
[86] By using the word "shall", Congress intended this to be a non-discretionary duty of the Administrator. See *Sierra Club v. Jackson*, 648 F.3d 848, 856 (D.C. Cir. 2011).
[87] 42 U.S.C. §7412(b)(2) (emphasis added).
[88] 42 U.S.C. §7412(b)(3)(A).

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review the science supporting this petition, and "shall either grant or deny the petition by publishing a written explanation of the reasons for the Administrator's decision."[89] Moreover, "EPA must ground its reasons for action or inaction in the statute rather than on reasoning divorced from the statutory text."[90]

"The Administrator may not deny a petition solely on the basis of inadequate resources or time for review."[91] Upon review of the body of evidence, "[t]he Administrator shall add a substance to the list upon a showing by the petitioner … that the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance *are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects*."[92]

To meet this statutory requirement, Petitioners have attached an exhaustive list of research produced by the EPA itself, the United Nations, the USGCRP, the U.S. Dep't of Defense, the National Academy of Sciences, the Center for Climate and Security, the Environment and Security Initiative, University of Cambridge's Centre for Risk Studies, the U.K.'s HM Treasury, and numerous scientific researchers in a plethora of disciplines from around the world detailing the adverse human health and environmental effects of climate change and GHGs. Moreover, the USGCRP has found that "[r]educing greenhouse gas emissions would benefit the health of Americans in the near and long term. By the end of this century, thousands of American lives could be saved and hundreds of billions of dollars in health-related economic benefits gained each year under a pathway of lower greenhouse gas emissions."[93] Listing and regulating GHGs, substances that very clearly meet the statutory definition of HAPs, is that pathway to lower GHG emissions. We hereby incorporate the contents and findings of these research papers into this Petition by reference.

According to the Supreme Court, the only legally permissible way for EPA to avoid listing emissions of GHGs as regulated air pollutants would be to show "scientific uncertainty… so profound that it precludes EPA from making a reasoned judgment as to whether greenhouse gases contribute to global warming." However, given the determination of the 2009 Endangerment Finding and the Agency's efforts as part of the USGCRP, and the vast body of scientific research establishing the impacts of GHG's on the planet, such uncertainty simply does not exist. Furthermore, a broad global consensus of scientific professionals – over 97% of actively publishing climate scientists – agree that climate-warming trends over the past century are due to human activities, primarily through the emissions of GHGs.[94] Moreover, in response to a FOIA request seeking all EPA research that showed that human activity was *not* the primary driver of global climate change, EPA was unable to produce *any* evidence contrary to the consensus of the scientific community, the United Nations, and the USGCRP.[95]

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[89] 42 U.S.C. §7412(b)(2).
[90] *Util. Air Regulatory Group v. EPA*, 573 at 391 (citations omitted).
[91] 42 U.S.C. §7412(b)(3)(A).
[92] 42 U.S.C. §7412(b)(3)(B) (emphasis added).
[93] USGCRP, *Volume II*, at Ch. 14: Human Health.
[94] NASA, *Scientific consensus: Earth's climate is warming*, https://climate.nasa.gov/scientific-consensus/
[95] Charles S. Clark, *EPA Search for Pruitt-Cited Climate Studies Comes Up Dry*, Government Executive, Oct. 11, 2018, https://www.govexec.com/management/2018/10/epa-search-pruitt-cited-climate-studies-comes-dry/151956/?oref=river.

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In 2003, EPA rejected a rulemaking petition to regulate GHGs on grounds that have since been ruled illegal by the Supreme Court, a decision upheld in subsequent challenges.[96] As EPA has previously been found to have improperly denied meritorious attempts to compel the Agency to regulate GHG emissions, it must look only to whether GHGs meet the plain language statutory definition of a HAP – something that the Agency's own research, both individually and in conjunction with the USGCRP, has clearly demonstrated. The overwhelming body of scientific literature clearly demonstrates that GHGs meet the CAA § 112 definition of HAPs, especially since insertion of White House policy considerations are impermissible in EPA's decision-making process on the listing of GHGs as HAPs.[97] For these reasons, and those further addressed below, EPA must list GHGs as HAPs per the statutory definition.

REGULATORY BURDENS OR WHITE HOUSE POLICY DIRECTIVES MAY NOT BE CONSIDERED IN EPA'S DECISION TO LIST GHGs AS HAPs.

While EPA has previously cited to Executive Order 13783,[98] which establishes the official White House policy of "American energy dominance",[99] such policy considerations cannot be included within EPA's assessment of the endangerment of the public by GHGs. EPA has already unsuccessfully attempted to base its decision not to regulate GHGs upon political considerations; this approach was squarely rejected by the Supreme Court in *Massachusetts v. EPA*, where it clearly indicated that the Administrator's decision must be a "scientific judgment" and not based upon any policy or industry consideration.[100] The EPA Administrator "must base her decision about endangerment on the science, and not on policy considerations about the repercussions or impact of such a finding."[101] This strictly scientific review policy has been upheld by the Supreme Court as recently as 2014.[102]

In the Supreme Court's view, EPA's policy-based explanations in the past have contained "no reasoned explanation for [EPA's] refusal to decide" the key part of the endangerment inquiry: "whether greenhouse gases cause or contribute to climate change."[103] Moreover, the Court has noted that EPA's previous "policy judgments . . . have nothing to do with whether greenhouse gas emissions contribute to climate change. Still less do they amount to a reasoned justification for declining to form a scientific judgment."[104]

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[96] *See* U.S. EPA, *Control of Emissions From New Highway Vehicles and Engines: Notice of Denial of Petition for Rulemaking*, 68 Fed. Reg. 52,922 (Sept. 8, 2003); *see also* FN 1.
[97] *Massachusetts v. EPA,* 549 U.S. at 534.
[98] *See* U.S. EPA, *Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units,* 82 Fed. Reg. 48035, 48037 (Oct. 16, 2017).
[99] Executive Office of the President, *Promoting Energy Independence and Economic Growth*, 82 Fed. Reg. 16,093, 16,095 (March 28, 2017); E.O. 13783 of Mar 28, 2017; Tom DiChristopher, *Trump wants America to be 'energy dominant.' Here's what that means.*, CNBC, June 28, 2017, https://www.cnbc.com/2017/06/28/trump-america-energy-dominant-policy.html.
[100] 549 U.S. at 534.
[101] Endangerment Finding at 66515.
[102] "EPA must ground its reasons for action or inaction in the statute rather than on reasoning divorced from the statutory text." *Util. Air Regulatory Group v. EPA*, 573 at 391 (citations omitted).
[103] *Id.* at 534.
[104] 549 U.S. at 533–34.

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Nor does the plain language of the CAA leave room for EPA to consider, as part of the HAP listing inquiry, the stationary-source regulation triggered by an endangerment finding, even if the degree of regulation triggered might at a later stage be characterized as "absurd."[105] Given that the Agency has already made a scientific determination based upon the established science of climate change that GHGs endanger the public health and welfare, it is impermissible for EPA to deny this petition based upon any reason outside the concrete data and evidence that supported the Agency's previous 2009 Endangerment Finding that GHGs cause global climate change and that such climate change poses a significant threat to human health, welfare, and the environment. As of this date, the Agency has been unable to produce any documentation to counter this evidence in response to public requests for said data.[106]

Furthermore, the Supreme Court has rejected the argument made by EPA that it should consider compliance costs in setting the NAAQS because many more factors than air pollution might affect public health.[107] To be sure, the language in CAA § 109(b) applicable to the setting of a NAAQS is different than that in CAA § 112 regarding endangerment, however the concepts are similar—the NAAQS are about setting standards at a level requisite to protect public health (with an adequate margin of safety) and public welfare, whereas endangerment is about whether the current or projected future levels may reasonably be anticipated to endanger public health or welfare. In other words, both decisions essentially are based on assessing the harm associated with a certain level of air pollution and as such, compliance costs cannot be considered in determining whether GHGs meet the clear statutory definition of a HAP.[108]

Given this similarity in purpose, as well as the Court's instructions in *Massachusetts v. EPA* that the Administrator's decision must be solely based upon the scientific evidence of risk, EPA has historically interpreted the statutory endangerment language to be analogous to setting the NAAQS.[109] Therefore, it is reasonable to interpret the HAP listing process under § 112 as not requiring the consideration of the impacts of implementing the permitting and regulation in the event of a HAP listing as part of the decision-making process itself, much as EPA did within its Endangerment Finding in 2009.

Of note, industry and the EPA itself have a history of stating that a plethora of adverse effects will result from additional regulation of pollutants found to endanger public health and welfare which have ultimately turned out to not come to pass.[110] Moreover, EPA has established

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[105] *Coalition for Responsible Regulation, et al. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012).
[106] Charles S. Clark, *EPA Search for Pruitt-Cited Climate Studies Comes Up Dry*, Government Executive, Oct. 11, 2018, https://www.govexec.com/management/2018/10/epa-search-pruitt-cited-climate-studies-comes-dry/151956/?oref=river
[107] *Whitman v. ATA*, 531 U.S. 466, 457 (2001).
[108] *See* Endangerment at 66516.
[109] *Ibid.*
[110] *See* NYTimes, "*E.P.A. Orders 90 Percent Cut in Lead Content of Gasoline by 1986*", March 5, 1985. https://www.nytimes.com/1985/03/05/us/epa-orders-90-percent-cut-in-lead-content-of-gasoline-by-1986.html. The American Petroleum Institute argued that the lead reduction initiatives of the Agency "will create a substantial problem for the refining industry in providing motorists with adequate quantities of high-quality gasoline at reasonable costs." The average U.S. gas price in 1985 was $2.62 in 2018 dollars; compare to the average gas price of Nov. 26, 2018 – $2.53. Energy Information Administration, *Gasoline and Diesel Fuel Update*, Nov. 26, 2018. https://www.eia.gov/petroleum/gasdiesel/

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within its Endangerment Finding that the Agency does not believe the impact of regulation under the CAA as a whole, let alone that which will result from its GHG endangerment finding, would lead to the panoply of adverse consequences that commenters predicted. EPA has already stated that it has the ability to fashion a reasonable and common-sense approach to address greenhouse gas emissions and climate change under the CAA.[111]

Moreover, the Supreme Court has noted in its *Util. Air Regulatory Group v. EPA* decision that requiring permits for sources based solely on their emission of greenhouse gases at the 100- and 250-tons per-year levels set forth in the CAA would be incompatible with the substance of Congress's regulatory scheme. The PSD program and Title V are designed to apply to, and cannot rationally be extended beyond, a relative handful of large sources capable of shouldering heavy substantive and procedural burdens, as such any regulatory burden will be manageable.[112]

Therefore, it is overwhelmingly clear that White House and EPA policy may not be considered when assessing whether GHGs meet the statutory definition of a HAP; evidenced by the Supreme Court's rejection of EPA's reliance upon administration policy in denying regulation of GHGs under §202 of the CAA. As such, the Agency may not weigh White House policy objectives concerning "energy dominance" as stated in Executive Order 13783. Rather, the Agency must only look objectively at the weighty body of scientific evidence before it which establishes that GHGs and their resultant global climate change pose a clear and present danger to human health and welfare and adverse environmental effects in deciding whether GHGs meet the statutory definition of HAPs under § 112(b)(3)(B) of the CAA.

LISTING GHGs AS HAPs WILL NOT HAMPER GRID RELIABILITY OR ENERGY SECURITY

One factor often recited by industry commenters on GHG regulations is that regulation of GHG emissions will result in the endangerment of electric grid reliability and threaten U.S. energy security. However, the USGCRP has stated that the climate change caused by release of GHGs by fossil fuel power plants, like coal and natural gas facilities, threatens the very integrity of the U.S. electric grid itself. Due to climate change, "the petroleum, natural gas, and electrical infrastructure along the East and Gulf Coasts are at increased risk of damage from rising sea levels and hurricanes of greater intensity."[113] Moreover, climate change and extreme weather events are "increasingly… affecting the [fossil fuel] energy system (including all components related to the production, conversion, delivery, and use of energy), threatening more frequent and longer-lasting power outages and fuel shortages. Such events can have cascading impacts on other critical sectors and potentially affect the Nation's economic and national security."[114] Additionally, "higher temperatures reduce the thermal efficiency and generating capacity of thermoelectric power plants [*i.e.*, coal, nuclear, and natural gas] and reduce the efficiency and

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[111] *See* Endangerment at 66,516
[112] *Util. Air Regulatory Group v. EPA*, 573 at 393.
[113] USGCRP, Volume II, at Ch. 4: Energy Supply, Delivery, and Demand
[114] *Ibid.*

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current-carrying capacity of transmission and distribution lines."[115] Furthermore, droughts caused by climate change "will likely threaten fuel production, such as fracking for natural gas and shale oil; enhanced oil recovery in the Northeast, Midwest, Southwest, and Northern and Southern Great Plains; oil refining; and thermoelectric power generation that relies on surface water for cooling."[116]

These challenges can be seen in ISO New England's recent FERC filing, where it states that "the most significant resilience challenge is fuel security – or the assurance that power plants will have or be able to obtain the fuel they need to run, particularly in winter…" The ISO goes on to further state that "[m]ore renewable resources can help lessen the region's fuel-security risk depending on the type and quantity."[117] Such resiliency issues will continue to pressure the bulk electric grid unless prompt changes are made to "develop[] and deploy[] new innovative energy technologies that increase resilience and reduce emissions" like wind and solar generation.[118]

Integration of carbon-free technology into the bulk electric grid is vital to the continued resiliency and security of the American energy chain and the regulation of GHGs will only foster a transition to a safer and more reliable grid in the future. Researchers from the Karlsruhe Institute of Technology in Germany, the South African Council for Scientific and Industrial Research, Lappeenranta University of Technology in Finland, Delft University of Technology, Netherlands, and Aalborg University, Denmark have done a comprehensive scientific review of the technical feasibility of integrating 100% renewable energy into global electric grids and have demonstrated that such a goal is feasible and technical hurdles can be cleared at low-cost.[119]

Moreover, Australia, another advanced economy dependent upon fossil fuel infrastructure, has shown that battery technology paired with renewable generation is capable of providing frequency stability in the immediate aftermath of a coal plant failure. In April 2018, Australia's largest generator, a 750 MW coal plant, tripped and ceased operating. Power balances were reestablished by other generators, but the frequency control (provided by the spinning of the turbine) went away. So, the frequency of that alternating current delivering the power went below 49.85 cycles per second (*i.e.*, Hertz), a level at which appliances such as refrigerators can be damaged. Recently integrated distributed renewables and battery storage provided immediate frequency control, and grid stability, to avoid such damage to consumer appliances.[120]

The U.S. government's own National Renewable Energy Laboratory has found that "[r]enewable electricity generation from technologies *that are commercially available today*

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[115] *Ibid.*
[116] *Ibid.*
[117] ISO New England, *AD18-7-000 ISO-NE Response to Grid Resilience Order*, March 9, 2018. https://www.iso-ne.com/static-assets/documents/2018/03/ad18-7_iso_response_to_grid_resilience.pdf
[118] USGCRP, Volume II, at Ch. 4: Energy Supply, Delivery, and Demand.
[119] Brown TW, Bischof-Niemz T, Blok K, et al. (2018) *Response to 'Burden of Proof: A comprehensive review of the feasibility of 100% renewable-electricity systems.'* Renewable and Sustainable Energy Reviews, Vol. 92, pp. 834-847. https://doi.org/10.1016/j.rser.2018.04.113
[120] Mike Leonard, *Households can hold grid together when big coal units fail*, Renew Economy, April 24, 2018 https://reneweconomy.com.au/households-can-hold-grid-together-when-big-coal-units-fail-69737/ ; Australian Energy Market Operator, *Initial operation of the Hornsdale Power Reserve Battery Energy Storage System*, April 2018 at https://www.aemo.com.au/-/media/Files/Media_Centre/2018/Initial-operation-of-the-Hornsdale-Power-Reserve.pdf

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[2012] [are] more than adequate to supply 80% of total U.S. electricity generation in 2050 while meeting electricity demand on an hourly basis in every region of the country."[121]

While such considerations are irrelevant to the HAP listing review protocols prescribed by CAA § 112, it is important to note that the removal of facilities from the grid that cannot meet strict emissions standards for GHG emissions will not pose a threat to system resiliency until near total system penetration of currently commercially-available renewable generation technology.

CONCLUSION

Ultimately, the EPA is faced with a decision based upon clear statutory language and overwhelming scientific consensus. This leaves little room for the Agency to deny this petition on defensible grounds given that GHGs pose a clear and imminent threat to human health and adverse environmental effects, EPA has an express mandate to regulate GHGs as a pollutant under the CAA, and a non-discretionary duty to list HAPs that pose a threat to the public. As such Petitioners request that EPA list GHGs as HAPs in accordance with the statutory definition within § 112(b) of the Clean Air Act, 42 U.S.C. § 7412(b).

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[121] Mai T, Sandor D, Wiser R, Schneider T (2012) *Renewable Energy Futures Study: Executive Summary*. National Renewable Energy Laboratory, Golden, CO. http://www.nrel.gov/analysis/re_futures/. (emphasis added)

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APPENDIX OF PERTINANT SCIENCE

Under § 112(b) of the Clean Air Act, 42 U.S.C. §7412(b), the EPA Administrator is required to revise the listing of Hazardous Air Pollutants to include "pollutants which present, or may present, through inhalation *or other routes of exposure*, a threat of adverse human health effects… or ***adverse environmental effects*** *whether through* ***ambient concentrations, bioaccumulation, deposition***…"

The Clean Air Act defines "adverse environmental effect" as "any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas." 42 U.S.C. § 7412(a)(7).

Given that GHGs, which fuel global climate change, have been found to have a plethora of adverse environmental effects, Petitioners have provided a compendium of relevant research for EPA review in deciding that GHGs meet the statutory definition of a Hazardous Air Pollutant.

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Message

From: McLamb, Marguerite [McLamb.Marguerite@epa.gov]
Sent: 2/11/2020 7:33:06 PM
To: OAQPS SPPD PSG [OAQPS_SPPD_PSG@epa.gov]
CC: Cozzie, David [Cozzie.David@epa.gov]; South, Peter [South.Peter@epa.gov]; Anderson, Lea [anderson.lea@epa.gov]
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation
Attachments: FWW - CAA 112 GHG Petition.pdf; ATT00001.htm

All -- Ex. 5 AC/DP

Ex. 5 AC/DP

Best,
Marguerite

****

Marguerite E. McLamb
Advisor
Sector Policies and Programs Division, Office of Air Quality Planning & Standards
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
Office: (919) 541-7858; Mobile: (919) 491-7514
mclamb.marguerite@epa.gov

From: Lassiter, Penny
Sent: Monday, April 08, 2019 11:01 AM
To: Cozzie, David <Cozzie.David@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

See attached.

Penny Lassiter
Acting Director,
Sector Policies and Programs Division
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
Mail Code: E143-01
Research Triangle Park, NC 27711
(919) 541-5396
lassiter.penny@epa.gov

From: Koerber, Mike
Sent: Monday, April 08, 2019 8:19 AM
To: Lassiter, Penny <Lassiter.Penny@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>; Wayland, Richard <Wayland.Richard@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Husk, Martin <Husk.Martin@epa.gov>; Ward, Hillary <Ward.Hillary@epa.gov>; Mathias, Scott <Mathias.Scott@epa.gov>
Subject: Fwd: CAA Rulemaking Petition for EPA's Office of Air and Radiation

FYI

Sent from my iPhone

Begin forwarded message:

From: "Lewis, Josh" <Lewis.Josh@epa.gov>
Date: April 5, 2019 at 4:26:44 PM EDT
To: "Koerber, Mike" <Koerber.Mike@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

This came in to our office today. Elliott: can you remind me if OGC has a preference on how this is logged/in and tracked? Mike, appreciate any thoughts from OAQPS too. Thanks.

From: Adam Carlesco <acarlesco@fwwatch.org>
Sent: Wednesday, April 3, 2019 4:01 PM
To: Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Subject: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Ms. Raksonik,

Thank you for the guidance on how to formally submit this proposed rulemaking petition. I have attached our petition and look forward to the Office of Air and Radiation's review of this proposal. Would the Assistant Administrator like a hardcopy mailed to the EPA offices?

Sincerely,
Adam Carlesco

Adam Carlesco
Staff Attorney, Climate & Energy
Food & Water Watch
Office: 202.683.4925
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Message

From: Williams, Melina [Williams.Melina@epa.gov]
Sent: 3/1/2022 11:39:32 PM
To: Martinich, Jeremy [Martinich.Jeremy@epa.gov]; Hartin, Corinne [Hartin.Corinne@epa.gov]; Sarofim, Marcus [Sarofim.Marcus@epa.gov]
CC: Orlin, David [Orlin.David@epa.gov]; Anderson, Lea [anderson.lea@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions
Attachments: Schwartz.SIGNED.pdf; Carlesco.SIGNED.pdf

Hi Jeremy,

Thanks for the heads up (and I'm cc'ing David, Lea, and Emily for awareness as well). I believe these are the two withdrawals you're looking for.

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

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From: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Sent: Tuesday, March 1, 2022 4:08 PM
To: Williams, Melina <Williams.Melina@epa.gov>; Hartin, Corinne <Hartin.Corinne@epa.gov>; Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Subject: FW: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

FYI, some press interest. It doesn't look like anything else is needed from us at this point, but let me know if you see otherwise.

Do any of you have copies of the following withdrawals?
-- It is my understanding that EPA withdrew Wheeler's denials of the petitions by the New York University Law Institute for Policy Integrity to have EPA regulate greenhouse gas emissions under Section 115 of the Clean Air Act as well as by Food & Water Watch to have EPA regulate greenhouse gas emissions as a Hazardous Air Pollutant. Can you share those withdrawals with me?

From: Gunning, Paul <Gunning.Paul@epa.gov>
Sent: Tuesday, March 1, 2022 3:44 PM
To: DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Schmeltz, Rachel <Schmeltz.Rachel@epa.gov>; Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Ex. 5 Deliberative Process (DP)

Paul

From: DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Sent: Tuesday, March 1, 2022 2:59 PM
To: Gunning, Paul <Gunning.Paul@epa.gov>; Schmeltz, Rachel <Schmeltz.Rachel@epa.gov>; Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Hi all,
Kevin Bogartus from E&E is planning another article about the previous administration's denial of GHG endangerment petitions, and the current administration's subsequent withdrawal of those denials. Please scroll all the way down to see all of his questions -

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thanks,
Isabel

From: Carroll, Timothy <Carroll.Timothy@epa.gov>
Sent: Tuesday, March 1, 2022 10:20 AM
To: Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Cc: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>
Subject: FW: Former EPA Administrator Andrew Wheeler's last moves on climate

Hi all, please see below from Kevin Bogardus at E&E. He's writing about the push by the last administration to deny petitions to reconsider EPA's endangerment finding on GHG in the last few weeks of the term. Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

OAR – can you take a look at the petition status questions and let us know if there's anything more we can/should say about the process? It would also be good to share the withdrawals requested, if possible.

OGC – Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Let me know of any other questions or concerns here, happy to chat by phone if helpful. We have a deadline of COB tomorrow, Wednesday, March 2.

Thanks all!

Tim Carroll (he/him)
Deputy Press Secretary
Environmental Protection Agency
202-384-7510 (mobile)
Twitter: @EPAPressOffice

From: Kevin Bogardus <kbogardus@eenews.net>
Sent: Monday, February 28, 2022 5:09 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; EPA Press Office <Press@epa.gov>
Subject: Re: Former EPA Administrator Andrew Wheeler's last moves on climate

My apologies, everyone, but I forgot to link one document in my original email, which is EPA's withdrawal of Wheeler's denial of several similar petitions to have EPA regulate greenhouse gas emissions under the Clean Air Act. Here is that link (please see https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-03-05-Decision-Withdrawing-Denial.pdf). Please let me know if you have any thoughts. My deadline is close of business Wednesday, March 2. Thank you for your help!

Kevin Bogardus

E&E News Reporter

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202-737-5299 (f)

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From: Kevin Bogardus <kbogardus@eenews.net>
Sent: Monday, February 28, 2022 4:20 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Press <press@epa.gov>
Subject: Former EPA Administrator Andrew Wheeler's last moves on climate

Hey everyone,

It's Kevin Bogardus with E&E News. I hope all is well. I'm also copying Nancy on this email because I quote her from an email in my story.

I'm working on a story about former EPA Administrator Andrew Wheeler's last moves on climate change policy before he left EPA. I'm quoting from and linking to emails, letters and memos. I obtained several of these records under the Freedom of Information Act (please see attached).

I have a few questions about this, which are:

-- Former EPA Administrator Andrew Wheeler received denials on petitions to reconsider EPA's endangerment finding on greenhouse gas emissions as well as several similar petitions to have EPA regulate greenhouse gas emissions under the Clean Air Act (please see emails-about-endangerment-finding.pdf and emails-about-endangerment-finding-1.pdf). He signed both sets of those denials (please see https://legacy-assets.eenews.net/open_files/assets/2021/05/20/document_gw_01.pdf and https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-01-19-GHG-NAAQS-

Petition-Denial-2021-01-19.pdf). EPA, however, later withdrew those denials (please see https://legacy-assets.eenews.net/open_files/assets/2021/05/20/document_gw_02.pdf).

What is the status of these petitions now at EPA? Is EPA still reviewing them? When does EPA expect to reach a decision on these petitions?

-- It is my understanding that EPA withdrew Wheeler's denials of the petitions by the New York University Law Institute for Policy Integrity to have EPA regulate greenhouse gas emissions under Section 115 of the Clean Air Act as well as by Food & Water Watch to have EPA regulate greenhouse gas emissions as a Hazardous Air Pollutant. Can you share those withdrawals with me?

-- One of EPA's withdrawals of Wheeler's denials said "an adequate justification of the denial" was not provided while another withdrawal said "the agency did not fully and fairly assess the issues raised" by the petition. Emails show EPA officials begin discussing the petition on the endangerment finding on Jan. 5, 2021, only a few weeks before the Trump administration came to an end (please see emails-about-endangerment-finding-2.pdf). Also, one email said an update on developing a draft denial of the petition "didn't sound too promising" and the agency may have to "deploy an alternative approach" (please see emails-about-endangerment-finding-3.pdf). Further, another email said one message was "not encouraging" (please see emails-about-endangerment-finding-4.pdf).

When EPA said Wheeler's denials did not provide adequate justification, nor fully and fairly assess the issues raised, did EPA mean Wheeler's denials were rushed? How would EPA characterize the process behind drafting these denials?

-- There were plans to post Wheeler's denials on EPA's website, either on the Office of Air and Radiation's website or the Office of General Counsel's website, with that latter request being made within an hour of the end of President Trump's term in office, according to a series of emails (please see emails-about-endangerment-finding-5.pdf). In addition, Adam Gustafson, then EPA's deputy general counsel, emailed two different EPA officials, asking if they could post the denials to the OGC's website, hours after the end of the Trump administration and his own resignation from EPA (please see emails-about-endangerment-finding-6.pdf and emails-about-endangerment-finding-7.pdf). Nevertheless, with two minutes until the changeover between the Trump and Biden administrations at noon on Jan. 20, 2021, Nancy Grantham, principal deputy assistant administrator in EPA's Office of Public Affairs, said in an email, "As discussed, the transition is now official, so we need to revisit this posting with the incoming team."

Why did EPA not post Wheeler's denials on EPA's website?

-- Chris Grundler, director of EPA's Office of Atmospheric Programs, said in an email, "I will expect we will get some questions about this one," referring to EPA's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding (please see emails-about-endangerment-finding-10.pdf).

Why should EPA expect questions about this withdrawal? What did Grundler mean by that?

Also, I will be quoting from and linking to the following records in my story. Please let me know if you have any comment on the following:

-- Senior political appointees and career officials in several EPA offices were invited to a meeting to "discuss paths forward" on Wheeler's denials in February 2021, according to records (please see emails-about-endangerment-finding-8.pdf and emails-about-endangerment-finding-9.pdf).

-- Senior political appointees and career officials in EPA's Office of Air and Radiation were notified when Administrator Regan signed the withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, which wasn't normal practice but was done since they might be interested in the withdrawal, according to an email (please see emails-about-endangerment-finding-11.pdf).

-- Senior political appointees in EPA's Office of Air and Radiation were made aware of a statement EPA prepared on Administrator Regan's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, according to an email (please see emails-about-endangerment-finding-12.pdf).

Please get back to me as soon as possible. My deadline is close of business Wednesday, March 2, but the sooner you get back to me, the more it helps my reporting. Also, since I'm working from home, please email me here or call me back on my cell phone at 202-247-7844. Thank you for your help and stay safe, stay healthy!

Kevin Bogardus

E&E News Reporter

kbogardus@eenews.net

202-446-0401 (o)

202-247-7844 (c)

202-737-5299 (f)

Follow me @KevinBogardus

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Greenwire, ClimateWire, EnergyWire, E&E Daily, E&ENews PM

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

March 4, 2021

OFFICE OF THE
ADMINISTRATOR

Mr. Adam Carlesco
Staff Attorney – Climate & Energy
Food & Water Watch
1616 P Street, NW, Suite 600
Washington, D.C. 20036

Dear Mr. Carlesco:

Food & Water Watch submitted a Petition for Listing and Rulemaking Under Section 112 of the Clean Air Act to Establish Greenhouse Gases as Hazard Air Pollutants and to Set National Emission Standards for Hazardous Air Pollutant Emissions to the U.S. Environmental Protection Agency on April 3, 2019. As you know, on January 19, 2021, the EPA sent you a denial of your then-pending petition.

I am withdrawing the denial of your petition, as the agency did not fully and fairly assess the issues raised by the petition. The EPA intends to further consider the important issues raised by your petition before responding.

Thank you for your interest in these issues, and please contact me if you have further questions about the status of the EPA's response to your petition.

Sincerely,

Jane T. Nishida
Acting Administrator

ED_013363_00002112-00001

Message

From: Marks, Matthew [Marks.Matthew@epa.gov]
Sent: 1/4/2021 9:15:18 PM
To: Anderson, Lea [anderson.lea@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Orlin, David [Orlin.David@epa.gov]
Subject: RE: FYI on potential ask

Ex. 5 AC/AWP/DP

Matthew C. Marks
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: 202-564-3276
E: marks.matthew@epa.gov

From: Anderson, Lea <anderson.lea@epa.gov>
Sent: Monday, January 04, 2021 3:57 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>
Subject: RE: FYI on potential ask

Thanks for the heads up.

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Lea Anderson
(202) 564-5571

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Monday, January 04, 2021 3:26 PM
To: Anderson, Lea <anderson.lea@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>
Subject: FYI on potential ask

Ex. 5 AC/DP

++++++++++++++++++++++++++++

(202) 564-5647 (o)
(202) 695-6287 (c)

Message

From: McLamb, Marguerite [McLamb.Marguerite@epa.gov]
Sent: 10/9/2020 1:31:50 PM
To: Shrager, Brian [Shrager.Brian@epa.gov]; Anderson, Lea [anderson.lea@epa.gov]
Subject: FW: HAP Listing and Delisting - OAR Info Pager
Attachments: HAP listing delisting.OAR.2.11.20v2.docx; FWW - CAA 112 GHG Petition.pdf

Hi – this is the petition I mentioned recently. From this last email, it looks like OGC has it.

From: Mills, Kathy <Mills.Kathy@epa.gov>
Sent: Tuesday, February 11, 2020 3:17 PM
To: Hagan, Nicole <Hagan.Nicole@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; McKinney, Voronina <mckinney.voronina@epa.gov>
Cc: South, Peter <South.Peter@epa.gov>; Cozzie, David <Cozzie.David@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>; Howard, Jodi <Howard.Jodi@epa.gov>; Schaefer, John <Schaefer.John@epa.gov>; Eck, Janet <Eck.Janet@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Crowley, Kate <crowley.kate@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>
Subject: HAP Listing and Delisting - OAR Info Pager

Updated version attached – includes petition to list GHG as HAP:

Green House Gases (GHG)

- Petition to list submitted by Food & Water Watch (FWW) on April 3, 2019. EPA's response to the petition is due October 2020 (18 months from receipt of petition).
- OGC is handling the response to this petition.

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

This document has been withheld in its entirety under Ex. 5 - Attorney Client (ACP), Ex. 5 - Attorney Work Product (AWP), Ex. 5 - Deliberative Process (DPP).

Message

From: Jordan, Scott [Jordan.Scott@epa.gov]
Sent: 1/6/2021 12:45:43 PM
To: Marks, Matthew [Marks.Matthew@epa.gov]; Anderson, Lea [anderson.lea@epa.gov]; Orlin, David [Orlin.David@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Okoye, Winifred [Okoye.Winifred@epa.gov]
Subject: RE: GHG Petition Denials Discussion
Attachments: Ex. 5 AC/AWP/DP 20210105 Draft GHG NAAQS Petition Denial.+ SJJ 1.6.21.docx

Sensitivity: Private

Folks –

In advance of our call today at 11:00, Ex. 5 AC/AWP/DP Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Scott Jordan
Air and Radiation Law Office
Office of General Counsel
202-564-7508

I am an EPA LGBTQ+ Ally
Pronouns: he/him/his

-----Original Appointment-----
From: Marks, Matthew <Marks.Matthew@epa.gov>
Sent: Tuesday, January 5, 2021 11:09 AM
To: Marks, Matthew; Anderson, Lea; Orlin, David; Jordan, Scott; Srinivasan, Gautam; Okoye, Winifred
Subject: GHG Petition Denials Discussion
When: Wednesday, January 6, 2021 11:00 AM-11:45 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting
Sensitivity: Private

Lea/David – As discussed, here is Adam's draft of the GHG petition denials. This meeting is to discuss next steps in reviewing it before circling back with Adam.

Scott, I'll give you a call later today to explain what this is about. Ex. 5 Attorney Client (AC)
Ex. 5 Attorney Client (AC) Do not forward or discuss. Thanks!

Microsoft Teams meeting

Join on your computer or mobile app
Click here to join the meeting

Or call in (audio only)
+1 202-991-0477,,981043844# United States, Washington DC
Phone Conference ID: 981 043 844#

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This document has been withheld in its entirety under Ex. 5 - Attorney Work Product (AWP), Ex. 5 - Deliberative Process (DPP), Ex. 6 - Personal Privacy (PP).

Message

From: Jordan, Scott [Jordan.Scott@epa.gov]
Sent: 1/11/2021 1:16:07 PM
To: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Anderson, Lea [anderson.lea@epa.gov]
CC: Orlin, David [Orlin.David@epa.gov]; Okoye, Winifred [Okoye.Winifred@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]
Subject: RE: GHG petition
Attachments: 20210109 Draft GHG NAAQS Petition Denial +ARLO +ag.docx; ACE.RTC.Legal Authority Chapter 1.pdf

Ex. 5 AC/AWP/DP

I can point this out to Adam in our call (or by sending him an email making these points), but I wanted to let you know in advance in case you had any questions or thoughts.

Scott Jordan
Air and Radiation Law Office
Office of General Counsel
202-564-7508

I am an EPA LGBTQ+ Ally
Pronouns: he/him/his

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Sunday, January 10, 2021 4:55 PM
To: Orlin, David <Orlin.David@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>

Cc: Marks, Matthew <Marks.Matthew@epa.gov>
Subject: GHG petition

Hi all. FYI attached are Adam's responses to the comments on the GHG petition denial. He and David have asked to meet on Monday, and I have asked Fletcher to include you all. If you are willing and able to make the meeting, that would be appreciated. If you are not, that is also 100% fine, but Matt and I may circle back with specific questions. Thanks.

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

This document has been withheld in its entirety under Ex. 5 - Attorney Client (ACP), Ex. 5 - Attorney Work Product (AWP), Ex. 5 - Deliberative Process (DPP).

Message

From: Marks, Matthew [Marks.Matthew@epa.gov]
Sent: 1/6/2021 4:32:15 PM
To: Okoye, Winifred [Okoye.Winifred@epa.gov]; Jordan, Scott [Jordan.Scott@epa.gov]; Orlin, David [Orlin.David@epa.gov]; Anderson, Lea [anderson.lea@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]
CC: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Subject: GHG petitions
Attachments: CBD Petition_GHG_pollution_cap_12-2-2009.pdf; NYU IPI Petition for Rulemakings Under CAA 115, 111.pdf; FWW - CAA 112 GHG Petition.pdf

Here are the petitions addressed in the denial.

Matthew C. Marks
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: 202-564-3276
E: marks.matthew@epa.gov

This document has been withheld in its entirety under Ex. 5 - Attorney Client (ACP).

Message

From: Greenfield, Meghan (ENRD) [Meghan.Greenfield@usdoj.gov]
Sent: 5/21/2020 7:15:19 PM
To: Anderson, Lea [anderson.lea@epa.gov]; Jordan, Scott [Jordan.Scott@epa.gov]
CC: Marks, Matthew [Marks.Matthew@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: RE: ACE - EPA Brief - 112 Exclusion Text

Ha! We do the best we can with the hand we're dealt.

From: Anderson, Lea <anderson.lea@epa.gov>
Sent: Thursday, May 21, 2020 3:13 PM
To: Greenfield, Meghan (ENRD) <MGreenfiel@ENRD.USDOJ.GOV>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: RE: ACE - EPA Brief - 112 Exclusion Text

Ex. 5 AC/AWP

From: Anderson, Lea
Sent: Thursday, May 21, 2020 3:12 PM
To: 'Greenfield, Meghan (ENRD)' <Meghan.Greenfield@usdoj.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: RE: ACE - EPA Brief - 112 Exclusion Text

Ex. 5 AC/AWP

From: Greenfield, Meghan (ENRD) <Meghan.Greenfield@usdoj.gov>
Sent: Thursday, May 21, 2020 2:43 PM
To: Anderson, Lea <anderson.lea@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: RE: ACE - EPA Brief - 112 Exclusion Text

Lea

Ex. 5 AC/AWP

Meghan

Meghan E. Greenfield
ENRD/EDS
(T) 202-514-2795
(C) 202-598-5791
Meghan.Greenfield@usdoj.gov

From: Anderson, Lea <anderson.lea@epa.gov>
Sent: Thursday, May 21, 2020 2:38 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>; Greenfield, Meghan (ENRD) <MGreenfiel@ENRD.USDOJ.GOV>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: RE: ACE - EPA Brief - 112 Exclusion Text

For the discussion of 112, Ex. 5 AC/AWP Ex. 5 AC/AWP Ex. 5 AC/AWP I added a few edits/comments on the attached document.

From: Jordan, Scott <Jordan.Scott@epa.gov>
Sent: Thursday, May 21, 2020 9:56 AM
To: Meghan Greenfield <Meghan.Greenfield@usdoj.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>
Subject: ACE - EPA Brief - 112 Exclusion Text

Meghan – I think your draft 112 exclusion text looks very good. I have no major comments, but I have marked some wordsmithing suggestions in the attached in redline/strikeout.

Matt – I have only one thing to flag for you: Ex. 5 AC/AWP Ex. 5 AC/AWP Please give that a quick look and let us know if you have any different or additional edits.

Lea – For your awareness: Ex. 5 AC/AWP Ex. 5 AC/AWP I don't have any specific issues to flag for you but if you have any comments or concerns, please let us know.

Scott Jordan
Air and Radiation Law Office
Office of General Counsel
202-564-7508

I am an EPA LGBTQ+ Ally
Pronouns: he/him/his

From: Greenfield, Meghan (ENRD) <Meghan.Greenfield@usdoj.gov>
Sent: Wednesday, May 20, 2020 3:25 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>
Subject: ENV_DEFENSE-#919711-v1-ENV_DEFENSE-ACE_111_112_Revised.docx

Scott

The draft of the 111/112 section is attached. I look forward to your feedback.

Meghan

Meghan E. Greenfield
Senior Counsel for Appellate Matters
U.S. Department of Justice
Environment & Natural Resources Division
Environmental Defense Section

P.O. Box 7611
Washington, DC 20044
(T) 202-514-2795
(C) 202-598-5791
(F) 202-514-8865
Meghan.Greenfield@usdoj.gov

Overnight Mail:
4 Constitution Square
150 M Street, NE
Room 4.1106
Washington, DC 20002

Message

From: McLamb, Marguerite [McLamb.Marguerite@epa.gov]
Sent: 4/10/2019 6:46:04 PM
To: Anderson, Lea [anderson.lea@epa.gov]
CC: Shrager, Brian [Shrager.Brian@epa.gov]
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation
Attachments: FWW - CAA 112 GHG Petition.pdf; ATT00001.htm

From: Lassiter, Penny
Sent: Monday, April 08, 2019 11:01 AM
To: Cozzie, David <Cozzie.David@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

See attached.

Penny Lassiter
Acting Director,
Sector Policies and Programs Division
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
Mail Code: E143-01
Research Triangle Park, NC 27711
(919) 541-5396
lassiter.penny@epa.gov

From: Koerber, Mike
Sent: Monday, April 08, 2019 8:19 AM
To: Lassiter, Penny <Lassiter.Penny@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>; Wayland, Richard <Wayland.Richard@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Husk, Martin <Husk.Martin@epa.gov>; Ward, Hillary <Ward.Hillary@epa.gov>; Mathias, Scott <Mathias.Scott@epa.gov>
Subject: Fwd: CAA Rulemaking Petition for EPA's Office of Air and Radiation

FYI

Sent from my iPhone

Begin forwarded message:

From: "Lewis, Josh" <Lewis.Josh@epa.gov>
Date: April 5, 2019 at 4:26:44 PM EDT
To: "Koerber, Mike" <Koerber.Mike@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

This came in to our office today. Elliott: can you remind me if OGC has a preference on how this is logged/in and tracked? Mike, appreciate any thoughts from OAQPS too. Thanks.

From: Adam Carlesco <acarlesco@fwwatch.org>
Sent: Wednesday, April 3, 2019 4:01 PM
To: Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Subject: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Ms. Raksonik,

Thank you for the guidance on how to formally submit this proposed rulemaking petition. I have attached our petition and look forward to the Office of Air and Radiation's review of this proposal. Would the Assistant Administrator like a hardcopy mailed to the EPA offices?

Sincerely,
Adam Carlesco

Adam Carlesco
Staff Attorney, Climate & Energy
Food & Water Watch
Office: 202.683.4925
acarlesco@fwwatch.org
1616 P Street NW, Suite 300
Washington, DC 20036

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Message

From: Gustafson, Adam [Gustafson.Adam@epa.gov]
Sent: 1/12/2021 12:25:32 PM
To: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Jordan, Scott [Jordan.Scott@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]
CC: Marks, Matthew [Marks.Matthew@epa.gov]; Anderson, Lea [anderson.lea@epa.gov]; Orlin, David [Orlin.David@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Okoye, Winifred [Okoye.Winifred@epa.gov]
Subject: RE: GHG petition denial - Ex. 5 AC/AWP/DP
Attachments: 20210111 Draft GHG NAAQS Petition Denial clean.docx

Gautam,

Here is the cleaned up-text. I left in most of the comments, but we can resolve these in time as appropriate.

Adam

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Monday, January 11, 2021 5:50 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>
Subject: RE: GHG petition denial - Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Jordan, Scott <Jordan.Scott@epa.gov>
Sent: Monday, January 11, 2021 5:06 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>; Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>
Subject: GHG petition denial - Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Scott Jordan
Air and Radiation Law Office
Office of General Counsel
202-564-7508

I am an EPA LGBTQ+ Ally
Pronouns: he/him/his

From: Orlin, David <Orlin.David@epa.gov>
Sent: Monday, January 11, 2021 10:00 AM
To: Marks, Matthew <Marks.Matthew@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>
Cc: Okoye, Winifred <Okoye.Winifred@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Subject: RE: GHG petition

Ex. 5 AC/AWP/DP

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Marks, Matthew <Marks.Matthew@epa.gov>
Sent: Monday, January 11, 2021 8:46 AM
To: Jordan, Scott <Jordan.Scott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Subject: RE: GHG petition

This all makes sense. If you can make the call, I assume it will be easiest to just raise it there.

Matthew C. Marks

Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: 202-564-3276
E: marks.matthew@epa.gov

From: Jordan, Scott <Jordan.Scott@epa.gov>
Sent: Monday, January 11, 2021 8:16 AM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Subject: RE: GHG petition

Ex. 5 AC/AWP/DP

I can point this out to Adam in our call (or by sending him an email making these points), but I wanted to let you know in advance in case you had any questions or thoughts.

Scott Jordan
Air and Radiation Law Office
Office of General Counsel
202-564-7508

I am an EPA LGBTQ+ Ally

Pronouns: he/him/his

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Sunday, January 10, 2021 4:55 PM
To: Orlin, David <Orlin.David@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>
Subject: GHG petition

Hi all. FYI attached are Adam's responses to the comments on the GHG petition denial. He and David have asked to meet on Monday, and I have asked Fletcher to include you all. If you are willing and able to make the meeting, that would be appreciated. If you are not, that is also 100% fine, but Matt and I may circle back with specific questions. Thanks.
++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

This document has been withheld in its entirety under Ex. 5 - Attorney Client (ACP), Ex. 5 - Attorney Work Product (AWP), Ex. 5 - Deliberative Process (DPP).

Message

From: McLamb, Marguerite [McLamb.Marguerite@epa.gov]
Sent: 5/16/2019 4:10:59 PM
To: Anderson, Lea [anderson.lea@epa.gov]
CC: Shrager, Brian [Shrager.Brian@epa.gov]
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation
Attachments: FWW - CAA 112 GHG Petition.pdf; ATT00001.htm

Lea,
I had meant to raise this topic yesterday. Ex. 5 AC/DP
Ex. 5 AC/DP
Ex. 5 AC/DP Let's talk about it when you have a chance in the next week or so.
Thanks,
Marguerite

From: McLamb, Marguerite
Sent: Wednesday, April 10, 2019 2:46 PM
To: Anderson, Lea <anderson.lea@epa.gov>
Cc: Brian Shrager <Shrager.Brian@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

---

From: Lassiter, Penny
Sent: Monday, April 08, 2019 11:01 AM
To: Cozzie, David <Cozzie.David@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

See attached.

Penny Lassiter
Acting Director,
Sector Policies and Programs Division
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
Mail Code: E143-01
Research Triangle Park, NC 27711
(919) 541-5396
lassiter.penny@epa.gov

From: Koerber, Mike
Sent: Monday, April 08, 2019 8:19 AM
To: Lassiter, Penny <Lassiter.Penny@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>; Wayland, Richard <Wayland.Richard@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Husk, Martin <Husk.Martin@epa.gov>; Ward, Hillary <Ward.Hillary@epa.gov>; Mathias, Scott <Mathias.Scott@epa.gov>
Subject: Fwd: CAA Rulemaking Petition for EPA's Office of Air and Radiation

FYI

Sent from my iPhone

Begin forwarded message:

From: "Lewis, Josh" <Lewis.Josh@epa.gov>
Date: April 5, 2019 at 4:26:44 PM EDT
To: "Koerber, Mike" <Koerber.Mike@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

This came in to our office today. Elliott: can you remind me if OGC has a preference on how this is logged/in and tracked? Mike, appreciate any thoughts from OAQPS too. Thanks.

From: Adam Carlesco <acarlesco@fwwatch.org>
Sent: Wednesday, April 3, 2019 4:01 PM
To: Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Subject: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Ms. Raksonik,

Thank you for the guidance on how to formally submit this proposed rulemaking petition. I have attached our petition and look forward to the Office of Air and Radiation's review of this proposal. Would the Assistant Administrator like a hardcopy mailed to the EPA offices?

Sincerely,
Adam Carlesco

Adam Carlesco
Staff Attorney, Climate & Energy
Food & Water Watch
Office: 202.683.4925
acarlesco@fwwatch.org
1616 P Street NW, Suite 300
Washington, DC 20036

PRIVILEGE AND CONFIDENTIALITY NOTICE
This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law as attorney client and work-product confidential or otherwise confidential communications. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication or other use of a transmission received in error is strictly prohibited. If you have received this transmission in error, immediately notify us at the above telephone number.

Message

From: Marks, Matthew [Marks.Matthew@epa.gov]
Sent: 1/14/2021 1:57:01 PM
To: Anderson, Lea [anderson.lea@epa.gov]; Okoye, Winifred [Okoye.Winifred@epa.gov]
CC: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Subject: FW: GHG petition denial Ex. 5 AC/AWP/DP
Attachments: 20210113 Draft GHG NAAQS Petition Denial - mcm.docx

Lea/Winnie,

Please see Adam's message below. Ex. 5 AC/AWP/DP
Ex. 5 AC/AWP/DP
Ex. 5 AC/AWP/DP Once you're finished, please send the document back to me so that I can forward it on to Adam. My hope is that this will be the final time we are asked to engage on this document. Thanks for your patience and hard work.

Matt

Matthew C. Marks
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: 202-564-3276
E: marks.matthew@epa.gov

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Ex. 5 AC/AWP/DP

I will be unavailable Thursday morning and most of Friday. Can I review a near-final draft Thursday afternoon/evening?

Adam Gustafson
Deputy General Counsel

Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Wednesday, January 13, 2021 3:04 PM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>
Subject: RE: GHG petition denial Ex. 5 AC/AWP/DP

Melina and Karen have entered comments. If you are able to share the version you send to the third floor, that would be appreciated.

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(202) 564-5647 (o)
(202) 695-6287 (c)

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Sent: Wednesday, January 13, 2021 2:06 PM
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Cc: Marks, Matthew <Marks.Matthew@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>
Subject: RE: GHG petition denial Ex. 5 AC/AWP/DP

I'm taking the document offline at 2:10 to clean it up and send to the third floor.

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Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
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On reflection, let's aim for a more finished product by noon tomorrow. No deadline today.

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Cell: 202-836-3570

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Subject: RE: GHG petition denial Ex. 5 AC/AWP/DP

I understand, and I anticipate there will be gaps remaining to be filled later this week.

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U.S. Environmental Protection Agency
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Cc: Marks, Matthew <Marks.Matthew@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>
Subject: RE: GHG petition denial Ex. 5 AC/AWP/DP

Hi Adam. We will do the best we can, but this is a fast turnaround we hadn't anticipated (or at least I hadn't).

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

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Sent: Tuesday, January 12, 2021 9:44 AM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>
Subject: RE: GHG petition denial Ex. 5 AC/AWP/DP

I've been asked to have a draft ready for third floor review by 2pm, so please aim to fill in the gaps we discussed and have preliminary answers from OAP on the factual questions David Orlin raised by 1pm. Note any outstanding issues in comments.

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Office of General Counsel
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Cell: 202-836-3570

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To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>
Subject: RE: GHG petition denial Ex. 5 AC/AWP/DP

Gautam,

Here is the cleaned up-text. I left in most of the comments, but we can resolve these in time as appropriate.

Adam

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Office of General Counsel
U.S. Environmental Protection Agency
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Cell: 202-836-3570

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Monday, January 11, 2021 5:50 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>
Subject: RE: GHG petition denial Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

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Sent: Monday, January 11, 2021 5:06 PM
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Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>
Subject: GHG petition denial Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Scott Jordan
Air and Radiation Law Office
Office of General Counsel
202-564-7508

I am an EPA LGBTQ+ Ally
Pronouns: he/him/his

From: Orlin, David <Orlin.David@epa.gov>
Sent: Monday, January 11, 2021 10:00 AM
To: Marks, Matthew <Marks.Matthew@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>
Cc: Okoye, Winifred <Okoye.Winifred@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Subject: RE: GHG petition

Ex. 5 AC/AWP/DP

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Marks, Matthew <Marks.Matthew@epa.gov>
Sent: Monday, January 11, 2021 8:46 AM
To: Jordan, Scott <Jordan.Scott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Subject: RE: GHG petition

This all makes sense. If you can make the call, I assume it will be easiest to just raise it there.

_____

Matthew C. Marks
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW

Washington, DC 20460
T: 202-564-3276
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Message

From: Marks, Matthew [Marks.Matthew@epa.gov]
Sent: 1/14/2021 1:58:56 PM
To: Williams, Melina [Williams.Melina@epa.gov]; Bianco, Karen [Bianco.Karen@epa.gov]
CC: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Anderson, Lea [anderson.lea@epa.gov]; Okoye, Winifred [Okoye.Winifred@epa.gov]
Subject: FW: GHG petition denial Ex. 5 AC/AWP/DP
Attachments: 20210113 Draft GHG NAAQS Petition Denial - mcm.docx

Adding Melina and Karen. Ex. 5 AC/AWP/DP
Ex. 5 AC/AWP/DP Thanks!

Matthew C. Marks
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: 202-564-3276
E: marks.matthew@epa.gov

From: Marks, Matthew
Sent: Thursday, January 14, 2021 8:57 AM
To: Lea Anderson (anderson.lea@epa.gov) <anderson.lea@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
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Ex. 5 AC/AWP/DP
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Cell: 202-836-3570

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Monday, January 11, 2021 5:50 PM
To: Jordan, Scott <Jordan.Scott@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>
Subject: RE: GHG petition denial Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

++++++++++++++++++++++++++++

(202) 564-5647 (o)
(202) 695-6287 (c)

From: Jordan, Scott <Jordan.Scott@epa.gov>
Sent: Monday, January 11, 2021 5:06 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>; Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>
Subject: GHG petition denial Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Scott Jordan
Air and Radiation Law Office
Office of General Counsel
202-564-7508

I am an EPA LGBTQ+ Ally
Pronouns: he/him/his

From: Orlin, David <Orlin.David@epa.gov>
Sent: Monday, January 11, 2021 10:00 AM
To: Marks, Matthew <Marks.Matthew@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>
Cc: Okoye, Winifred <Okoye.Winifred@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Subject: RE: GHG petition

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Marks, Matthew <Marks.Matthew@epa.gov>
Sent: Monday, January 11, 2021 8:46 AM
To: Jordan, Scott <Jordan.Scott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Subject: RE: GHG petition

This all makes sense. If you can make the call, I assume it will be easiest to just raise it there.

Matthew C. Marks
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: 202-564-3276
E: marks.matthew@epa.gov

From: Jordan, Scott <Jordan.Scott@epa.gov>
Sent: Monday, January 11, 2021 8:16 AM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Subject: RE: GHG petition

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

I can point this out to Adam in our call (or by sending him an email making these points), but I wanted to let you know in advance in case you had any questions or thoughts.

Scott Jordan
Air and Radiation Law Office
Office of General Counsel
202-564-7508

I am an EPA LGBTQ+ Ally
Pronouns: he/him/his

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Sunday, January 10, 2021 4:55 PM
To: Orlin, David <Orlin.David@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>
Subject: GHG petition

Hi all. FYI attached are Adam's responses to the comments on the GHG petition denial. He and David have asked to meet on Monday, and I have asked Fletcher to include you all. If you are willing and able to make the meeting, that would be appreciated. If you are not, that is also 100% fine, but Matt and I may circle back with specific questions. Thanks.
++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

Message

From: Okoye, Winifred [Okoye.Winifred@epa.gov]
Sent: 5/17/2019 10:37:43 PM
To: Anderson, Lea [anderson.lea@epa.gov]
Subject: Re: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Thanks Lea.
'Tis mine indeed. Ex. 5 AC/AWP/DP

I'm out of the office on Monday taking a rare CDO. Ex. 5 AC/AWP/DP
Ex. 5 AC/AWP/DP
Ex. 5 AC/AWP/DP

From: Anderson, Lea
Sent: Friday, May 17, 2019 1:52:08 PM
To: Okoye, Winifred
Subject: Fw: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Hi Winnie,

If I'm not mistaken this request to add GHGs to the HAP list falls within your area of expertise. I should have sent it on earlier, but left on vacation and promptly forgot about it.

This should be mentioned at reg review as an FYI. Perhaps we can talk Monday briefly about this beforehand?

Lea

From: McLamb, Marguerite
Sent: Thursday, May 16, 2019 12:10 PM
To: Anderson, Lea
Cc: Shrager, Brian
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Lea,
I had meant to raise this topic yesterday, Ex. 5 AC/DP
Ex. 5 AC/DP
Ex. 5 AC/DP Let's talk about it when you have a chance in the next week or so.
Thanks,
Marguerite

From: McLamb, Marguerite
Sent: Wednesday, April 10, 2019 2:46 PM
To: Anderson, Lea <anderson.lea@epa.gov>
Cc: Brian Shrager <Shrager.Brian@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

From: Lassiter, Penny
Sent: Monday, April 08, 2019 11:01 AM
To: Cozzie, David <Cozzie.David@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

See attached.

Penny Lassiter
Acting Director,
Sector Policies and Programs Division
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
Mail Code: E143-01
Research Triangle Park, NC 27711
(919) 541-5396
lassiter.penny@epa.gov

From: Koerber, Mike
Sent: Monday, April 08, 2019 8:19 AM
To: Lassiter, Penny <Lassiter.Penny@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>; Wayland, Richard <Wayland.Richard@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Husk, Martin <Husk.Martin@epa.gov>; Ward, Hillary <Ward.Hillary@epa.gov>; Mathias, Scott <Mathias.Scott@epa.gov>
Subject: Fwd: CAA Rulemaking Petition for EPA's Office of Air and Radiation

FYI

Sent from my iPhone

Begin forwarded message:

From: "Lewis, Josh" <Lewis.Josh@epa.gov>
Date: April 5, 2019 at 4:26:44 PM EDT
To: "Koerber, Mike" <Koerber.Mike@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

This came in to our office today. Elliott: can you remind me if OGC has a preference on how this is logged/in and tracked? Mike, appreciate any thoughts from OAQPS too. Thanks.

From: Adam Carlesco <acarlesco@fwwatch.org>
Sent: Wednesday, April 3, 2019 4:01 PM
To: Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Subject: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Ms. Raksonik,

Thank you for the guidance on how to formally submit this proposed rulemaking petition. I have attached our petition and look forward to the Office of Air and Radiation's review of this proposal. Would the Assistant Administrator like a hardcopy mailed to the EPA offices?

Sincerely,
Adam Carlesco

Adam Carlesco
Staff Attorney, Climate & Energy
Food & Water Watch
Office: 202.683.4925
acarlesco@fwwatch.org
1616 P Street NW, Suite 300
Washington, DC 20036

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Message

From: McLamb, Marguerite [McLamb.Marguerite@epa.gov]
Sent: 5/17/2019 6:10:05 PM
To: Anderson, Lea [anderson.lea@epa.gov]
CC: Shrager, Brian [Shrager.Brian@epa.gov]
Subject: Re: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Thanks, Lea! After you and Winnie talk, let's set up a short discussion about next steps.

Have a great weekend!

Best, Marguerite

****

Marguerite E. McLamb
Policy Advisor
Sector Policies and Programs Division
Office of Air Quality Planning & Standards
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
Phone (office): (919) 541-7858
Phone (mobile): (919) 491-7514
Fax: (919) 541-4991
mclamb.marguerite@epa.gov

On May 17, 2019, at 1:46 PM, Anderson, Lea <anderson.lea@epa.gov> wrote:

Marguerite,

Thank you for reminding me of this. Winnie Okoye is the OGC expert on listing/delisting of HAP. I would want to talk to Winnie, Ex. 5 AC/DP Ex. 5 AC/DP. I will loop Winnie in and we can all talk in the next week or so.

Ex. 5 AC/DP

Lea

From: McLamb, Marguerite
Sent: Thursday, May 16, 2019 12:10 PM
To: Anderson, Lea
Cc: Shrager, Brian
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Lea,

I had meant to raise this topic yesterday, Ex. 5 AC/DP
Ex. 5 AC/DP
Ex. 5 AC/DP Let's talk about it when you have a chance in the next week or so.

Thanks,
Marguerite

From: McLamb, Marguerite
Sent: Wednesday, April 10, 2019 2:46 PM
To: Anderson, Lea <anderson.lea@epa.gov>
Cc: Brian Shrager <Shrager.Brian@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

---

From: Lassiter, Penny
Sent: Monday, April 08, 2019 11:01 AM
To: Cozzie, David <Cozzie.David@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

See attached.

Penny Lassiter

Acting Director,

Sector Policies and Programs Division

Office of Air Quality Planning and Standards

U.S. Environmental Protection Agency

Mail Code: E143-01

Research Triangle Park, NC 27711

(919) 541-5396

lassiter.penny@epa.gov

From: Koerber, Mike
Sent: Monday, April 08, 2019 8:19 AM
To: Lassiter, Penny <Lassiter.Penny@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>; Wayland, Richard <Wayland.Richard@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Husk, Martin <Husk.Martin@epa.gov>; Ward, Hillary <Ward.Hillary@epa.gov>; Mathias, Scott <Mathias.Scott@epa.gov>
Subject: Fwd: CAA Rulemaking Petition for EPA's Office of Air and Radiation

FYI

Sent from my iPhone

Begin forwarded message:

From: "Lewis, Josh" <Lewis.Josh@epa.gov>
Date: April 5, 2019 at 4:26:44 PM EDT
To: "Koerber, Mike" <Koerber.Mike@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

This came in to our office today. Elliott: can you remind me if OGC has a preference on how this is logged/in and tracked? Mike, appreciate any thoughts from OAQPS too. Thanks.

From: Adam Carlesco <acarlesco@fwwatch.org>
Sent: Wednesday, April 3, 2019 4:01 PM
To: Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Subject: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Ms. Raksonik,

Thank you for the guidance on how to formally submit this proposed rulemaking petition. I have attached our petition and look forward to the Office of Air and Radiation's review of this proposal. Would the Assistant Administrator like a hardcopy mailed to the EPA offices?

Sincerely,

Adam Carlesco

Adam Carlesco

Staff Attorney, Climate & Energy

Food & Water Watch

Office: 202.683.4925
acarlesco@fwwatch.org

1616 P Street NW, Suite 300

Washington, DC 20036

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Message

From: Orlin, David [Orlin.David@epa.gov]
Sent: 2/10/2021 1:54:13 AM
To: Anderson, Lea [anderson.lea@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]
Subject: GHG petition denial withdrawal
Attachments: GHG petition denial withdrawal 2-9.docx

Just checking in on this very short draft withrawal letter.

Emily—I think you said you probably wouldn't have any edits?

Lea—you may also not have any (there is hardly anything to edit) but figured I'd ask because I am sending it to the program

Thanks,

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

This document has been withheld in its entirety under Ex. 5 - Attorney Client (ACP), Ex. 5 - Attorney Work Product (AWP), Ex. 5 - Deliberative Process (DPP).

Message

From: Williams, Melina [Williams.Melina@epa.gov]
Sent: 3/5/2021 4:28:08 PM
To: Marks, Matthew [Marks.Matthew@epa.gov]; Orlin, David [Orlin.David@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Anderson, Lea [anderson.lea@epa.gov]
Subject: RE: Letter from US EPA

Ex. 5 AC/AWP/DP

Melina Williams | US EPA | Office of General Counsel | Air & Radiation Law Office | Mail Code 2344A | phone: (202) 564-3406 | fax: (202) 564-5603

The contents of this e-mail and any attachments to it may contain deliberative-process, attorney-client, attorney work product, or otherwise privileged material. Do not distribute outside of EPA or DOJ.

From: Marks, Matthew <Marks.Matthew@epa.gov>
Sent: Friday, March 5, 2021 11:21 AM
To: Orlin, David <Orlin.David@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Williams, Melina <Williams.Melina@epa.gov>
Subject: RE: Letter from US EPA

Thanks David. Just curious, did we just withdraw the 108/112/115 letters, **Ex. 5 AC/AWP/DP**

Ex. 5 AC/AWP/DP

Matthew C. Marks
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: 202-564-3276
E: marks.matthew@epa.gov

From: Orlin, David <Orlin.David@epa.gov>
Sent: Friday, March 5, 2021 10:59 AM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Williams, Melina <Williams.Melina@epa.gov>
Subject: FW: Letter from US EPA

In case anyone wants a signed version of the GHG withdrawal letters (They broke them out into individual letters).

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Noonan, Jenny <Noonan.Jenny@epa.gov>
Sent: Friday, March 05, 2021 9:32 AM
To: acariesco@fwwatch.org
Subject: Letter from US EPA

Dear Mr. Carlesco:

Attached please find a response from US EPA Acting Administrator Jane Nishida to a petition you submitted on behalf of the Food & Water Watch. This letter is also being sent via USPS.

Thanks,
Jenny

JENNY NOONAN

919.541.0193 919.358.9562 noonan.jenny@epa.gov

Director
Policy Analysis and Communications
EPA's Office of Air Quality Planning and Standards
109 TW Alexander Drive – C301F
Research Triangle Park, NC 27711

Message

From: Anderson, Lea [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B8317EDF62F74E67BCF42ADBDF7785E9-LANDER03]
Sent: 11/19/2020 3:45:27 PM
To: McLamb, Marguerite [McLamb.Marguerite@epa.gov]
Subject: RE: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Did we? I remember seeing this but wasn't aware that it had been assigned to OGC (or that OGC had volunteered to respond). Ex. 5 AC/DP

Ex. 5 AC/DP

Lea Anderson
(202) 564-5571

From: McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Sent: Thursday, November 19, 2020 10:36 AM
To: Anderson, Lea <anderson.lea@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Good morning!

I know that OGC has said it is handling this petition, but I can't find any record of that in my emails, etc. Do you have any information you could share (documents, status, etc.)? Ex. 5 AC/DP

Ex. 5 AC/DP The person in PSG who is tasked with tracking listing petitions has asked to talk with me about this petition, and I don't have anything helpful to tell him or who to direct him to.

Thanks, and I hope you're doing well today. :)

Best,
Marguerite

****
Marguerite E. McLamb
Advisor
Sector Policies and Programs Division, Office of Air Quality Planning & Standards
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
Office: (919) 541-7858; Mobile: (919) 491-7514
mclamb.marguerite@epa.gov

From: Lassiter, Penny
Sent: Monday, April 08, 2019 11:01 AM
To: Cozzie, David <Cozzie.David@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

See attached.

Penny Lassiter
Acting Director,
Sector Policies and Programs Division
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
Mail Code: E143-01
Research Triangle Park, NC 27711
(919) 541-5396
lassiter.penny@epa.gov

From: Koerber, Mike
Sent: Monday, April 08, 2019 8:19 AM
To: Lassiter, Penny <Lassiter.Penny@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>; Wayland, Richard <Wayland.Richard@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Husk, Martin <Husk.Martin@epa.gov>; Ward, Hillary <Ward.Hillary@epa.gov>; Mathias, Scott <Mathias.Scott@epa.gov>
Subject: Fwd: CAA Rulemaking Petition for EPA's Office of Air and Radiation

FYI

Sent from my iPhone

Begin forwarded message:

From: "Lewis, Josh" <Lewis.Josh@epa.gov>
Date: April 5, 2019 at 4:26:44 PM EDT
To: "Koerber, Mike" <Koerber.Mike@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

This came in to our office today. Elliott: can you remind me if OGC has a preference on how this is logged/in and tracked? Mike, appreciate any thoughts from OAQPS too. Thanks.

From: Adam Carlesco <acarlesco@fwwatch.org>
Sent: Wednesday, April 3, 2019 4:01 PM
To: Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Subject: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Ms. Raksonik,

Thank you for the guidance on how to formally submit this proposed rulemaking petition. I have attached our petition and look forward to the Office of Air and Radiation's review of this proposal. Would the Assistant Administrator like a hardcopy mailed to the EPA offices?

Sincerely,
Adam Carlesco

Adam Carlesco
Staff Attorney, Climate & Energy
Food & Water Watch

Office: 202.683.4925
acarlesco@fwwatch.org
1616 P Street NW, Suite 300
Washington, DC 20036

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Message

From: Anderson, Lea [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B8317EDF62F74E67BCF42ADBDF7785E9-LANDER03]
Sent: 11/19/2020 3:46:44 PM
To: McLamb, Marguerite [McLamb.Marguerite@epa.gov]
Subject: FW: HAP Listing and Delisting - OAR Info Pager
Attachments: HAP listing delisting.OAR.2.11.20v2.docx; FWW - CAA 112 GHG Petition.pdf

I did find the email that you sent to me. **Ex. 5 AC/DP**

Lea Anderson
(202) 564-5571

From: McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Sent: Friday, October 09, 2020 9:32 AM
To: Shrager, Brian <Shrager.Brian@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>
Subject: FW: HAP Listing and Delisting - OAR Info Pager

Hi – this is the petition I mentioned recently. From this last email, it looks like OGC has it.

From: Mills, Kathy <Mills.Kathy@epa.gov>
Sent: Tuesday, February 11, 2020 3:17 PM
To: Hagan, Nicole <Hagan.Nicole@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; McKinney, Voronina <mckinney.voronina@epa.gov>
Cc: South, Peter <South.Peter@epa.gov>; Cozzie, David <Cozzie.David@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>; Howard, Jodi <Howard.Jodi@epa.gov>; Schaefer, John <Schaefer.John@epa.gov>; Eck, Janet <Eck.Janet@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Crowley, Kate <crowley.kate@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>
Subject: HAP Listing and Delisting - OAR Info Pager

Updated version attached – includes petition to list GHG as HAP:

Green House Gases (GHG)

- Petition to list submitted by Food & Water Watch (FWW) on April 3, 2019. EPA's response to the petition is due October 2020 (18 months from receipt of petition).
- OGC is handling the response to this petition.

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

Message

From: Anderson, Lea [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B8317EDF62F74E67BCF42ADBDF7785E9-LANDER03]
Sent: 11/19/2020 7:02:43 PM
To: Marks, Matthew [Marks.Matthew@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Subject: RE: CAA Rulemaking Petition for EPA's Office of Air and Radiation

No idea why it would be assigned to OGC, but that's the rumor. Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

I agree that the right step at this point is to have it assigned to OAR/OAQPS so that they can at least keep track of it.

Lea Anderson
(202) 564-5571

From: Marks, Matthew <Marks.Matthew@epa.gov>
Sent: Thursday, November 19, 2020 1:53 PM
To: Anderson, Lea <anderson.lea@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Thanks for the update. Why would it be assigned to OGC? Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Matthew C. Marks
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: 202-564-3276
E: marks.matthew@epa.gov

From: Anderson, Lea <anderson.lea@epa.gov>
Sent: Thursday, November 19, 2020 1:10 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Gautam and Matt,

This is an FYI at the moment. OAQPS asked me today about the response to the attached rulemaking petition which the Agency received in April 2019. It requests the Agency to list GHG as HAP. The email today makes clear that OAQPS believes that OGC was given responsibility for responding to the petition. Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Marguerite McLamb is looking on her end to see if she can determine whether the response was assigned to OGC. Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Lea Anderson
(202) 564-5571

From: Anderson, Lea
Sent: Thursday, May 16, 2019 2:03 PM
To: Zenick, Elliott <Zenick.Elliott@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Elliott, I saw that Josh Lewis asked you about how to log this when it came in. Do you know if this petition to list GHG as a HAP was for sent to the OGC front office? Or how we find out whether they have it? Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Also, any thoughts about who to work on this? I think Winnie typically handles listings and delistings of HAP, Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

From: McLamb, Marguerite
Sent: Thursday, May 16, 2019 12:11 PM
To: Anderson, Lea <anderson.lea@epa.gov>
Cc: Shrager, Brian <Shrager.Brian@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Lea,
I had meant to raise this topic yesterday, Ex. 5 AC/DP
Ex. 5 AC/DP
Ex. 5 AC/DP Let's talk about it when you have a chance in the next week or so.
Thanks,
Marguerite

From: McLamb, Marguerite
Sent: Wednesday, April 10, 2019 2:46 PM
To: Anderson, Lea <anderson.lea@epa.gov>
Cc: Brian Shrager <Shrager.Brian@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

---

From: Lassiter, Penny
Sent: Monday, April 08, 2019 11:01 AM
To: Cozzie, David <Cozzie.David@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

See attached.

Penny Lassiter
Acting Director,
Sector Policies and Programs Division
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
Mail Code: E143-01
Research Triangle Park, NC 27711
(919) 541-5396
lassiter.penny@epa.gov

From: Koerber, Mike
Sent: Monday, April 08, 2019 8:19 AM
To: Lassiter, Penny <Lassiter.Penny@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>; Wayland, Richard <Wayland.Richard@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Husk, Martin <Husk.Martin@epa.gov>; Ward, Hillary <Ward.Hillary@epa.gov>; Mathias, Scott <Mathias.Scott@epa.gov>
Subject: Fwd: CAA Rulemaking Petition for EPA's Office of Air and Radiation

FYI

Sent from my iPhone

Begin forwarded message:

From: "Lewis, Josh" <Lewis.Josh@epa.gov>
Date: April 5, 2019 at 4:26:44 PM EDT
To: "Koerber, Mike" <Koerber.Mike@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

This came in to our office today. Elliott: can you remind me if OGC has a preference on how this is logged/in and tracked? Mike, appreciate any thoughts from OAQPS too. Thanks.

From: Adam Carlesco <acarlesco@fwwatch.org>
Sent: Wednesday, April 3, 2019 4:01 PM
To: Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Subject: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Ms. Raksonik,

Thank you for the guidance on how to formally submit this proposed rulemaking petition. I have attached our petition and look forward to the Office of Air and Radiation's review of this proposal. Would the Assistant Administrator like a hardcopy mailed to the EPA offices?

Sincerely,
Adam Carlesco

Adam Carlesco
Staff Attorney, Climate & Energy
Food & Water Watch

Office: 202.683.4925
acarlesco@fwwatch.org
1616 P Street NW, Suite 300
Washington, DC 20036

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Message

From: Anderson, Lea [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B8317EDF62F74E67BCF42ADBDF7785E9-LANDER03]
Sent: 1/6/2021 4:25:51 PM
To: Okoye, Winifred [Okoye.Winifred@epa.gov]
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation
Attachments: FWW - CAA 112 GHG Petition.pdf

Lea Anderson
(202) 564-5571

From: McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Sent: Thursday, November 19, 2020 10:36 AM
To: Anderson, Lea <anderson.lea@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Good morning!

I know that OGC has said it is handling this petition, but I can't find any record of that in my emails, etc. Do you have any information you could share (documents, status, etc.)? Ex. 5 AC/DP

Ex. 5 AC/DP The person in PSG who is tasked with tracking listing petitions has asked to talk with me about this petition, and I don't have anything helpful to tell him or who to direct him to.

Thanks, and I hope you're doing well today. :)

Best,
Marguerite

****
Marguerite E. McLamb
Advisor
Sector Policies and Programs Division, Office of Air Quality Planning & Standards
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711
Office: (919) 541-7858; Mobile: (919) 491-7514
mclamb.marguerite@epa.gov

From: Lassiter, Penny
Sent: Monday, April 08, 2019 11:01 AM
To: Cozzie, David <Cozzie.David@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

See attached.

Penny Lassiter
Acting Director,
Sector Policies and Programs Division
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
Mail Code: E143-01
Research Triangle Park, NC 27711
(919) 541-5396
lassiter.penny@epa.gov

From: Koerber, Mike
Sent: Monday, April 08, 2019 8:19 AM
To: Lassiter, Penny <Lassiter.Penny@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>; Wayland, Richard <Wayland.Richard@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Husk, Martin <Husk.Martin@epa.gov>; Ward, Hillary <Ward.Hillary@epa.gov>; Mathias, Scott <Mathias.Scott@epa.gov>
Subject: Fwd: CAA Rulemaking Petition for EPA's Office of Air and Radiation

FYI

Sent from my iPhone

Begin forwarded message:

From: "Lewis, Josh" <Lewis.Josh@epa.gov>
Date: April 5, 2019 at 4:26:44 PM EDT
To: "Koerber, Mike" <Koerber.Mike@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

This came in to our office today. Elliott: can you remind me if OGC has a preference on how this is logged/in and tracked? Mike, appreciate any thoughts from OAQPS too. Thanks.

From: Adam Carlesco <acarlesco@fwwatch.org>
Sent: Wednesday, April 3, 2019 4:01 PM
To: Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Subject: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Ms. Raksonik,

Thank you for the guidance on how to formally submit this proposed rulemaking petition. I have attached our petition and look forward to the Office of Air and Radiation's review of this proposal. Would the Assistant Administrator like a hardcopy mailed to the EPA offices?

Sincerely,
Adam Carlesco

Adam Carlesco
Staff Attorney, Climate & Energy
Food & Water Watch
Office: 202.683.4925
acarlesco@fwwatch.org

1616 P Street NW, Suite 300
Washington, DC 20036

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Message

From: Anderson, Lea [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B8317EDF62F74E67BCF42ADBDF7785E9-LANDER03]
Sent: 1/11/2021 6:12:55 PM
To: Okoye, Winifred [Okoye.Winifred@epa.gov]
Subject: FW: GHG petition
Attachments: 20210109 Draft GHG NAAQS Petition Denial +ARLO +ag.docx

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP Do you have the time or inclination to do that?

Lea Anderson
(202) 564-5571

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Sunday, January 10, 2021 4:55 PM
To: Orlin, David <Orlin.David@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>
Subject: GHG petition

Hi all. FYI attached are Adam's responses to the comments on the GHG petition denial. He and David have asked to meet on Monday, and I have asked Fletcher to include you all. If you are willing and able to make the meeting, that would be appreciated. If you are not, that is also 100% fine, but Matt and I may circle back with specific questions. Thanks.
++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

This document has been withheld in its entirety under Ex. 5 - Attorney Client (ACP), Ex. 5 - Attorney Work Product (AWP), Ex. 5 - Deliberative Process (DPP).

Message

From: Anderson, Lea [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B8317EDF62F74E67BCF42ADBDF7785E9-LANDER03]
Sent: 5/17/2019 5:52:08 PM
To: Okoye, Winifred [Okoye.Winifred@epa.gov]
Subject: Fw: CAA Rulemaking Petition for EPA's Office of Air and Radiation
Attachments: FWW - CAA 112 GHG Petition.pdf; ATT00001.htm

Hi Winnie,

If I'm not mistaken this request to add GHGs to the HAP list falls within your area of expertise. I should have sent it on earlier, but left on vacation and promptly forgot about it.

This should be mentioned at reg review as an FYI. Perhaps we can talk Monday briefly about this beforehand?

Lea

From: McLamb, Marguerite
Sent: Thursday, May 16, 2019 12:10 PM
To: Anderson, Lea
Cc: Shrager, Brian
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Lea,
I had meant to raise this topic yesterday, Ex. 5 AC/DP
Ex. 5 AC/DP
Ex. 5 AC/DP Let's talk about it when you have a chance in the next week or so.
Thanks,
Marguerite

From: McLamb, Marguerite
Sent: Wednesday, April 10, 2019 2:46 PM
To: Anderson, Lea <anderson.lea@epa.gov>
Cc: Brian Shrager <Shrager.Brian@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

---

From: Lassiter, Penny
Sent: Monday, April 08, 2019 11:01 AM
To: Cozzie, David <Cozzie.David@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

See attached.

Penny Lassiter

Acting Director,
Sector Policies and Programs Division
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
Mail Code: E143-01
Research Triangle Park, NC 27711
(919) 541-5396
lassiter.penny@epa.gov

From: Koerber, Mike
Sent: Monday, April 08, 2019 8:19 AM
To: Lassiter, Penny <Lassiter.Penny@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>; Wayland, Richard <Wayland.Richard@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Husk, Martin <Husk.Martin@epa.gov>; Ward, Hillary <Ward.Hillary@epa.gov>; Mathias, Scott <Mathias.Scott@epa.gov>
Subject: Fwd: CAA Rulemaking Petition for EPA's Office of Air and Radiation

FYI

Sent from my iPhone

Begin forwarded message:

From: "Lewis, Josh" <Lewis.Josh@epa.gov>
Date: April 5, 2019 at 4:26:44 PM EDT
To: "Koerber, Mike" <Koerber.Mike@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

This came in to our office today. Elliott: can you remind me if OGC has a preference on how this is logged/in and tracked? Mike, appreciate any thoughts from OAQPS too. Thanks.

From: Adam Carlesco <acarlesco@fwwatch.org>
Sent: Wednesday, April 3, 2019 4:01 PM
To: Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Subject: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Ms. Raksonik,

Thank you for the guidance on how to formally submit this proposed rulemaking petition. I have attached our petition and look forward to the Office of Air and Radiation's review of this proposal. Would the Assistant Administrator like a hardcopy mailed to the EPA offices?

Sincerely,
Adam Carlesco

Adam Carlesco
Staff Attorney, Climate & Energy
Food & Water Watch
Office: 202.683.4925
acarlesco@fwwatch.org
1616 P Street NW, Suite 300
Washington, DC 20036

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Message

From: Goffman, Joseph [Goffman.Joseph@epa.gov]
Sent: 3/9/2021 1:57:52 PM
To: DeLuca, Isabel [DeLuca.Isabel@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Nunez, Alejandra [Nunez.Alejandra@epa.gov]; Kim, Eun [Kim.Eun@epa.gov]
CC: Millett, John [Millett.John@epa.gov]
Subject: RE: Politico press inquiry

Looks fine here. Thanks.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Sent: Tuesday, March 9, 2021 8:55 AM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Nunez, Alejandra <Nunez.Alejandra@epa.gov>; Kim, Eun <Kim.Eun@epa.gov>
Cc: Millett, John <Millett.John@epa.gov>
Subject: Politico press inquiry

Hi all,
We have a press inquiry from Politico asking about last week's letters regarding the withdrawal of several petition denials. Please see incoming and draft below and let me know if you have concerns.

Thanks,
Isabel

Incoming from Politico
The withdraw of the denial: https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-03-05-Decision-Withdrawing-Denial.pdf
The Center for Biological Diversity says EPA has undone the Jan. 19 denial of its petition to regulate greenhouse gases under the NAAQS program. They shared a Jan. 19 letter that also denied petitions from the Institute for Policy Integrity to regulate GHGs under Section 115 of the Clean Air Act and another from Food & Water Watch seeking Section 112 regulation of GHGs.

Ex. 5 Deliberative Process (DP)

Draft response

Ex. 5 Deliberative Process (DP)

Isabel DeLuca

Office of Air and Radiation, US EPA
(202) 343-9247

Message

From: Gustafson, Adam [Gustafson.Adam@epa.gov]
Sent: 12/28/2020 11:05:01 PM
To: Idsal, Anne [idsal.anne@epa.gov]; Moor, Karl [Moor.Karl@epa.gov]
CC: Fotouhi, David [Fotouhi.David@epa.gov]
Subject: Draft Work Product
Attachments: 20201228 Draft GHG NAAQS Petition Denial.docx

DELIBERATIVE. ATTORNEY-CLIENT PRIVILEGED.

Anne and Karl,

Ex. 5 AC/DP

Ex. 5 AC/DP

I'm available to discuss as needed.

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

Message

From: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Sent: 1/8/2021 12:18:26 AM
To: Fotouhi, David [Fotouhi.David@epa.gov]; Gustafson, Adam [Gustafson.Adam@epa.gov]
CC: Marks, Matthew [Marks.Matthew@epa.gov]
Subject: GHG petition denial
Attachments: 20210105 Draft GHG NAAQS Petition Denial.docx

Flag: Follow up

Attached are ARLO comments as of 7p tonight. Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

We had planned to talk tomorrow, and Matt and I are available, so let us know if you want to do that. Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP Thanks.

++++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

This document has been withheld in its entirety under Ex. 5 - Attorney Client (ACP), Ex. 5 - Attorney Work Product (AWP), Ex. 5 - Deliberative Process (DPP).

Message

From: Gustafson, Adam [Gustafson.Adam@epa.gov]
Sent: 1/10/2021 4:54:48 AM
To: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]
CC: Marks, Matthew [Marks.Matthew@epa.gov]
Subject: RE: GHG petition denial
Attachments: 20210109 Draft GHG NAAQS Petition Denial +ARLO +ag.docx

Flag: Follow up

Gautam,

Thanks for organizing this rapid response. I appreciate the helpful feedback on short notice. I've made some edits in response and left some comments in the margin. Ex. 5 AC/AWP/DP Ex. 5 AC/AWP/DP

Let's plan to discuss on Monday. It looks like David and I are available 11:30-12:30 and 3:30-5:00.

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Friday, January 8, 2021 6:23 AM
To: Fotouhi, David <Fotouhi.David@epa.gov>; Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>
Subject: Re: GHG petition denial

Ex. 5 AC/AWP/DP

++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

On Jan 7, 2021, at 7:18 PM, Srinivasan, Gautam <Srinivasan.Gautam@epa.gov> wrote:

Attached are ARLO comments as of 7p tonight. Ex. 5 AC/AWP/DP Ex. 5 AC/AWP/DP

We had planned to talk tomorrow, and Matt and I are available, so let us know if you want to do that. Ex. 5 AC/AWP/DP Ex. 5 AC/AWP/DP Ex. 5 AC/AWP/DP Thanks.

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

<20210105 Draft GHG NAAQS Petition Denial.docx>

Message

From: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Sent: 1/8/2021 8:36:42 PM
To: Fotouhi, David [Fotouhi.David@epa.gov]; Gustafson, Adam [Gustafson.Adam@epa.gov]
CC: Marks, Matthew [Marks.Matthew@epa.gov]
Subject: 20210105 Draft GHG NAAQS Petition Denial.docx
Attachments: 20210105 Draft GHG NAAQS Petition Denial.docx

Ex. 5 AC/AWP/DP

++++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

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Message

From: Gustafson, Adam [Gustafson.Adam@epa.gov]
Sent: 1/13/2021 7:23:55 PM
To: Hyman, Alana [Hyman.Alana@epa.gov]; Vella, Sophia [Vella.Sophia@epa.gov]; Scott, Corey [scott.corey@epa.gov]; Dickerson, Aaron [dickerson.aaron@epa.gov]
CC: Fotouhi, David [Fotouhi.David@epa.gov]
Subject: Draft GHG NAAQS/115/HAP Petition Denial
Attachments: 20210113 Draft GHG NAAQS Petition Denial.docx

Flag: Follow up

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Alana, Sophia, Corey, and Aaron,

Please include this draft denial of three GHG-related rulemaking petitions in the Administrator's binder. Ex. 5 AC/DP

Ex. 5 AC/DP

Thank you.

Adam

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

Message

From: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Sent: 1/14/2021 9:11:05 PM
To: Fotouhi, David [Fotouhi.David@epa.gov]
Subject: FW: ghg petitions
Attachments: 20210113 Draft GHG NAAQS Petition Denial - mcm.docx

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Srinivasan, Gautam
Sent: Thursday, January 14, 2021 3:41 PM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>
Subject: ghg petitions

Adam- Attached are some additional edits to the document. Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

I'm not sure how many people are going to be around tomorrow, but please let us know if you have further thoughts/asks.

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

This document has been withheld in its entirety under Ex. 5 - Attorney Client (ACP), Ex. 5 - Attorney Work Product (AWP), Ex. 5 - Deliberative Process (DPP).

Message

From: Gustafson, Adam [Gustafson.Adam@epa.gov]
Sent: 1/14/2021 10:19:22 PM
To: Fotouhi, David [Fotouhi.David@epa.gov]
Subject: RE: GHG NAAQS petitions
Attachments: 20210114 Draft GHG NAAQS Petition Denial.docx

Flag: Follow up

David,

Here is the current version. I will be going over this again tonight.

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Gustafson, Adam
Sent: Thursday, January 14, 2021 3:01 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: Re: GHG NAAQS petitions

Yes, I'll send it when I get to my hotel in a couple hours and will continue tweaking after that.

Sent from my iPhone

On Jan 14, 2021, at 12:58 PM, Fotouhi, David <Fotouhi.David@epa.gov> wrote:

I'd like to give this document a final read tonight before we send it through for signature tomorrow. When you're happy with it, could you please send me the latest draft? I'm okay if you're planning to keep tweaking it after you send it—just want to review the latest.

David Fotouhi

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

This document has been withheld in its entirety under Ex. 5 - Attorney Client (ACP), Ex. 5 - Attorney Work Product (AWP), Ex. 5 - Deliberative Process (DPP).

Message

From: Gustafson, Adam [Gustafson.Adam@epa.gov]
Sent: 1/15/2021 2:27:13 PM
To: Fotouhi, David [Fotouhi.David@epa.gov]
Subject: RE: GHG NAAQS petitions
Attachments: 20210115 Draft GHG NAAQS Petition Denial.docx

Thanks, David.

Here is my final version. It is still marked draft.

Ex. 5 AC/DP

Ex. 5 AC/DP

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Thursday, January 14, 2021 11:31 PM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Subject: RE: GHG NAAQS petitions

Adam: Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP

David Fotouhi

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

From: Gustafson, Adam <Gustafson.Adam@epa.gov>
Sent: Thursday, January 14, 2021 5:19 PM

To: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: RE: GHG NAAQS petitions

David,

Here is the current version. I will be going over this again tonight.

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Gustafson, Adam
Sent: Thursday, January 14, 2021 3:01 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: Re: GHG NAAQS petitions

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Sent from my iPhone

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David Fotouhi

Acting General Counsel
U.S. Environmental Protection Agency
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Message

From: Gustafson, Adam [Gustafson.Adam@epa.gov]
Sent: 1/19/2021 4:17:28 AM
To: Fotouhi, David [Fotouhi.David@epa.gov]
Subject: RE: GHG NAAQS petition
Attachments: 20210115b Draft GHG NAAQS Petition Denial +df +ag.docx

Here it is after accepting your edits and responding to your question. Ex. 5 AC/DP

Ex. 5 AC/DP

I'll clean this up Ex. 5 AC/DP

Ex. 5 AC/DP

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
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From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Monday, January 18, 2021 5:31 PM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Subject: GHG NAAQS petition

Went through this draft one last time and made some mine tweaks (and asked a question in a comment bubble).

Once you're good with the draft, could you convert it to PDF and send it to me with the cover letter in Word for transmission to AW?

David Fotouhi

Acting General Counsel
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This document has been withheld in its entirety under Ex. 5 - Attorney Client (ACP), Ex. 5 - Attorney Work Product (AWP), Ex. 5 - Deliberative Process (DPP).

Message

From: Gustafson, Adam [Gustafson.Adam@epa.gov]
Sent: 1/19/2021 5:19:22 AM
To: Fotouhi, David [Fotouhi.David@epa.gov]
Subject: RE: GHG NAAQS petition
Attachments: 20210118 GHG NAAQS Denial w cover letter.docx

Here it is. I will send one more email tonight containing this and two other documents for the Administrator's signature.

Adam Gustafson
Deputy General Counsel
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From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Monday, January 18, 2021 11:30 PM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Subject: Re: GHG NAAQS petition

Thanks! Good suggestion...let's do one consolidated word document.

Sent from my iPhone

On Jan 18, 2021, at 11:17 PM, Gustafson, Adam <Gustafson.Adam@epa.gov> wrote:

Here it is after accepting your edits and responding to your question. Ex. 5 AC/DP

Ex. 5 AC/DP

I'll clean this up Ex. 5 AC/DP

Ex. 5 AC/DP

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Sent: Monday, January 18, 2021 5:31 PM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Subject: GHG NAAQS petition

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David Fotouhi

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<20210115b Draft GHG NAAQS Petition Denial +df +ag.docx>

Message

From: Gustafson, Adam [Gustafson.Adam@epa.gov]
Sent: 1/19/2021 6:22:47 AM
To: Fotouhi, David [Fotouhi.David@epa.gov]
Subject: Documents for AW Signature
Attachments: 20210118 GHG NAAQS Denial w cover letter.docx; 20210118d GHG Endangerment Denial w cover letter.docx;
Ex. 5 AC/DP

Flag: Flag for follow up

David,

Here are two documents Ex. 5 AC/DP for the Administrator's signature:

- Denial of three petitions to regulate GHG as a NAAQS, as a cross-border pollutant under CAA 115, and as a HAP, submitted by CBD, NYU Law Institute for Policy Integrity, and Food & Water Watch, respectively;
- Denial of four petitions to reconsider the 2009 GHG Endangerment Finding, submitted by CHECC, CEI/SEPP, Liberty Packing/TPPF, and FAIR Energy Foundation.

Ex. 5 AC/DP

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Ex. 5 AC/DP

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

THE ADMINISTRATOR

January 19, 2021

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Dear Ms. Siegel, Ms. Boeve, Mr. Schwartz, and Mr. Carlesco:

I am responding to a petition from the Center for Biological Diversity, dated December 2, 2009, to set National Ambient Air Quality Standards for greenhouse gases; a petition from the New York University School of Law Institute for Policy Integrity, dated February 19, 2013, to regulate greenhouse gases under Section 115 of the Clean Air Act; and a petition from Food & Water Watch, dated April 3, 2019, to regulate greenhouse gases as hazardous air pollutants under Section 112 of the CAA.

The EPA has reviewed your petitions and the information available on the issues you raised. For the reasons discussed in the enclosed response, the EPA denies your petitions, except as to the portions of the IPI petition identified in footnote [NOTEREF _Ref61907614 \h], as to which the EPA takes no action.

I would like to thank you for your interest in these issues. The EPA looks forward to working with you and other stakeholders as we continue to protect human health and the environment in accordance with law.

Sincerely,

Andrew R. Wheeler

Enclosure

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Denial of Petitions to Establish National Ambient Air Quality Standards for Greenhouse Gases, to Regulate Greenhouse Gases under Clean Air Act Section 115, and to Regulate Greenhouse Gases as Hazardous Air Pollutants

This document is in response to a petition from the Center for Biological Diversity (CBD), dated December 2, 2009, to set National Ambient Air Quality Standards (NAAQS) for greenhouse gases (GHG); a petition from the New York University School of Law Institute for Policy Integrity (IPI), dated February 19, 2013, to regulate GHG under Section 115 of the Clean Air Act (CAA); and a petition from Food & Water Watch (FWW), dated April 3, 2019, to regulate GHG as hazardous air pollutants (HAP) under Section 112 of the CAA.

Specifically, CBD requests that EPA list GHG as criteria pollutants pursuant to CAA § 108(a)(1), issue air quality criteria for GHG pursuant to CAA § 108(a)(2), propose primary and secondary NAAQS for GHG pursuant to CAA § 109(a), make available certain information about controlling GHG emissions pursuant to CAA § 108, including 108(f), issue final NAAQS for GHG along with techniques for controlling them pursuant to CAA § 108(b)(1), and aid the states in the State Implementation Plan (SIP) process pursuant to CAA § 110. Center for Biological Diversity & 350.org, Petition to Establish National Pollution Limits for Greenhouse Gases Pursuant to the Clean Air Act (Dec. 2, 2009) (hereinafter "CBD Petition").

IPI requests that EPA find that the prerequisites for controlling international air pollution pursuant to CAA § 115 have been satisfied for GHG, require states to revise SIPs to make reasonable progress toward abatement of GHG pollution, and advise states on implementation options under CAA § 115. Institute for Policy Integrity, Petition for Rulemakings and Call for Information Under Section 115, Title VI, Section 111, and Title II of the Clean Air Act to Regulate GHG Emissions at 12 (2013) (hereinafter "IPI Petition").

FWW requests that EPA list GHG as HAP under CAA § 112 and take steps to set emissions standards pursuant to that section. Food & Water Watch, Petition for Listing and Rulemaking Under Section 112 of the Clean Air Act to Establish Greenhouse Gases as Hazard [sic] Air Pollutants and to Set National Emission Standards for Hazardous Air Pollutant Emissions (Apr. 3, 2019) (hereinafter "FWW Petition").

Because EPA determines that regulation of international pollution pursuant to CAA § 115 is appropriate only for criteria pollutants that are subject to a NAAQS pursuant to CAA § 108, and because all three petitions raise questions of statutory interpretation dealing with GHG, EPA addresses all three petitions together.

Statutory Background

National Ambient Air Quality Standards

"For the purpose of establishing [NAAQS]," CAA § 108 provides that EPA shall publish and from time to time thereafter revise a list of air pollutants known as "criteria pollutants" that meet each of three requirements. First, "emissions of [the pollutant], in [the Administrator's] judgment [must] cause or contribute to air pollution which may reasonably be anticipated to endanger

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public health or welfare." CAA § 108(a)(1)(A). Second, the air pollutant must "result from numerous or diverse . . . sources." CAA § 108(a)(1)(B). Finally, the pollutant must be one "for which [the Administrator] plans to issue air quality criteria under this section." CAA § 108(a)(1)(C). Congress originally identified five criteria pollutants: carbon monoxide, ground-level ozone, particulate matter, nitrogen dioxide, and sulfur dioxide. To date, EPA has added only one to the list: lead.

For each pollutant on the list, EPA develops air quality criteria pursuant to CAA § 108(a)(2). The criteria "shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities." The criteria must include, to the extent practicable, information on variable factors, including other pollutants, that alter the pollutant's health or welfare effects, and "any known or anticipated adverse effects on welfare."

EPA promulgates "primary" and "secondary" NAAQS pursuant to CAA § 109. The primary standards are set such that the attainment and maintenance of the standards, in the judgment of the EPA Administrator, based on the air quality criteria, and allowing for an adequate margin of safety, are requisite to protect the public health. The secondary standards are set such that the attainment and maintenance of the standards are requisite to protect the public welfare from any known or anticipated effects. EPA may not consider the costs of meeting the NAAQS in setting the standards.

Within one year of EPA's promulgation of a new or revised NAAQS, each State must recommend designations of its regions as nonattainment, attainment, or unclassifiable. CAA § 107(d)(1)(A). EPA must finalize designations within two years after the NAAQS are finalized. CAA § 107(d)(1)(B)(i). Within three years from the NAAQS promulgation, States are required to adopt and submit to EPA State implementation plans (SIPs), pursuant to CAA § 110, providing for the implementation, maintenance, and enforcement of the NAAQS. The Act's requirements for SIPs are more detailed and stringent for areas not meeting the standards (nonattainment areas) than for areas meeting the standards (attainment areas).

States can petition EPA to exclude emissions data resulting from certain "exceptional events" pursuant to CAA § 319(b).

States are required to bring nonattainment areas into attainment with the NAAQS as expeditiously as practicable, but no later than attainment dates that are at most "10 years from the date of designation as nonattainment." CAA § 172(a)(2)(A).

States must address interstate transport of a pollutant that significantly contributes to another state's nonattainment or interferes with another state's maintenance of the NAAQS. CAA § 110(a)(2)(D)(i)(I).

If a nonattainment area fails to attain the NAAQS by the deadline, EPA publishes a notice of failure to attain. One year after the notice of failure to attain is published, a state is required to submit a revision to the applicable implementation plan for the area that includes "all measures that can be feasibly implemented in the area in light of technological achievability, costs, and

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any nonair quality and other air quality-related health and environmental impacts." CAA §§ 179(d)(1), 181(b)(2), 186(b)(2) & 188(b)(2).

A SIP must be revised whenever the Administrator finds that the plan is "substantially inadequate to attain the [NAAQS] which it implements or to otherwise comply with any additional requirements established under this chapter." CAA § 110(a)(2)(H)(ii).

A state that fails to submit a complete SIP, has its SIP disapproved by EPA, or fails to implement a required SIP is subject to sanctions. EPA may prohibit the Department of Transportation from awarding highway grants to noncompliant states. CAA § 179(b)(1). And new sources in such a state are subject to a requirement to obtain two tons of emissions reduction from other sources in the same nonattainment area for every one ton of emissions from the new source. CAA § 179(c)(1).

EPA is required to promulgate a federal implementation plan within two years of disapproving a SIP or finding that a state has failed to submit a required SIP. CAA § 110(c)(1).

Listing a criteria pollutant pursuant to CAA § 108 precludes regulation of that air pollutant from existing sources as a hazardous air pollutant under CAA § 112, *see* CAA § 112(b)(2), or under CAA § 111(d), which is intended to provide for regulation of air pollutants not otherwise subject to the major regulatory programs under the Act, *see* CAA § 111(d)(1)(A).

International Pollution

SIP revision can also be triggered under CAA § 115, which requires the Administrator to notify a state governor if the Administrator believes, based on information from an international agency, that "any air pollutant or pollutants" from that state "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country," but only if the Administrator determines that the foreign country has given the United States "essentially the same rights" as § 115 gives to the foreign country. CAA § 115(c). A notice to the state pursuant to § 115(a) is deemed to be a finding pursuant to § 110(a)(2)(H)(ii), "which requires a plan revision with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment to a foreign country." CAA § 115(b).

Hazardous Air Pollutants

CAA § 112(b)(1) provides a list of substances that Congress identified as hazardous air pollutants (HAP) in the 1990 CAA Amendments. These HAP have been associated with a wide variety of adverse health effects, including cancer, neurological effects, reproductive effects, and developmental effects.

The CAA directs the EPA to identify and list source categories that emit HAP and then to set emission standards for those listed source categories. Standards promulgated under CAA section 112(d) are commonly referred to as National Emission Standards for Hazardous Air Pollutants (NESHAP).

CAA § 112(b)(2) gives the Administrator authority to add to the CAA § 112(b)(1) list "pollutants which present, or may present through inhalation or other routes of exposure, a threat

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of adverse human health effects (including, but not limited to, substances, which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition or otherwise." CAA § 302(k) defines an air pollutant as "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive . . . substance or matter which is emitted into or otherwise enters the ambient air." CAA § 112(a)(7) defines the term "adverse environmental effect" as "any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas."

CAA § 112(b)(3)(A) specifies that any person may petition the Administrator to modify the list of HAP contained in CAA § 112(b)(1) by adding or deleting a substance. CAA § 112(b)(3)(B) sets out the substantive criteria for granting a petition. It calls for the Administrator to add a substance to the CAA section 112(b)(1) list "upon a showing by the petitioner or on the Administrator's own determination that the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects." The Administrator is required under CAA § 112(b)(3)(A) to either grant or deny a petition within 18 months of the receipt of a complete petition by publishing a written explanation of the reasons for the Administrator's decision. The Administrator may not deny a petition solely on the basis of inadequate resources or time for review. CAA § 112(b)(3)(A).

Under CAA § 112, new regulated sources must meet HAP emission standards that are no less stringent than the emission limitation achieved by the best controlled similar source. CAA § 112(d)(3). Existing regulated sources must meet emission standards that are no less stringent than the average emission limitation achieved by a specified subset of the best performing existing sources. CAA § 112(d)(3)(A) & (B).

Once a pollutant is listed as a HAP under CAA § 112, EPA is obligated to regulate all "major sources" of that pollutant. And, once a source qualifies as a "major source" of any hazardous air pollutant, EPA must regulate all HAP from that source. CAA § 112(c)(2).

Listing and regulating a pollutant as a HAP precludes regulation of that pollutant under CAA § 111(d). *See* CAA § 111(d)(1); *see also* Affordable Clean Energy Rule, Response to Comments, Chapter 1, Docket Item # EPA-HQ-OAR-2017-0355-26741, at 11 (confirming EPA's position on the section 112 exclusion as stated in Clean Power Plan Final Rule); Clean Power Plan Final Rule, 80 Fed Reg 64,662, 64,710 (Oct. 23, 2015) ("CAA section 111(d) contains an exclusion that limits the regulation under CAA section 111(d) of air pollutants that are regulated under CAA section 112.").

<u>EPA's Response to CBD's Petition to Establish a GHG NAAQS</u>

Upon consideration of CBD's petition, EPA has determined that a NAAQS for GHG would be inconsistent with the text and structure of the Clean Air Act. The NAAQS regime is designed for

local pollutants that state-level regulation can meaningfully control. GHG is a global pollutant that is dispersed evenly throughout the global atmosphere. No state implementation plan could possibly have any measurable effect on the concentration of GHG within its own borders, and no state could ever come into attainment, on the basis of state-level action, with CBD's preferred level of 350 parts per million (ppm) CO_2 or any other standard set below current global concentrations. The statutory devices that incentivize SIP submission and NAAQS attainment within specific geographic areas would serve no useful function in a circumstance of nationwide and perpetual nonattainment. For these reasons, EPA determines that it would be unreasonable and inappropriate to establish a NAAQS for GHG. It follows that EPA could not reasonably plan to issue air quality criteria for GHG and therefore could not reasonably list GHG as a criteria pollutant.

Statutory Text

As CBD acknowledges, before EPA can set a national pollution standard for a new pollutant pursuant to CAA § 109, the Agency must first list the new pollutant pursuant to § 108(a)(1), and then issue air quality criteria for the pollutant pursuant to § 108(a)(2). That statute leaves no ambiguity about the reason for the creation and revision of the list of criteria pollutants. It is "[f]or the purpose of establishing national primary and secondary ambient air quality standards" that the Administrator is required to publish and revise the list. The rest of the provision must be interpreted through the lens of this express statutory purpose. *See Herman & MacLean v. Huddleston*, 459 U.S. 375, 387 (1983) ("[C]ourts will construe the details of an act in conformity with its dominating general purpose." (quoting *SEC v. C. M. Joiner Leasing Corp.*, 320 U.S. 344, 350-51 (1943))). It would be illogical therefore to list a criteria pollutant that could not reasonably be regulated pursuant to a NAAQS.

The third statutory condition that must be satisfied before a pollutant may be listed makes clear that a pollutant should not be listed unless it is an appropriate subject for NAAQS regulation. That condition provides that a pollutant should only be listed if it is one "for which [the Administrator] plans to issue air quality criteria under this section." CAA § 108(a)(1)(C); *see St. Joe Minerals Corp. v. EPA*, 508 F.2d 743, 744 (3d Cir. 1975), *vacated as moot*, 425 U.S. 987 (1976) ("The Administrator is to include in the list of pollutants all substances for which air quality criteria had previously been established and any others which, in the Administrator's opinion, (1) detracted from the public health or welfare; (2) originated from numerous sources; and (3) *merited controls*.") (emphasis added).

CBD's petition effectively reads the third condition out of the statute. CBD argues that "[w]hen the provisions of subpart (A) and (B) have been met, listing the pollutant and proceeding with the additional requirements of sections 108-110 is mandatory, and EPA lacks any discretion to decline to regulate." CBD Petition at 15. CBD's only basis for this position is a single judicial decision from the 1970s. In *Natural Res. Def. Council v. Train*, the United States Court of Appeal for the Second Circuit ignored the text of CAA § 108(a)(1)(C). Instead of interpreting the statutory language actually enacted by Congress, the court overlooked the text and turned immediately to legislative history:

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> The EPA contention that the language of § 108(a)(1)(C) "for which (the Administrator) plans to issue air quality criteria" is a separate and third criterion to be met before § 108 requires listing lead and issuing air quality standards, thereby leaving the decision to list lead within the discretion of the Administrator, finds no support in the legislative history of the 1970 Amendments to the Act.

545 F.2d 320, 325 (2d Cir. 1976).

Only after its foray into legislative history did the court turn to "the literal language of § 108(a)(1)(C)," which it set aside as "somewhat ambiguous" in a two-sentence analysis:

> While the literal language of § 108(a)(1)(C) is somewhat ambiguous, this ambiguity is resolved when this section is placed in the context of the Act as a whole and in its legislative history. The deliberate inclusion of a specific timetable for the attainment of ambient air quality standards incorporated by Congress in §§ 108-110 would become an exercise in futility if the Administrator could avoid listing pollutants simply by choosing not to issue air quality criteria.

545 F.2d at 327.

If there were any ambiguity about § 108(a)(1)(C), the Supreme Court's subsequent decision in *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984), would require that it be resolved in favor of the agency's reasonable interpretation, not a court's. But there is no ambiguity to resolve. The third condition of CAA § 108 plainly turns on whether the Administrator "plans to issue air quality criteria under this section." CAA § 108(a)(1)(C). A pollutant that cannot plausibly be controlled under the NAAQS regime should not be the subject of air quality criteria, and when the Administrator does not plan to issue criteria for a pollutant, it should not be listed, according to the plain language of the statute.

The kind of statutory interpretation employed by the Second Circuit in *Train* that looks for meaning first in legislative history and only secondarily in the words of the statute has fallen out of favor with the courts in the intervening decades as inconsistent with the judicial role. *See Morley v. CIA*, 719 F.3d 689, 693 (D.C. Cir. 2013) (Kavanaugh, J., concurring) ("[W]e should not reflexively cling to FOIA decisions that were decided on the basis of legislative history during an era when statutory text was less central to statutory interpretation.").

Moreover, the Second Circuit misread the legislative history. The Senate Report that the court quoted observes that what is now § 108 "*directs* the Secretary to publish" the initial list. S. Rep. on S. 4358, 91st Cong., 2d Sess. By contrast, when speaking of revision, the Report says only that "[h]e *can* add to the list periodically." *Id.* (emphasis added); *see also id.* ("Others *may* be added to this group as knowledge increases"). This non-mandatory language reflects the discretion inherent in the decision whether to "plan[] to issue air quality criteria." CAA § 108(a)(1)(C). And although the legislative history reflects the assumptions of some legislators that EPA would issue a long list of criteria pollutants ("fluorides, nitrogen oxides, polynuclear organic matter, lead, and odors") within 30 days of passage, a legislator's expectations about the application of a law are not dispositive of the law's meaning. *See Oncale v. Sundowner Offshore Servs., Inc.*, 523

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U.S. 75, 79 (1998) ("[I]t is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed."), *quoted in Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1749 (2020).

The Second Circuit's assumption in 1976 about how the Clean Air Act—still relatively new at the time—would work in practice has proven incorrect in the intervening decades. Lead remains the only criteria pollutant EPA has added to the original list of five. It is clearly not the case that every dangerous pollutant that originates from multiple sources must be added to the list of criteria pollutants. The various pollution control mechanisms of the Act work in tandem with each other to protect public health.

The Second Circuit's "structural" argument also fails. EPA's reading does not render the "the mandatory language of § 108(a)(1)(A) . . . mere surplusage." 545 F.2d at 325. The phrase "shall . . . revise" in CAA § 108(a)(1) has meaning under EPA's reading. The word "shall" makes the listing mechanism mandatory. Because of this mandatory language, the Administrator cannot bypass it simply by issuing criteria for a pollutant that has not been listed, a result that would undermine the public notice benefit of the listing process. And the statutory timetable for attainment is not an "exercise in futility," 545 F.2d at 327, but continues to drive state and federal action in response to EPA's increasingly stringent NAAQS for the six existing criteria pollutants.

The court of appeals adopted without analysis the district court's argument that the phrase "for which he plans to issue air quality criteria" applies only to the initial list of criteria pollutants. *See Natural Res. Def. Council, Inc. v. Train*, 411 F. Supp. 864, 868 (S.D.N.Y. 1976), *endorsed by* 545 F.2d at 325. This interpretation has no basis in the text of the statute, and it ignores that "and" is conjunctive. The entire series of three conditions, joined by "and," applies by the rules of grammar to the phrase that precedes it—"each air pollutant." 42 U.S.C. § 108(a)(1). Therefore, all three of the conditions must be met to trigger the listing requirement.

Structure

EPA's statutory interpretation of CAA § 108(a)(1) is supported by the structure of the CAA. It would not be reasonable to set a NAAQS for GHG for the same reason it would make no sense to "plan to issue air quality criteria" for GHG: The NAAQS regime's cooperative federalism approach to air pollution control is designed for local pollution that can be remedied by local action, not pollutants like GHG that are dispersed globally throughout the atmosphere and cannot be remedied by local controls.

The absurdity of setting a NAAQS for GHG is evident in the utter futility of the prospect. As the Department of Energy observed, "A GHG NAAQS standard would put the entire United States in either attainment or non-attainment, and it would be virtually impossible for an individual State to control or reduce GHG concentrations in its area and, thus, to make significant strides toward remaining in or reaching attainment." ANPRM, 73 Fed. Reg. at 44,367; *see also id.* ("There is little or nothing that a single State or region can do that will appreciably alter the atmospheric GHG concentration level in that particular State or region. Thus it is hard to see how a GHG NAAQS, which required States to take action to reduce their emissions to meet a

particular air quality standard, would actually work."); *id.* at 44,363 (DOT). EPA will not presume that Congress intended to legislate a meaningless exercise. *See Jackson v. The Archimedes*, 275 U.S. 463, 468 (1928) ("[A] purpose so wholly futile is not to be attributed to Congress.").

The prospect of perpetual nationwide nonattainment is inconsistent with the structure of the NAAQS regime, which is built around statutory deadlines enforced with statutory penalties designed to incentivize attainment and maintenance of the NAAQS. As EPA has previously observed, "it would appear to be an inescapable conclusion that the maximum 10-year horizon for attaining the primary NAAQS is ill-suited to pollutants such as greenhouse gases with long atmospheric residence times. . . . Thus, despite active control efforts to meet a NAAQS, the entire United States would remain in nonattainment for an unknown number of years." ANPRM, 73 Fed. Reg. at 44,481; *see also id.* at 44,381 (White House CEA and OSTP) ("Activities currently proposed for regulation will have no impact on public welfare for decades.").

States might try in vain to exempt themselves from the obligation to attain the NAAQS by a date certain by proving that timely attainment is impossible due to foreign GHG emissions. Under CAA § 179B, EPA may approve a SIP that does not demonstrate attainment by the deadline under specified circumstances. But no State would be able to make the required showing that its SIP "would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date . . . but for emissions emanating from outside of the United States." CAA § 179B(a)(2). Even if all the foreign countries of the world were to immediately cease anthropogenic emissions of GHG, it is unlikely that a hypothetical NAAQS would be attained by the attainment date, due to the long atmospheric lifetime of GHG[1] and the comparatively high contribution of GHG from natural sources.[2]

Perpetual nationwide nonattainment would yield a regulatory morass as nonattainment triggers new transportation conformity burdens. As the Department of Transportation explained, "[i]f the entire Nation were found to be in nonattainment for carbon dioxide or multiple greenhouse gases, and transportation and general conformity requirements applied to Federal activities, a broad range of those activities would be severely disrupted. For example, application of transportation conformity requirements to all metropolitan area transportation plans would add layers of additional regulations onto an already arduous Federal approval process and expand transportation-related litigation." ANPRM, 73 Fed. Reg. at 44,363.

If EPA were to adopt a GHG NAAQS, "controls on specific source categories would flow from independent state-level decisions, and could result in a patchwork of regulations requiring different types and levels of controls in different states." ANPRM, 73 Fed. Reg. at 44,483. Although state-by-state variation makes sense for local air pollutants that have area-specific sources and effects, it would be inefficient in the extreme for a pollutant that is present everywhere in the same concentrations. Eventually, the cooperative federalism framework of the NAAQS regime would collapse as ineffectual SIPs would give rise to ineffectual federal

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[1] *See* IPCC, Climate Change 2007: The Physical Science Basis, at 33-34, Table TS.2, Table 2.14, https://www.ipcc.ch/site/assets/uploads/2018/05/ar4_wg1_full_report-1.pdf.
[2] *Id.* at 2-3.

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implementation plans (FIPs). In the meantime, states would be forced to play a meaningless regulatory charade with no hope of having any measurable effect on the GHG levels within their borders.

Other features of the Clean Air Act's NAAQS regime would make no sense applied to GHG:

- States must "provide for establishment and operation" of air quality monitoring devices. CAA 110(a)(2)(A). This requirement has no relevance to a global air pollutant like GHG that is dispersed around the world. It has no location-specific effect that could be measured by an air quality monitor.
- Under certain circumstances, when determining their attainment status, States may be able to exclude certain monitored air quality exceedances or violations if the State demonstrates, and EPA concurs, that the exceedance or violation was caused by some types of "exceptional events" that are natural events or unlikely to recur. But this statutory feature is designed for local pollutants that trigger exceedances at specific air quality monitors. GHG's status as a long-term pollutant that is dispersed globally would make it difficult if not impossible for a state to make the required demonstration that a particular "exceptional event caused a specific air pollution concentration at a particular air quality monitoring location." CAA § 319(b)(3)(B)(ii).
- The CAA's interstate transport and "good neighbor" provisions are likewise designed for local pollutants. *See* CAA § 126 (interstate transport) (cited in CAA § 110(A)(2)(D)(ii)); CAA § 110(a)(2)(D)(i)(I) (good neighbor). The globally dispersed quality of GHG is such that every emission from one state affects all other states equally. Given the far greater contributions from foreign sources that have the exact same effect (ton for ton) on any given state's nonattainment, and given that every state is upwind of every other state when it comes to a globally dispersed pollutant, the interstate transport and good neighbor provisions would not function as intended if applied to a hypothetical GHG NAAQS.

Policy Considerations

The plain meaning and structure of the Clean Air Act precludes regulation of greenhouse gas as a criteria pollutant pursuant to NAAQS. But this outcome is also supported by several policy considerations that confirm the reasonableness of EPA's interpretation. In the alternative, these considerations reasonably support the Administrator's discretionary decision not to "plan[] to issue air quality criteria under this section." CAA § 108(a)(1)(C).

A GHG NAAQS would reduce America's bargaining power and undermine international cooperation. Even petitioner CBD recognizes that the "global problems" of climate change "cannot be solved unless each nation limits its own emissions sufficiently to achieve its share of the reductions necessary to stabilize atmospheric greenhouse gas concentrations." CBD Petition at iii. But a GHG NAAQS would regulate only the United States. It would have no direct beneficial effect on the GHG reductions of other countries, nor could a NAAQS be made contingent on the actions of foreign countries. As the White House Council of Economic Advisers and the White House Office of Science and Technology Policy have recognized,

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unilateral adoption of a GHG NAAQS would undermine the United States' ability to negotiate with foreign countries for a fair and effective global GHG regime: The CAA "does not permit regulations to depend on mitigation actions taken by other countries. The failure to allow for contingencies of this sort removes an important tool for inducing other countries to take actions that benefit Americans and the rest of the world." ANPRM 73 Fed. Reg. at 44,383.

A GHG NAAQS would damage American competitiveness and worsen pollution. Adopting a GHG NAAQS would drive carbon-intensive industries overseas to less regulated jurisdictions, increasing pollution and damaging the U.S. economy. As the Department of Commerce explained, "embrac[ing] emissions reductions outside of an international agreement with the world's major emitters . . . would put U.S. firms at a competitive disadvantage by raising their input costs compared to foreign competitors, likely resulting in emissions leakage outside of the United States and energy-intensive firms relocating to less regulated countries. Such an outcome would not be beneficial to the environment or the U.S. economy." ANPRM, 73 Fed. Reg. at 44,376; *see generally id.* at 44,413-14. The White House Council of Economic Advisers agreed that "acting in a globally uncoordinated fashion will put the United States at a competitive disadvantage, will induce economic distortions, and may actually be counter productive in reducing GHGs. . . . If businesses in other countries do not suffer the penalty for emitting GHGs, production has an incentive to move abroad, even when producing in the U.S. would be more economically efficient." *Id.* at 44,383. CBD's petition claims that a nationwide GHG standard would help to "address[] interstate leakage concerns by requiring the participation of those states that have yet to take action." CBD Petition at ii; 32. But CBD neglects the much larger leakage problem that would occur if the United States were to adopt a GHG standard unilaterally.

A GHG NAAQS would be inefficient. When setting a NAAQS, EPA may not consider the cost of compliance but must set the standard at the level that is "sufficient, but not more than necessary" to "protect public health from the adverse effects of the pollutant" with an "adequate margin of safety." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 465, 473 (2001) (quoting CAA § 109(b)(1)). As the Department of Energy has observed, "[t]his limitation inhibits a rational balancing of factors in determining and setting a GHG NAAQS based on the science available, the availability and cost of emission controls, the resulting impact on the U.S. economy, the emissions of other nations, etc." ANPRM, 73 Fed. Reg. at 44,367. This precludes rational regulations. As the White House Council of Economic Advisers has explained, "[t]o obtain economic efficiency, it is necessary to equalize marginal abatement costs across sources, which is extremely unlikely to occur if states are required to meet the same standard." ANPRM, 73 Fed. Reg. at 44,382.

A GHG NAAQS would hurt American agriculture. Clean Air Act programs, including the NAAQS "were neither designed for, nor are they suitable to, regulation of greenhouse gases from agricultural sources." ANPRM, 73 Fed. Reg. at 44,376 (USDA). The Department of Agriculture has explained that "[u]nder a NAAQS regulatory program, agricultural sources may need to employ Reasonably Available Control Measures ('RACM') or, at a minimum, include the use of Reasonable Available Control Technologies ('RACT')," but "agriculture is primarily dependent on biological processes which are not readily re-engineered. Given the nature of many

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agricultural source emissions, RACM and RACT may not exist or may be cost prohibitive." *Id.* at 44,377.

A GHG NAAQS would hurt America's small businesses. Given the uniform distribution of GHG and the resulting nationwide nonattainment, the Small Business Administration has explained that small entities would bear a disproportionate share of the costs of implementing a GHG NAAQS:

> [E]stablishing a GHG NAAQS would set in motion a number of statutory control measures that would be costly, inefficient, and ineffective. Small entities could have to contend with new barriers to construction and expansion, new restrictions on operating cars and trucks, and the potential for having to retrofit their existing buildings with GHG controls or to purchase equivalent credits. These NAAQS control measures would subject vast numbers of small entities across the country to standardized, inflexible, GHG control requirements for the first time. The full impact of these new burdens on these small entities could be devastating.

ANPRM 73 Fed. Reg. at 44,393.

EPA's Response to IPI's Petition to Regulate GHG under CAA § 115[3]

Because the text and structure of the Clean Air Act preclude a NAAQS for GHG, *see supra*, it also precludes the use of CAA § 115's mechanism for regulating foreign effects of domestic emissions of the pollutant. That is because § 115 depends upon the existence of a NAAQS SIP that is controlling the pollutant at issue. CAA § 115 operates by requiring the Administrator, when a reciprocity requirement is satisfied, to compel a state to revise its SIP when the state's pollution is endangering public health or welfare in a foreign country. (The Administrator's notice to the state under § 115 operates as a finding pursuant to § 110(a)(2)(H)(ii) that the SIP is inadequate.) The statutory remedy is for the State to revise its plan so that it adequately protects human health and welfare in the foreign country. If the state does not have a SIP that covers the relevant pollutant, then neither the Administrator's notice nor the statutory remedy makes any sense. Thus, EPA has previously acknowledged that "Section 115 could not be used to require states to incorporate into their SIPs measures unrelated to attainment or maintenance of a NAAQS." ANPRM, 73 Fed. Reg. at 44,483; *see id.* at 44,482 ("The Administrator could exercise his authority under [Section 115] *if* EPA were to promulgate a NAAQS for GHG." (emphasis added)).

EPA has previously rejected a request to regulate GHG under CAA § 115, because that provision applies only to criteria pollutants:

[3] IPI also asks EPA to regulate GHG under section 111, Title II, and Title VI of the CAA. This denial does not address those portions of IPI's petition. EPA notes that it is already regulating GHG under these provisions. *See, e.g.*, Affordable Clean Energy Rule, 84 Fed. Reg. 32,520 (July 8, 2019); Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, 85 Fed. Reg. 24,174 (April 30, 2020); Determination 36 for Significant New Alternatives Policy Program, 85 Fed. Reg. 79,863 (Dec. 11, 2020).

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> [C]onsistent with the authority in section 110 of the CAA under which SIPs are approved, only measures that are related to attainment and maintenance of the NAAQS (including procedural and interim requirements) should be approved by EPA as part of a federally enforceable implementation plan. *See, e.g.*, 67 Fed. Reg. 17,368 (April 2, 2004) ("An important element of [the SIP approval] process is not to include in the SIP portions of those regulations that are not related to attainment or maintenance of the NAAQS or to the requirements for SIPs under the Act."). In fact, on numerous occasions in the past twelve years, EPA has acted to remove from state SIPs provisions that were not reasonably related to the NAAQS. . . . It would be inconsistent with this long standing interpretation for EPA to issue notices requiring states to revise their SIPs to address CO_2 emissions and climate change issues. . . . The CAA does not authorize the Administrator to require states, as your submittal requests, to adopt SIP provisions regarding CO_2 emissions in order to reduce any impact on climate change, as such provisions would not be reasonably related to attainment and maintenance of the NAAQS.

Letter from Brian McLean, Dir., Office of Atmospheric Programs, EPA, to Albert Kochl, Staff Attorney, Ecojustice Canada (Feb. 29, 2008).

Petitioner IPI admits that "Section 110 does facially appear exclusive to the NAAQS program due to its title, 'State Implementation Plans for National Primary and Secondary Ambient Air Quality Standards.'" Institute for Policy Integrity, Petition for Rulemakings and Call for Information Under Section 115, Title VI, Section 111, and Title II of the Clean Air Act to Regulate GHG Emissions at 12 (2013) (hereinafter "IPI Petition"). Yet IPI argues that regulation of GHG under CAA § 115 is not limited to criteria pollutants for which a NAAQS has been established. IPI points to the phrase "any air pollutant" in § 115 as evidence that the statute must apply beyond criteria pollutants. *Id.* But this argument is unavailing.

The Supreme Court has instructed that the phrase "any air pollutant" must be interpreted in context. Thus "any air pollutant" for purpose of PSD and Title V permitting is limited to "*regulated* air pollutants." *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 316 (2014) (citing 43 Fed. Reg. 26403, *codified as amended*, 40 C.F.R. § 52.21(b)(1)-(2), (50)). In the context of new source performance standards, "any air pollutant" is limited to "air pollutants *for which EPA has promulgated new source performance standards.*" *Id.* at 317 (citing CAA § 111(a)(2), (4); 36 Fed. Reg. 24877 (1971), *codified as amended*, 40 C.F.R. § 60.2; 40 Fed. Reg. 58419 (1975), *codified as amended*, 40 C.F.R. § 60.14(a)). And in the context of permitting a major source to operate in a nonattainment area, "any air pollutant" is limited to "pollutants *for which the area is designated nonattainment.*" *Id.* at 317 (citing CAA § 172(c)(5), 302(j); 45 Fed. Reg. 52745 (1980), *promulgating* 40 C.F.R. § 51.18(j)(2), *as amended*, § 51.165(a)(2)).

Likewise, in the context of CAA § 115, in which Congress has expressly incorporated the NAAQS/SIP regime by reference, "any air pollutant" must be limited to air pollutants whose emissions are controlled pursuant to a NAAQS SIP. The Administrator's notice under CAA § 115(a) operates as a finding that a NAAQS SIP is "substantially inadequate to attain the [NAAQS] which it implements or otherwise comply with any additional requirements established under this chapter." CAA § 110(a)(2)(H)(ii). And Section 115 can only be

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effectuated by "a plan *revision* with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment" to public health or welfare in a foreign country. CAA § 115(b) (emphasis added). State plans exist to attain and maintain standards for criteria pollutants; it would not be reasonable to require their revision for other pollutants that are not controlled by the NAAQS.

IPI points out that CAA § 110(a)(2)(D)(ii) requires a SIP to "contain adequate provisions . . . insuring compliance with the applicable requirements of [CAA §§ 126 and 115]." IPI infers from this that SIPs may therefore govern non-criteria pollutants. But this reasoning is question begging. The more natural reading of CAA § 110(a)(2)(D)(ii) is that it governs international transport of criteria pollutants—the same pollutants covered by the NAAQS that the SIP implements.

During the Carter Administration, in an effort to control international acid rain pollution, Administrator Costle took a broader view of CAA § 115. He stated in private correspondence and without explanation that Section 115 "is broadly drafted to encompass all forms of air pollution-related endangerment to public health or welfare and is not limited to interference with U.S. air quality standards or significant deterioration programs." Letter from Douglas M. Costle, Admin. EPA, Sen. George Mitchell (Jan. 13, 1981), *reprinted in New York v. Thomas*, 613 F.Supp. at 1472, 1488. But EPA never acted on this interpretation, and the D.C. Circuit rejected a claim that the letter compelled the Agency to issue SIP notices to states producing pollution that caused acid rain deposition in Canada. *Thomas v. State of N.Y.*, 802 F.2d 1443, 1447 (D.C. Cir. 1986) (Scalia, J.) ("We conclude that if Administrator Costle's findings left the EPA no alternative but to issue SIP notices ultimately causing the termination or restriction of the operations of many utilities and manufacturers—if they *forced* the EPA to take direct and substantial regulatory actions—they could not be promulgated without notice-and-comment procedures.").

Any bilateral reciprocal agreement on GHG emissions with another country would be inadequate to substantially reduce GHG accumulation in the atmosphere, because all the nations of the world contribute to GHG pollution. Indeed, regional efforts at GHG control could be counter-productive, because, as described above, they may cause emitters to relocate to less-regulated jurisdictions. And the EPA does not believe that Congress would have given it authority to regulate on a global scale one of the present day's most contentious political questions with the most profound economic and geopolitical implications, through a statutory mechanism designed to deal with cross-border emissions of local air pollutants through state-level regulation. *See generally Whitman*, 531 U.S. at 468 ("Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.").

<u>EPA's Response to FWW's Petition to List GHG as a Hazardous Air Pollutant</u>

FWW's petition to list GHG as a hazardous air pollutant pursuant to CAA § 112 is based on a projection of GHG's indirect effects on human health and the environment. FWW points to EPA's 2009 finding that elevated concentrations of greenhouse gases in the atmosphere may

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reasonably be anticipated to endanger the public health and to endanger the public welfare of current and future generations" through climate change. FWW Petition at 3. FWW cites IPCC projections that GHG will cause "a mean surface temperature increase of 3.7°C to 4.8°C by 2100." FWW Petition at 7 (citing IPCC, "Summary for Policymakers," Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (2014)). Specifically, FWW alleges that climate change is causing or will cause the following environmental and welfare effects: harm to food production and forestry, impaired access to water, sea level rise, increased energy demand, infrastructure damage, and changes in wildlife habitat that hurt biodiversity. FWW Petition at 10. FWW also alleges that climate change will cause the following public health effects: increased mortality from heat waves, flooding, and storm surge; aggravated respiratory illness and asthma from increased ground-level ozone and plant growth; and increased food-, water-, and insect-borne diseases. FWW Petition at 11.

All of these circumstances are secondary effects of climate change to which GHG emissions are a contributing factor. They are not direct effects of exposure to GHG molecules.

The EPA concludes that it would be improper to list a substance as a hazardous air pollutant based on its *indirect* effects on human health or the environment. The text of CAA § 112 demonstrates that the statute is concerned with substances that themselves cause immediate harm to health and the environment. CAA § 112(b)(2) gives the Administrator the power to add to the list of HAP "pollutants which present, or may present, through inhalation or other routes of *exposure*, a threat of adverse human health effects . . . or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise." The parallel phrases "through . . . exposure" and "through ambient concentrations, bioaccumulation, deposition or otherwise" are best interpreted to require immediate, not secondary, health and environmental effects to justify a hazardous air pollutant listing. To be sure, the phrase "or otherwise" could be read broadly in another context to allow consideration of indirect environmental effects. But in this context, coming as it does after a list of direct means of environmental harm, "or otherwise" is best interpreted to refer to other direct mechanisms by which a HAP may cause environmental harm. *See United States v. Williams*, 553 U.S. 285, 294 (2008) ("[T]he commonsense canon of *noscitur a sociis* . . . counsels that a word is given more precise content by the neighboring words with which it is associated.").

CAA § 112's focus on direct effects distinguishes it from other provisions of the Clean Air Act that are silent as to the mechanisms by which a pollutant causes harm. For example, CAA § 202(a)(1) requires the Administrator to set emissions standards for "any air pollutant from any class . . . of new motor vehicles . . . which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." Thus, the 2009 Endangerment Finding under § 202(a)(1) did not require EPA to conclude that GHG itself directly endangers health or welfare. It was enough to find that GHG emissions would contribute to elevated temperatures, which would in turn contribute to climate change, which would in turn contribute to secondary effects, which would in turn harm health and welfare. By contrast to CAA § 202(a)(1), § 112 requires that the pollutant itself directly cause the harm—whether by

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inhalation or other routes of exposure (in the case of human health effects) or by concentration, bioaccumulation, deposition, or other direct mechanisms (in the case of the environmental effects).

Although petitions to modify the HAP list are treated in the statute's succeeding paragraph, which does not use the term "exposure," *see* CAA § 112(b)(3)(B), the statute is best interpreted as a whole to require direct harm whether the Administrator is revising the list on his own initiative pursuant to CAA § 112(b)(2) or in response to a petition pursuant to CAA § 112(b)(3). A petition to modify the HAP list is a petition "under this subsection," CAA § 112(b)(3), so the Administrator's evaluation of a pollutant's causation of adverse effects should be the same in either circumstance. *See* 82 Fed. Reg. 2357 ("CAA section 112(b)(2) provides additional guidance on how the Administrator's decision [on a petition under CAA § 112(b)(3)(B)] is to be formed by identifying carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, reproductive dysfunction, and acute or chronic toxicity as types of adverse health effects."). Thus, it would not be reasonable for the Administrator to list a substance in response to a petition under CAA § 112(b)(3)(B) that he could not list on his own initiative under CAA § 112(b)(2).

Read in this light, CAA § 112 does not permit the Administrator to list GHG as a HAP. Greenhouse gas is not emitted in concentrations that could cause direct adverse effect on human health via exposure. Human beings inhale and ingest CO_2 and other GHG in relatively high concentrations without ill effect, so no plausible exposure to these substances at the concentrations in which they operate as GHG would threaten adverse health effects. Likewise, GHG does not have a direct environmental effect "through ambient concentrations, bioaccumulation, deposition, or otherwise." GHG's adverse effects are indirect: In FWW's account, GHG traps heat in the atmosphere, which contributes to climate change, which in turn contributes to adverse environmental effects.

Further, GHG could not be regulated based on its *environmental* effects without reference to *health* effects. CAA § 112(b)(2) prohibits listing on the basis of adverse environmental effects alone any substance that is already regulated under Title VI: "No substance, practice, process or activity regulated under subchapter VI of this chapter shall be subject to regulation under this section solely due to its adverse effects on the environment." Hydrofluorocarbons (HFCs) are a subset of well-mixed GHG that are currently regulated under some sections of Title VI. Accordingly, even if FWW could identify direct (as opposed to indirect) environmental effects of GHG, EPA would be unable to list the "mix of six long-lived and directly-emitted greenhouse gases" under CAA § 112 as FWW requests,[4] because of the lack of exposure-based health effects.

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[4] FWW Petition at 1. The predicate for FWW's petition is the 2009 Endangerment Finding, which assessed the harm from these GHG collectively as a single pollutant. *See* Endangerment Finding, 74 Fed. Reg. 66,496, 66,497 (2009) ("Specifically, the Administrator is defining the 'air pollution' referred to in CAA section 202(a) to be the mix of six long-lived and directly-emitted greenhouse gases: carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6)."); *id.* at 66,516 ("In this final action, the Administrator finds that the air pollution is the combined mix of six key directly-emitted, long-lived and well-mixed greenhouse gases (henceforth 'well-mixed greenhouse gases'), which together, constitute the root cause of human-induced climate change and the resulting impacts on public health and welfare.").

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FWW's interpretation of CAA § 112 to allow listing GHG as HAP is at odds with the best evidence of Congress's intent—the list of HAP it codified with the passage of CAA § 112. Congress included in that list pollutants that present direct adverse health and environmental effects, it did not list either well-mixed GHG or individual GHG. If Congress had intended EPA to have the authority to regulate climate-forcing agents under section 112, it could have given EPA that authority expressly, similar to the direct authority given to EPA to regulate substances that cause harmful effects to the ozone layer. *See* Title VI, 104 Stat. 2649, 42 U. S. C. §§7671–7671q.

The practical consequences of FWW's interpretation further demonstrate its unreasonableness. CAA § 112 obligates EPA to regulate HAP from all major sources. The term "major source" is defined as a stationary source that emits "10 tons per year or more of any hazardous air pollutant." CAA § 112(a)(1), (c)(2). Many thousands of sources currently unregulated under CAA § 112 emit ten tons or more per year of CO_2, including buildings like schools, small apartment complexes, and hospitals. *Cf. UARG v. EPA*, 573 U.S. 302, 324 (2014). Subjecting these sources to regulation for the first time under CAA § 112 would bring about an extraordinary expansion and transformation of the CAA § 112 regulatory scheme. As the Supreme Court said in rejecting the Agency's effort to let GHG emissions trigger PSD and Title V regulation, "The fact that EPA's greenhouse-gas-inclusive interpretation . . . would place plainly excessive demands on limited governmental resources is alone a good reason for rejecting it." *UARG*, 573 U.S. at 323-24.

And as with the Agency's interpretation in *UARG*, the Petitioners' interpretation of EPA's authority under § 112 "is also unreasonable because it would bring about an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization." *UARG*, 573 U.S. at 324; *see also id.* (citing *Brown & Williamson*, 529 U.S., at 159-60 (requiring a clear statement from Congress when an agency claims to discover in a long-extant statute an unheralded power to regulate "a significant portion of the American economy"); *MCI Telecommunications Corp. v. American Telephone & Telegraph Co.*, 512 U.S. 218, 231 (1994); *Industrial Union Dept., AFL–CIO v. American Petroleum Institute*, 448 U.S. 607, 645–46 (1980) (plurality opinion)).

Other Considerations

In addition to the statutory reasons discussed above, and even if the EPA were authorized to list and regulate GHG as criteria pollutants under CAA §§ 108 and 115 and to regulate GHG as a HAP under CAA § 112, EPA is also denying these petitions as an exercise of its discretion to prioritize the allocation of its limited agency resources.

As is true for all federal agencies, the EPA has a limited budget and limited staff resources, and so has to prioritize its actions when deciding what actions to take and what actions to defer or decline to take. To illustrate how this need to prioritize limited resources impacts our decision here, we will focus on three points.

First, the EPA is required to conduct numerous actions that have mandatory statutory deadlines under the CAA, some of which are further governed by court orders and consent decrees

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imposed as the result of mandatory duty claims. For example, the EPA must review (and revise if appropriate) the NAAQS for each of the six currently listed criteria pollutants (ozone, sulfur dioxide, nitrogen dioxide, carbon monoxide, lead, and fine and course particulate matter) every five years. 42 U.S.C. § 7409(d)(1). With regards to HAP, EPA must review and revise the emission standards for each of the dozens of listed source categories every eight years. *Id.* § 7412(d)(6). Under the D.C. Circuit's recent decision in *Louisiana Environmental Action Network v. EPA*, 955 F.3d 1088 (D.C. Cir. 2020), this duty also includes filling gaps in emission standards for previously unregulated HAP and emissions units. EPA has little or no discretion to lower the priority of those actions. Based on EPA's past experience, listing and regulating GHG as criteria pollutants and HAP under CAA §§ 108, 115, and 112 would be a lengthy and resource-intensive set of tasks and would divert resources from the aforementioned mandatory reviews of existing NAAQS and NESHAP, as well as EPA's GHG regulations under CAA § 111 and other high-priority actions.

Second, even focusing just on the EPA's regulation of GHG emissions, the Agency must decide which sources of GHG to regulate first, and how to achieve that regulation. To that end, EPA has chosen to regulate GHG emissions from stationary sources under CAA § 111. *See, e.g.*, 84 Fed. Reg. 32,520 (July 9, 2019) (promulgating CAA § 111(d) emission guidelines for existing coal-fired power plants); 80 Fed. Reg. 64,510 (Oct. 23, 3015) (setting CAA § 111(b) standards of performance for new, modified, and reconstructed coal- and gas-fired power plants); 81 Fed. Reg. 59,322 & 81 Fed. Reg. 59,276 (Aug. 29, 2016) (setting CAA § 111(b) standards of performance and issuing CAA § 111(d) emission guidelines for municipal solid waste landfills). EPA, as the expert agency, is in the best position to select the appropriate statutory authority for addressing a given environmental challenge and has done so in this instance.

Further, it is important to recognize that the EPA's ongoing regulation of GHG under CAA § 111(d) would have to be halted and reversed if the EPA were to list and regulate GHG as criteria pollutants under CAA § 108 or as HAP under CAA § 112, due to the exclusions stated in CAA § 111(d)(1)(A). This would both undo significant aspects of EPA's regulation of GHG emissions to date and be a poor use of EPA's limited resources.

Conclusion

The Clean Air Act's NAAQS regime and § 115 are well suited to local pollutants that have the greatest effect on—and can be meaningfully controlled by the localities where they are emitted. That is not true of GHG, which are dispersed throughout the global atmosphere. Likewise, § 112 is designed to address HAP that cause direct health and environmental effects by exposure, concentration, or otherwise in relatively low concentrations by a few sources. These provisions are not designed to handle globally dispersed pollutants that are emitted in great amounts by myriad sources and have only indirect health and environmental effects.

Congress has the power to craft a comprehensive solution to the problem of greenhouse gas emissions, but such a solution will necessarily involve equitable participation by the other nations that emit significant amounts of GHG. EPA cannot create such a solution unilaterally, and it has not been given the statutory tools that would be necessary. Because the text and

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structure of the CAA preclude the regulation of GHG under these statutory provisions, EPA denies the petitions of CBD, IPI, and FWW, except as to the portions of the IPI petition identified in footnote [NOTEREF _Ref61907614 \h], as to which the EPA takes no action.

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Message

From: Gustafson, Adam [Gustafson.Adam@epa.gov]
Sent: 1/19/2021 8:01:38 PM
To: Fotouhi, David [Fotouhi.David@epa.gov]
Subject: FW: GHG petition denials for posting and emailing

FYI

From: Raymond, Kelley <Raymond.Kelley@epa.gov>
Sent: Tuesday, January 19, 2021 2:53 PM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Subject: RE: GHG petition denials for posting and emailing

Responses have been emailed, and the request has been put in for the website updates.

Kelley Raymond
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Gustafson, Adam <Gustafson.Adam@epa.gov>
Sent: Tuesday, January 19, 2021 11:41 AM
To: Raymond, Kelley <Raymond.Kelley@epa.gov>
Subject: GHG petition denials for posting and emailing

Kelley,

Here are the two signed documents we have discussed for posting on OAR's website:

- Denial of three petitions to regulate GHG as a NAAQS, as a cross-border pollutant under CAA 115, and as a HAP, submitted by CBD, NYU Law Institute for Policy Integrity, and Food & Water Watch, respectively;
- Denial of four petitions to reconsider the 2009 GHG Endangerment Finding, submitted by CHECC, CEI/SEPP, Liberty Packing/TPPF, and FAIR Energy Foundation.

Are you able to send these to the petitioners' email addresses on the cover letters? Ex. 5 AC/DP
Ex. 5 AC/DP

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Scott, Corey <scott.corey@epa.gov>
Sent: Tuesday, January 19, 2021 11:21 AM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Fotouhi, David <Fotouhi.David@epa.gov>; adm15.arwheeler.email <adm15.arwheeler.email@epa.gov>
Subject: NAAQS Denial Signed

Adam,

Here is the NAAQS denial! Thanks!

Corey

Message

From: Graham, Cheryl [Graham.Cheryl@epa.gov]
Sent: 5/20/2019 4:49:58 PM
To: OGC Immediate Office Support [OGCFrontOfficeSupportStaff@epa.gov]
CC: Schwab, Justin [Schwab.Justin@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Siciliano, CarolAnn [Siciliano.CarolAnn@epa.gov]
Subject: ARLO REG REVIEW AGENDA
Attachments: Reg agenda 05202019.docx

Cheryl R. Graham
OGC/ARLO
(202) 564-5473

This document has been withheld in its entirety under Ex. 5 - Attorney Client (ACP), Ex. 5 - Attorney Work Product (AWP), Ex. 5 - Deliberative Process (DPP).

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 1/19/2021 1:27:11 PM
To: Gustafson, Adam [Gustafson.Adam@epa.gov]
Subject: RE: Documents for AW Signature

Thanks! I'll give the petition denials a quick once-over and get then to AW. If you don't hear from Karl by midday, let me know.

David Fotouhi

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

From: Gustafson, Adam <Gustafson.Adam@epa.gov>
Sent: Tuesday, January 19, 2021 1:23 AM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: Documents for AW Signature

David,

Here are two documents Ex. 5 AC/DP for the Administrator's signature:

- Denial of three petitions to regulate GHG as a NAAQS, as a cross-border pollutant under CAA 115, and as a HAP, submitted by CBD, NYU Law Institute for Policy Integrity, and Food & Water Watch, respectively;
- Denial of four petitions to reconsider the 2009 GHG Endangerment Finding, submitted by CHECC, CEI/SEPP, Liberty Packing/TPPF, and FAIR Energy Foundation.

Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 11/20/2020 10:44:22 PM
To: Gustafson, Adam [Gustafson.Adam@epa.gov]
Subject: FW: Petition to list GHGs under section 112
Attachments: FWW - CAA 112 GHG Petition.pdf

Let's talk about this on Monday

David Fotouhi

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

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Friday, November 20, 2020 5:40 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>
Subject: Petition to list GHGs under section 112

Hi David. I spoke with Lea on this attached petition to list GHGs under CAA 112. Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

From: Anderson, Lea <anderson.lea@epa.gov>
Sent: Thursday, November 19, 2020 10:53 AM
To: Payne, James (Jim) <payne.james@epa.gov>
Subject: FW: HAP Listing and Delisting - OAR Info Pager

Hi Jim,

Ex. 5 AC/AWP/DP

Lea Anderson
(202) 564-5571

From: McLamb, Marguerite <McLamb.Marguerite@epa.gov>
Sent: Friday, October 09, 2020 9:32 AM
To: Shrager, Brian <Shrager.Brian@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>
Subject: FW: HAP Listing and Delisting - OAR Info Pager

Hi – this is the petition I mentioned recently. From this last email, it looks like OGC has it.

From: Mills, Kathy <Mills.Kathy@epa.gov>
Sent: Tuesday, February 11, 2020 3:17 PM
To: Hagan, Nicole <Hagan.Nicole@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; McKinney, Voronina <mckinney.voronina@epa.gov>
Cc: South, Peter <South.Peter@epa.gov>; Cozzie, David <Cozzie.David@epa.gov>; Lassiter, Penny <Lassiter.Penny@epa.gov>; Joseph, Wanda <joseph.wanda@epa.gov>; Howard, Jodi <Howard.Jodi@epa.gov>; Schaefer, John <Schaefer.John@epa.gov>; Eck, Janet <Eck.Janet@epa.gov>; McLamb, Marguerite <McLamb.Marguerite@epa.gov>; Crowley, Kate <crowley.kate@epa.gov>; Gmyr, Joanna <Gmyr.Joanna@epa.gov>
Subject: HAP Listing and Delisting - OAR Info Pager

Updated version attached – includes petition to list GHG as HAP:

Green House Gases (GHG)

- Petition to list submitted by Food & Water Watch (FWW) on April 3, 2019. EPA's response to the petition is due October 2020 (18 months from receipt of petition).
- OGC is handling the response to this petition.

Kathy "KB" Mills ~ SPPD ~ U. S. EPA, OAQPS ~ 919-541-1599

Message

From: cmsadmin@epa.gov [cmsadmin@epa.gov]
Sent: 3/2/2021 4:48:16 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]; Campbell, Ann [Campbell.Ann@epa.gov]
Subject: CMS For Review - Martha Faulkner - OAR-21-000-2069

Control OAR-21-000-2069 is in your CMS In Box for review. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: OAR-21-000-2069
Control Subject: Petition by the Food and Water Watch to regulate GHGs under the Clean Air Act.
From: Carlesco, Adam

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at https://cms.epa.gov/cms. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

Message

From: Campbell, Ann [Campbell.Ann@epa.gov]
Sent: 3/2/2021 5:14:15 PM
To: Goffman, Joseph [Goffman.Joseph@epa.gov]
CC: Carbonell, Tomas [Carbonell.Tomas@epa.gov]
Subject: FOR YOUR CONCURRENCE: GHG Petition Responses for Administrator's signature
Attachments: For Concurrence - Petition by the Center for Biodiversity and 350.org to regulate GHGs under the Clean Air Act -- OAR-21-000-2056; For Concurrence -Petition by the Institute for Policy Integrity to regulate GHGs under the Clean Air Act -- OAR-21-000-2063; For Concurrence - Petition by the Food and Water Watch to regulate GHGs under the Clean Air Act -- OAR-21-000-2069

Joe, please find attached 3 sets of responses, 4 responses in all, withdrawing our denial of the petition request. The language used is the same but for the characterization of their actual request and is below for your quick review. If you are comfortable with the language, please send me an email indicating your concurrence.

Ex. 5 Deliberative Process (DP)

Thank you,

Ann (Campbell) Ferrio
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 566 1370

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

THE ADMINISTRATOR

January 19, 2021

Kassie Siegel, Director
Climate Law Institute
Center for Biological Diversity
P.O. Box 549
Joshua Tree, CA 92252
ksiegel@biologicaldiversity.org

Jason A Schwartz
Institute for Policy Integrity at
NYU School of Law
139 MacDougal Street, Wilf Hall,
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jason.schwartz@nyu.edu

Gillian May Boeve
350.org
The David Brower Center
2150 Allston Way
Suite 340
Berkeley, CA 94704
may@350.org

Adam Carlesco
Food & Water Watch
1616 P St., Suite 600
Washington, D.C. 20036
acarlesco@fwwatch.org

Dear Ms. Siegel, Ms. Boeve, Mr. Schwartz, and Mr. Carlesco:

I am responding to a petition from the Center for Biological Diversity, dated December 2, 2009, to set National Ambient Air Quality Standards for greenhouse gases; a petition from the New York University School of Law Institute for Policy Integrity, dated February 19, 2013, to regulate greenhouse gases under Section 115 of the Clean Air Act; and a petition from Food & Water Watch, dated April 3, 2019, to regulate greenhouse gases as hazardous air pollutants under Section 112 of the CAA.

The EPA has reviewed your petitions and the information available on the issues you raised. For the reasons discussed in the enclosed response, the EPA denies your petitions, except as to the portions of the IPI petition identified in footnote 3, as to which the EPA takes no action.

I would like to thank you for your interest in these issues. The EPA looks forward to working with you and other stakeholders as we continue to protect human health and the environment in accordance with law.

Sincerely,

Andrew R. Wheeler

Enclosure

Denial of Petitions to Establish National Ambient Air Quality Standards for Greenhouse Gases, to Regulate Greenhouse Gases under Clean Air Act Section 115, and to Regulate Greenhouse Gases as Hazardous Air Pollutants

This document is in response to a petition from the Center for Biological Diversity (CBD), dated December 2, 2009, to set National Ambient Air Quality Standards (NAAQS) for greenhouse gases (GHG); a petition from the New York University School of Law Institute for Policy Integrity (IPI), dated February 19, 2013, to regulate GHG under Section 115 of the Clean Air Act (CAA); and a petition from Food & Water Watch (FWW), dated April 3, 2019, to regulate GHG as hazardous air pollutants (HAP) under Section 112 of the CAA.

Specifically, CBD requests that EPA list GHG as criteria pollutants pursuant to CAA § 108(a)(1), issue air quality criteria for GHG pursuant to CAA § 108(a)(2), propose primary and secondary NAAQS for GHG pursuant to CAA § 109(a), make available certain information about controlling GHG emissions pursuant to CAA § 108, including 108(f), issue final NAAQS for GHG along with techniques for controlling them pursuant to CAA § 108(b)(1), and aid the states in the State Implementation Plan (SIP) process pursuant to CAA § 110. Center for Biological Diversity & 350.org, Petition to Establish National Pollution Limits for Greenhouse Gases Pursuant to the Clean Air Act (Dec. 2, 2009) (hereinafter "CBD Petition").

IPI requests that EPA find that the prerequisites for controlling international air pollution pursuant to CAA § 115 have been satisfied for GHG, require states to revise SIPs to make reasonable progress toward abatement of GHG pollution, and advise states on implementation options under CAA § 115. Institute for Policy Integrity, Petition for Rulemakings and Call for Information Under Section 115, Title VI, Section 111, and Title II of the Clean Air Act to Regulate GHG Emissions at 12 (2013) (hereinafter "IPI Petition").

FWW requests that EPA list GHG as HAP under CAA § 112 and take steps to set emissions standards pursuant to that section. Food & Water Watch, Petition for Listing and Rulemaking Under Section 112 of the Clean Air Act to Establish Greenhouse Gases as Hazard [sic] Air Pollutants and to Set National Emission Standards for Hazardous Air Pollutant Emissions (Apr. 3, 2019) (hereinafter "FWW Petition").

Because EPA determines that regulation of international pollution pursuant to CAA § 115 is appropriate only for criteria pollutants that are subject to a NAAQS pursuant to CAA § 108, and because all three petitions raise questions of statutory interpretation dealing with GHG, EPA addresses all three petitions together.

Statutory Background

National Ambient Air Quality Standards

"For the purpose of establishing [NAAQS]," CAA § 108 provides that EPA shall publish and from time to time thereafter revise a list of air pollutants known as "criteria pollutants" that meet each of three requirements. First, "emissions of [the pollutant], in [the Administrator's] judgment [must] cause or contribute to air pollution which may reasonably be anticipated to endanger

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public health or welfare." CAA § 108(a)(1)(A). Second, the air pollutant must "result from numerous or diverse . . . sources." CAA § 108(a)(1)(B). Finally, the pollutant must be one "for which [the Administrator] plans to issue air quality criteria under this section." CAA § 108(a)(1)(C). Congress originally identified five criteria pollutants: carbon monoxide, ground-level ozone, particulate matter, nitrogen dioxide, and sulfur dioxide. To date, EPA has added only one to the list: lead.

For each pollutant on the list, EPA develops air quality criteria pursuant to CAA § 108(a)(2). The criteria "shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities." The criteria must include, to the extent practicable, information on variable factors, including other pollutants, that alter the pollutant's health or welfare effects, and "any known or anticipated adverse effects on welfare."

EPA promulgates "primary" and "secondary" NAAQS pursuant to CAA § 109. The primary standards are set such that the attainment and maintenance of the standards, in the judgment of the EPA Administrator, based on the air quality criteria, and allowing for an adequate margin of safety, are requisite to protect the public health. The secondary standards are set such that the attainment and maintenance of the standards are requisite to protect the public welfare from any known or anticipated effects. EPA may not consider the costs of meeting the NAAQS in setting the standards.

Within one year of EPA's promulgation of a new or revised NAAQS, each State must recommend designations of its regions as nonattainment, attainment, or unclassifiable. CAA § 107(d)(1)(A). EPA must finalize designations within two years after the NAAQS are finalized. CAA § 107(d)(1)(B)(i). Within three years from the NAAQS promulgation, States are required to adopt and submit to EPA State implementation plans (SIPs), pursuant to CAA § 110, providing for the implementation, maintenance, and enforcement of the NAAQS. The Act's requirements for SIPs are more detailed and stringent for areas not meeting the standards (nonattainment areas) than for areas meeting the standards (attainment areas).

States can petition EPA to exclude emissions data resulting from certain "exceptional events" pursuant to CAA § 319(b).

States are required to bring nonattainment areas into attainment with the NAAQS as expeditiously as practicable, but no later than attainment dates that are at most "10 years from the date of designation as nonattainment." CAA § 172(a)(2)(A).

States must address interstate transport of a pollutant that significantly contributes to another state's nonattainment or interferes with another state's maintenance of the NAAQS. CAA § 110(a)(2)(D)(i)(I).

If a nonattainment area fails to attain the NAAQS by the deadline, EPA publishes a notice of failure to attain. One year after the notice of failure to attain is published, a state is required to submit a revision to the applicable implementation plan for the area that includes "all measures that can be feasibly implemented in the area in light of technological achievability, costs, and

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any nonair quality and other air quality-related health and environmental impacts." CAA §§ 179(d)(1), 181(b)(2), 186(b)(2) & 188(b)(2).

A SIP must be revised whenever the Administrator finds that the plan is "substantially inadequate to attain the [NAAQS] which it implements or to otherwise comply with any additional requirements established under this chapter." CAA § 110(a)(2)(H)(ii).

A state that fails to submit a complete SIP, has its SIP disapproved by EPA, or fails to implement a required SIP is subject to sanctions. EPA may prohibit the Department of Transportation from awarding highway grants to noncompliant states. CAA § 179(b)(1). And new sources in such a state are subject to a requirement to obtain two tons of emissions reduction from other sources in the same nonattainment area for every one ton of emissions from the new source. CAA § 179(c)(1).

EPA is required to promulgate a federal implementation plan within two years of disapproving a SIP or finding that a state has failed to submit a required SIP. CAA § 110(c)(1).

Listing a criteria pollutant pursuant to CAA § 108 precludes regulation of that air pollutant from existing sources as a hazardous air pollutant under CAA § 112, *see* CAA § 112(b)(2), or under CAA § 111(d), which is intended to provide for regulation of air pollutants not otherwise subject to the major regulatory programs under the Act, *see* CAA § 111(d)(1)(A).

International Pollution

SIP revision can also be triggered under CAA § 115, which requires the Administrator to notify a state governor if the Administrator believes, based on information from an international agency, that "any air pollutant or pollutants" from that state "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country," but only if the Administrator determines that the foreign country has given the United States "essentially the same rights" as § 115 gives to the foreign country. CAA § 115(c). A notice to the state pursuant to § 115(a) is deemed to be a finding pursuant to § 110(a)(2)(H)(ii), "which requires a plan revision with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment to a foreign country." CAA § 115(b).

Hazardous Air Pollutants

CAA § 112(b)(1) provides a list of substances that Congress identified as hazardous air pollutants (HAP) in the 1990 CAA Amendments. These HAP have been associated with a wide variety of adverse health effects, including cancer, neurological effects, reproductive effects, and developmental effects.

The CAA directs the EPA to identify and list source categories that emit HAP and then to set emission standards for those listed source categories. Standards promulgated under CAA section 112(d) are commonly referred to as National Emission Standards for Hazardous Air Pollutants (NESHAP).

CAA § 112(b)(2) gives the Administrator authority to add to the CAA § 112(b)(1) list "pollutants which present, or may present through inhalation or other routes of exposure, a threat

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of adverse human health effects (including, but not limited to, substances, which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition or otherwise." CAA § 302(k) defines an air pollutant as "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive . . . substance or matter which is emitted into or otherwise enters the ambient air." CAA § 112(a)(7) defines the term "adverse environmental effect" as "any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas."

CAA § 112(b)(3)(A) specifies that any person may petition the Administrator to modify the list of HAP contained in CAA § 112(b)(1) by adding or deleting a substance. CAA § 112(b)(3)(B) sets out the substantive criteria for granting a petition. It calls for the Administrator to add a substance to the CAA section 112(b)(1) list "upon a showing by the petitioner or on the Administrator's own determination that the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects." The Administrator is required under CAA § 112(b)(3)(A) to either grant or deny a petition within 18 months of the receipt of a complete petition by publishing a written explanation of the reasons for the Administrator's decision. The Administrator may not deny a petition solely on the basis of inadequate resources or time for review. CAA § 112(b)(3)(A).

Under CAA § 112, new regulated sources must meet HAP emission standards that are no less stringent than the emission limitation achieved by the best controlled similar source. CAA § 112(d)(3). Existing regulated sources must meet emission standards that are no less stringent than the average emission limitation achieved by a specified subset of the best performing existing sources. CAA § 112(d)(3)(A) & (B).

Once a pollutant is listed as a HAP under CAA § 112, EPA is obligated to regulate all "major sources" of that pollutant. And, once a source qualifies as a "major source" of any hazardous air pollutant, EPA must regulate all HAP from that source. CAA § 112(c)(2).

Listing and regulating a pollutant as a HAP precludes regulation of that pollutant under CAA § 111(d). *See* CAA § 111(d)(1); *see also* Affordable Clean Energy Rule, Response to Comments, Chapter 1, Docket Item # EPA-HQ-OAR-2017-0355-26741, at 11 (confirming EPA's position on the section 112 exclusion as stated in Clean Power Plan Final Rule); Clean Power Plan Final Rule, 80 Fed Reg 64,662, 64,710 (Oct. 23, 2015) ("CAA section 111(d) contains an exclusion that limits the regulation under CAA section 111(d) of air pollutants that are regulated under CAA section 112.").

<u>EPA's Response to CBD's Petition to Establish a GHG NAAQS</u>

Upon consideration of CBD's petition, EPA has determined that a NAAQS for GHG would be inconsistent with the text and structure of the Clean Air Act. The NAAQS regime is designed for

local pollutants that state-level regulation can meaningfully control. GHG is a global pollutant that is dispersed evenly throughout the global atmosphere. No state implementation plan could possibly have any measurable effect on the concentration of GHG within its own borders, and no state could ever come into attainment, on the basis of state-level action, with CBD's preferred level of 350 parts per million (ppm) CO_2 or any other standard set below current global concentrations. The statutory devices that incentivize SIP submission and NAAQS attainment within specific geographic areas would serve no useful function in a circumstance of nationwide and perpetual nonattainment. For these reasons, EPA determines that it would be unreasonable and inappropriate to establish a NAAQS for GHG. It follows that EPA could not reasonably plan to issue air quality criteria for GHG and therefore could not reasonably list GHG as a criteria pollutant.

Statutory Text

As CBD acknowledges, before EPA can set a national pollution standard for a new pollutant pursuant to CAA § 109, the Agency must first list the new pollutant pursuant to § 108(a)(1), and then issue air quality criteria for the pollutant pursuant to § 108(a)(2). That statute leaves no ambiguity about the reason for the creation and revision of the list of criteria pollutants. It is "[f]or the purpose of establishing national primary and secondary ambient air quality standards" that the Administrator is required to publish and revise the list. The rest of the provision must be interpreted through the lens of this express statutory purpose. *See Herman & MacLean v. Huddleston*, 459 U.S. 375, 387 (1983) ("[C]ourts will construe the details of an act in conformity with its dominating general purpose." (quoting *SEC v. C. M. Joiner Leasing Corp.*, 320 U.S. 344, 350-51 (1943))). It would be illogical therefore to list a criteria pollutant that could not reasonably be regulated pursuant to a NAAQS.

The third statutory condition that must be satisfied before a pollutant may be listed makes clear that a pollutant should not be listed unless it is an appropriate subject for NAAQS regulation. That condition provides that a pollutant should only be listed if it is one "for which [the Administrator] plans to issue air quality criteria under this section." CAA § 108(a)(1)(C); *see St. Joe Minerals Corp. v. EPA*, 508 F.2d 743, 744 (3d Cir. 1975), *vacated as moot*, 425 U.S. 987 (1976) ("The Administrator is to include in the list of pollutants all substances for which air quality criteria had previously been established and any others which, in the Administrator's opinion, (1) detracted from the public health or welfare; (2) originated from numerous sources; and (3) *merited controls*.") (emphasis added).

CBD's petition effectively reads the third condition out of the statute. CBD argues that "[w]hen the provisions of subpart (A) and (B) have been met, listing the pollutant and proceeding with the additional requirements of sections 108-110 is mandatory, and EPA lacks any discretion to decline to regulate." CBD Petition at 15. CBD's only basis for this position is a single judicial decision from the 1970s. In *Natural Res. Def. Council v. Train*, the United States Court of Appeal for the Second Circuit ignored the text of CAA § 108(a)(1)(C). Instead of interpreting the statutory language actually enacted by Congress, the court overlooked the text and turned immediately to legislative history:

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> The EPA contention that the language of § 108(a)(1)(C) "for which (the Administrator) plans to issue air quality criteria" is a separate and third criterion to be met before § 108 requires listing lead and issuing air quality standards, thereby leaving the decision to list lead within the discretion of the Administrator, finds no support in the legislative history of the 1970 Amendments to the Act.

545 F.2d 320, 325 (2d Cir. 1976).

Only after its foray into legislative history did the court turn to "the literal language of § 108(a)(1)(C)," which it set aside as "somewhat ambiguous" in a two-sentence analysis:

> While the literal language of § 108(a)(1)(C) is somewhat ambiguous, this ambiguity is resolved when this section is placed in the context of the Act as a whole and in its legislative history. The deliberate inclusion of a specific timetable for the attainment of ambient air quality standards incorporated by Congress in §§ 108-110 would become an exercise in futility if the Administrator could avoid listing pollutants simply by choosing not to issue air quality criteria.

545 F.2d at 327.

If there were any ambiguity about § 108(a)(1)(C), the Supreme Court's subsequent decision in *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984), would require that it be resolved in favor of the agency's reasonable interpretation, not a court's. But there is no ambiguity to resolve. The third condition of CAA § 108 plainly turns on whether the Administrator "plans to issue air quality criteria under this section." CAA § 108(a)(1)(C). A pollutant that cannot plausibly be controlled under the NAAQS regime should not be the subject of air quality criteria, and when the Administrator does not plan to issue criteria for a pollutant, it should not be listed, according to the plain language of the statute.

The kind of statutory interpretation employed by the Second Circuit in *Train* that looks for meaning first in legislative history and only secondarily in the words of the statute has fallen out of favor with the courts in the intervening decades as inconsistent with the judicial role. *See Morley v. CIA*, 719 F.3d 689, 693 (D.C. Cir. 2013) (Kavanaugh, J., concurring) ("[W]e should not reflexively cling to FOIA decisions that were decided on the basis of legislative history during an era when statutory text was less central to statutory interpretation.").

Moreover, the Second Circuit misread the legislative history. The Senate Report that the court quoted observes that what is now § 108 "*directs* the Secretary to publish" the initial list. S. Rep. on S. 4358, 91st Cong., 2d Sess. By contrast, when speaking of revision, the Report says only that "[h]e *can* add to the list periodically." *Id.* (emphasis added); *see also id.* ("Others *may* be added to this group as knowledge increases"). This non-mandatory language reflects the discretion inherent in the decision whether to "plan[] to issue air quality criteria." CAA § 108(a)(1)(C). And although the legislative history reflects the assumptions of some legislators that EPA would issue a long list of criteria pollutants ("fluorides, nitrogen oxides, polynuclear organic matter, lead, and odors") within 30 days of passage, a legislator's expectations about the application of a law are not dispositive of the law's meaning. *See Oncale v. Sundowner Offshore Servs., Inc.*, 523

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U.S. 75, 79 (1998) ("[I]t is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed."), *quoted in Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1749 (2020).

The Second Circuit's assumption in 1976 about how the Clean Air Act—still relatively new at the time—would work in practice has proven incorrect in the intervening decades. Lead remains the only criteria pollutant EPA has added to the original list of five. It is clearly not the case that every dangerous pollutant that originates from multiple sources must be added to the list of criteria pollutants. The various pollution control mechanisms of the Act work in tandem with each other to protect public health.

The Second Circuit's "structural" argument also fails. EPA's reading does not render the "the mandatory language of § 108(a)(1)(A) . . . mere surplusage." 545 F.2d at 325. The phrase "shall . . . revise" in CAA § 108(a)(1) has meaning under EPA's reading. The word "shall" makes the listing mechanism mandatory. Because of this mandatory language, the Administrator cannot bypass it simply by issuing criteria for a pollutant that has not been listed, a result that would undermine the public notice benefit of the listing process. And the statutory timetable for attainment is not an "exercise in futility," 545 F.2d at 327, but continues to drive state and federal action in response to EPA's increasingly stringent NAAQS for the six existing criteria pollutants.

The court of appeals adopted without analysis the district court's argument that the phrase "for which he plans to issue air quality criteria" applies only to the initial list of criteria pollutants. *See Natural Res. Def. Council, Inc. v. Train*, 411 F. Supp. 864, 868 (S.D.N.Y. 1976), *endorsed by* 545 F.2d at 325. This interpretation has no basis in the text of the statute, and it ignores that "and" is conjunctive. The entire series of three conditions, joined by "and," applies by the rules of grammar to the phrase that precedes it—"each air pollutant." 42 U.S.C. § 108(a)(1). Therefore, all three of the conditions must be met to trigger the listing requirement.

Structure

EPA's statutory interpretation of CAA § 108(a)(1) is supported by the structure of the CAA. It would not be reasonable to set a NAAQS for GHG for the same reason it would make no sense to "plan to issue air quality criteria" for GHG: The NAAQS regime's cooperative federalism approach to air pollution control is designed for local pollution that can be remedied by local action, not pollutants like GHG that are dispersed globally throughout the atmosphere and cannot be remedied by local controls.

The absurdity of setting a NAAQS for GHG is evident in the utter futility of the prospect. As the Department of Energy observed, "A GHG NAAQS standard would put the entire United States in either attainment or non-attainment, and it would be virtually impossible for an individual State to control or reduce GHG concentrations in its area and, thus, to make significant strides toward remaining in or reaching attainment." ANPRM, 73 Fed. Reg. at 44,367; *see also id.* ("There is little or nothing that a single State or region can do that will appreciably alter the atmospheric GHG concentration level in that particular State or region. Thus it is hard to see how a GHG NAAQS, which required States to take action to reduce their emissions to meet a

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particular air quality standard, would actually work."); *id.* at 44,363 (DOT). EPA will not presume that Congress intended to legislate a meaningless exercise. *See Jackson v. The Archimedes*, 275 U.S. 463, 468 (1928) ("[A] purpose so wholly futile is not to be attributed to Congress.").

The prospect of perpetual nationwide nonattainment is inconsistent with the structure of the NAAQS regime, which is built around statutory deadlines enforced with statutory penalties designed to incentivize attainment and maintenance of the NAAQS. As EPA has previously observed, "it would appear to be an inescapable conclusion that the maximum 10-year horizon for attaining the primary NAAQS is ill-suited to pollutants such as greenhouse gases with long atmospheric residence times. . . . Thus, despite active control efforts to meet a NAAQS, the entire United States would remain in nonattainment for an unknown number of years." ANPRM, 73 Fed. Reg. at 44,481; *see also id.* at 44,381 (White House CEA and OSTP) ("Activities currently proposed for regulation will have no impact on public welfare for decades.").

States might try in vain to exempt themselves from the obligation to attain the NAAQS by a date certain by proving that timely attainment is impossible due to foreign GHG emissions. Under CAA § 179B, EPA may approve a SIP that does not demonstrate attainment by the deadline under specified circumstances. But no State would be able to make the required showing that its SIP "would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date . . . but for emissions emanating from outside of the United States." CAA § 179B(a)(2). Even if all the foreign countries of the world were to immediately cease anthropogenic emissions of GHG, it is unlikely that a hypothetical NAAQS would be attained by the attainment date, due to the long atmospheric lifetime of GHG[1] and the comparatively high contribution of GHG from natural sources.[2]

Perpetual nationwide nonattainment would yield a regulatory morass as nonattainment triggers new transportation conformity burdens. As the Department of Transportation explained, "[i]f the entire Nation were found to be in nonattainment for carbon dioxide or multiple greenhouse gases, and transportation and general conformity requirements applied to Federal activities, a broad range of those activities would be severely disrupted. For example, application of transportation conformity requirements to all metropolitan area transportation plans would add layers of additional regulations onto an already arduous Federal approval process and expand transportation-related litigation." ANPRM, 73 Fed. Reg. at 44,363.

If EPA were to adopt a GHG NAAQS, "controls on specific source categories would flow from independent state-level decisions, and could result in a patchwork of regulations requiring different types and levels of controls in different states." ANPRM, 73 Fed. Reg. at 44,483. Although state-by-state variation makes sense for local air pollutants that have area-specific sources and effects, it would be inefficient in the extreme for a pollutant that is present everywhere in the same concentrations. Eventually, the cooperative federalism framework of the NAAQS regime would collapse as ineffectual SIPs would give rise to ineffectual federal

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[1] *See* IPCC, Climate Change 2007: The Physical Science Basis, at 33-34, Table TS.2, Table 2.14, https://www.ipcc.ch/site/assets/uploads/2018/05/ar4_wg1_full_report-1.pdf.
[2] *Id.* at 2-3.

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implementation plans (FIPs). In the meantime, states would be forced to play a meaningless regulatory charade with no hope of having any measurable effect on the GHG levels within their borders.

Other features of the Clean Air Act's NAAQS regime would make no sense applied to GHG:

- States must "provide for establishment and operation" of air quality monitoring devices. CAA 110(a)(2)(A). This requirement has no relevance to a global air pollutant like GHG that is dispersed around the world. It has no location-specific effect that could be measured by an air quality monitor.
- Under certain circumstances, when determining their attainment status, States may be able to exclude certain monitored air quality exceedances or violations if the State demonstrates, and EPA concurs, that the exceedance or violation was caused by some types of "exceptional events" that are natural events or unlikely to recur. But this statutory feature is designed for local pollutants that trigger exceedances at specific air quality monitors. GHG's status as a long-term pollutant that is dispersed globally would make it difficult if not impossible for a state to make the required demonstration that a particular "exceptional event caused a specific air pollution concentration at a particular air quality monitoring location." CAA § 319(b)(3)(B)(ii).
- The CAA's interstate transport and "good neighbor" provisions are likewise designed for local pollutants. *See* CAA § 126 (interstate transport) (cited in CAA § 110(A)(2)(D)(ii); CAA § 110(a)(2)(D)(i)(I) (good neighbor). The globally dispersed quality of GHG is such that every emission from one state affects all other states equally. Given the far greater contributions from foreign sources that have the exact same effect (ton for ton) on any given state's nonattainment, and given that every state is upwind of every other state when it comes to a globally dispersed pollutant, the interstate transport and good neighbor provisions would not function as intended if applied to a hypothetical GHG NAAQS.

Policy Considerations

The plain meaning and structure of the Clean Air Act precludes regulation of greenhouse gas as a criteria pollutant pursuant to NAAQS. But this outcome is also supported by several policy considerations that confirm the reasonableness of EPA's interpretation. In the alternative, these considerations reasonably support the Administrator's discretionary decision not to "plan[] to issue air quality criteria under this section." CAA § 108(a)(1)(C).

A GHG NAAQS would reduce America's bargaining power and undermine international cooperation. Even petitioner CBD recognizes that the "global problems" of climate change "cannot be solved unless each nation limits its own emissions sufficiently to achieve its share of the reductions necessary to stabilize atmospheric greenhouse gas concentrations." CBD Petition at iii. But a GHG NAAQS would regulate only the United States. It would have no direct beneficial effect on the GHG reductions of other countries, nor could a NAAQS be made contingent on the actions of foreign countries. As the White House Council of Economic Advisers and the White House Office of Science and Technology Policy have recognized,

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unilateral adoption of a GHG NAAQS would undermine the United States' ability to negotiate with foreign countries for a fair and effective global GHG regime: The CAA "does not permit regulations to depend on mitigation actions taken by other countries. The failure to allow for contingencies of this sort removes an important tool for inducing other countries to take actions that benefit Americans and the rest of the world." ANPRM 73 Fed. Reg. at 44,383.

A GHG NAAQS would damage American competitiveness and worsen pollution. Adopting a GHG NAAQS would drive carbon-intensive industries overseas to less regulated jurisdictions, increasing pollution and damaging the U.S. economy. As the Department of Commerce explained, "embrac[ing] emissions reductions outside of an international agreement with the world's major emitters . . . would put U.S. firms at a competitive disadvantage by raising their input costs compared to foreign competitors, likely resulting in emissions leakage outside of the United States and energy-intensive firms relocating to less regulated countries. Such an outcome would not be beneficial to the environment or the U.S. economy." ANPRM, 73 Fed. Reg. at 44,376; *see generally id.* at 44,413-14. The White House Council of Economic Advisers agreed that "acting in a globally uncoordinated fashion will put the United States at a competitive disadvantage, will induce economic distortions, and may actually be counter productive in reducing GHGs. . . . If businesses in other countries do not suffer the penalty for emitting GHGs, production has an incentive to move abroad, even when producing in the U.S. would be more economically efficient." *Id.* at 44,383. CBD's petition claims that a nationwide GHG standard would help to "address[] interstate leakage concerns by requiring the participation of those states that have yet to take action." CBD Petition at ii; 32. But CBD neglects the much larger leakage problem that would occur if the United States were to adopt a GHG standard unilaterally.

A GHG NAAQS would be inefficient. When setting a NAAQS, EPA may not consider the cost of compliance but must set the standard at the level that is "sufficient, but not more than necessary" to "protect public health from the adverse effects of the pollutant" with an "adequate margin of safety." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 465, 473 (2001) (quoting CAA § 109(b)(1)). As the Department of Energy has observed, "[t]his limitation inhibits a rational balancing of factors in determining and setting a GHG NAAQS based on the science available, the availability and cost of emission controls, the resulting impact on the U.S. economy, the emissions of other nations, etc." ANPRM, 73 Fed. Reg. at 44,367. This precludes rational regulations. As the White House Council of Economic Advisers has explained, "[t]o obtain economic efficiency, it is necessary to equalize marginal abatement costs across sources, which is extremely unlikely to occur if states are required to meet the same standard." ANPRM, 73 Fed. Reg. at 44,382.

A GHG NAAQS would hurt American agriculture. Clean Air Act programs, including the NAAQS "were neither designed for, nor are they suitable to, regulation of greenhouse gases from agricultural sources." ANPRM, 73 Fed. Reg. at 44,376 (USDA). The Department of Agriculture has explained that "[u]nder a NAAQS regulatory program, agricultural sources may need to employ Reasonably Available Control Measures ('RACM') or, at a minimum, include the use of Reasonable Available Control Technologies ('RACT')," but "agriculture is primarily dependent on biological processes which are not readily re-engineered. Given the nature of many

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agricultural source emissions. RACM and RACT may not exist or may be cost prohibitive." *Id.* at 44,377.

A GHG NAAQS would hurt America's small businesses. Given the uniform distribution of GHG and the resulting nationwide nonattainment, the Small Business Administration has explained that small entities would bear a disproportionate share of the costs of implementing a GHG NAAQS:

> [E]stablishing a GHG NAAQS would set in motion a number of statutory control measures that would be costly, inefficient, and ineffective. Small entities could have to contend with new barriers to construction and expansion, new restrictions on operating cars and trucks, and the potential for having to retrofit their existing buildings with GHG controls or to purchase equivalent credits. These NAAQS control measures would subject vast numbers of small entities across the country to standardized, inflexible, GHG control requirements for the first time. The full impact of these new burdens on these small entities could be devastating.

ANPRM 73 Fed. Reg. at 44,393.

EPA's Response to IPI's Petition to Regulate GHG under CAA § 115[3]

Because the text and structure of the Clean Air Act preclude a NAAQS for GHG, *see supra*, it also precludes the use of CAA § 115's mechanism for regulating foreign effects of domestic emissions of the pollutant. That is because § 115 depends upon the existence of a NAAQS SIP that is controlling the pollutant at issue. CAA § 115 operates by requiring the Administrator, when a reciprocity requirement is satisfied, to compel a state to revise its SIP when the state's pollution is endangering public health or welfare in a foreign country. (The Administrator's notice to the state under § 115 operates as a finding pursuant to § 110(a)(2)(H)(ii) that the SIP is inadequate.) The statutory remedy is for the State to revise its plan so that it adequately protects human health and welfare in the foreign country. If the state does not have a SIP that covers the relevant pollutant, then neither the Administrator's notice nor the statutory remedy makes any sense. Thus, EPA has previously acknowledged that "Section 115 could not be used to require states to incorporate into their SIPs measures unrelated to attainment or maintenance of a NAAQS." ANPRM, 73 Fed. Reg. at 44,483; *see id.* at 44,482 ("The Administrator could exercise his authority under [Section 115] *if* EPA were to promulgate a NAAQS for GHG." (emphasis added)).

EPA has previously rejected a request to regulate GHG under CAA § 115, because that provision applies only to criteria pollutants:

[3] IPI also asks EPA to regulate GHG under section 111, Title II, and Title VI of the CAA. This denial does not address those portions of IPI's petition. EPA notes that it is already regulating GHG under these provisions. *See, e.g.*, Affordable Clean Energy Rule, 84 Fed. Reg. 32,520 (July 8, 2019); Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, 85 Fed. Reg. 24,174 (April 30, 2020); Determination 36 for Significant New Alternatives Policy Program, 85 Fed. Reg. 79,863 (Dec. 11, 2020).

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> [C]onsistent with the authority in section 110 of the CAA under which SIPs are approved, only measures that are related to attainment and maintenance of the NAAQS (including procedural and interim requirements) should be approved by EPA as part of a federally enforceable implementation plan. *See, e.g.*, 67 Fed. Reg. 17,368 (April 2, 2004) ("An important element of [the SIP approval] process is not to include in the SIP portions of those regulations that are not related to attainment or maintenance of the NAAQS or to the requirements for SIPs under the Act."). In fact, on numerous occasions in the past twelve years, EPA has acted to remove from state SIPs provisions that were not reasonably related to the NAAQS. . . . It would be inconsistent with this long standing interpretation for EPA to issue notices requiring states to revise their SIPs to address CO_2 emissions and climate change issues. . . . The CAA does not authorize the Administrator to require states, as your submittal requests, to adopt SIP provisions regarding CO_2 emissions in order to reduce any impact on climate change, as such provisions would not be reasonably related to attainment and maintenance of the NAAQS.

Letter from Brian McLean, Dir., Office of Atmospheric Programs, EPA, to Albert Kochl, Staff Attorney, Ecojustice Canada (Feb. 29, 2008).

Petitioner IPI admits that "Section 110 does facially appear exclusive to the NAAQS program due to its title, 'State Implementation Plans for National Primary and Secondary Ambient Air Quality Standards.'" Institute for Policy Integrity, Petition for Rulemakings and Call for Information Under Section 115, Title VI, Section 111, and Title II of the Clean Air Act to Regulate GHG Emissions at 12 (2013) (hereinafter "IPI Petition"). Yet IPI argues that regulation of GHG under CAA § 115 is not limited to criteria pollutants for which a NAAQS has been established. IPI points to the phrase "any air pollutant" in § 115 as evidence that the statute must apply beyond criteria pollutants. *Id.* But this argument is unavailing.

The Supreme Court has instructed that the phrase "any air pollutant" must be interpreted in context. Thus "any air pollutant" for purpose of PSD and Title V permitting is limited to "*regulated* air pollutants." *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 316 (2014) (citing 43 Fed. Reg. 26403, *codified as amended*, 40 C.F.R. § 52.21(b)(1)-(2), (50)). In the context of new source performance standards, "any air pollutant" is limited to "air pollutants *for which EPA has promulgated new source performance standards*." *Id.* at 317 (citing CAA § 111(a)(2), (4); 36 Fed. Reg. 24877 (1971), *codified as amended*, 40 C.F.R. § 60.2; 40 Fed. Reg. 58419 (1975), *codified as amended*, 40 C.F.R. § 60.14(a)). And in the context of permitting a major source to operate in a nonattainment area, "any air pollutant" is limited to "pollutants *for which the area is designated nonattainment*." *Id.* at 317 (citing CAA § 172(c)(5), 302(j); 45 Fed. Reg. 52745 (1980), *promulgating* 40 C.F.R. § 51.18(j)(2), *as amended*, § 51.165(a)(2)).

Likewise, in the context of CAA § 115, in which Congress has expressly incorporated the NAAQS/SIP regime by reference, "any air pollutant" must be limited to air pollutants whose emissions are controlled pursuant to a NAAQS SIP. The Administrator's notice under CAA § 115(a) operates as a finding that a NAAQS SIP is "substantially inadequate to attain the [NAAQS] which it implements or otherwise comply with any additional requirements established under this chapter." CAA § 110(a)(2)(H)(ii). And Section 115 can only be

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effectuated by "a plan *revision* with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment" to public health or welfare in a foreign country. CAA § 115(b) (emphasis added). State plans exist to attain and maintain standards for criteria pollutants; it would not be reasonable to require their revision for other pollutants that are not controlled by the NAAQS.

IPI points out that CAA § 110(a)(2)(D)(ii) requires a SIP to "contain adequate provisions . . . insuring compliance with the applicable requirements of [CAA §§ 126 and 115]." IPI infers from this that SIPs may therefore govern non-criteria pollutants. But this reasoning is question begging. The more natural reading of CAA § 110(a)(2)(D)(ii) is that it governs international transport of criteria pollutants—the same pollutants covered by the NAAQS that the SIP implements.

During the Carter Administration, in an effort to control international acid rain pollution, Administrator Costle took a broader view of CAA § 115. He stated in private correspondence and without explanation that Section 115 "is broadly drafted to encompass all forms of air pollution-related endangerment to public health or welfare and is not limited to interference with U.S. air quality standards or significant deterioration programs." Letter from Douglas M. Costle, Admin. EPA, Sen. George Mitchell (Jan. 13, 1981), *reprinted in New York v. Thomas*, 613 F.Supp. at 1472, 1488. But EPA never acted on this interpretation, and the D.C. Circuit rejected a claim that the letter compelled the Agency to issue SIP notices to states producing pollution that caused acid rain deposition in Canada. *Thomas v. State of N.Y.*, 802 F.2d 1443, 1447 (D.C. Cir. 1986) (Scalia, J.) ("We conclude that if Administrator Costle's findings left the EPA no alternative but to issue SIP notices ultimately causing the termination or restriction of the operations of many utilities and manufacturers—if they *forced* the EPA to take direct and substantial regulatory actions—they could not be promulgated without notice-and-comment procedures.").

Any bilateral reciprocal agreement on GHG emissions with another country would be inadequate to substantially reduce GHG accumulation in the atmosphere, because all the nations of the world contribute to GHG pollution. Indeed, regional efforts at GHG control could be counter-productive, because, as described above, they may cause emitters to relocate to less-regulated jurisdictions. And the EPA does not believe that Congress would have given it authority to regulate on a global scale one of the present day's most contentious political questions with the most profound economic and geopolitical implications, through a statutory mechanism designed to deal with cross-border emissions of local air pollutants through state-level regulation. *See generally Whitman*, 531 U.S. at 468 ("Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.").

EPA's Response to FWW's Petition to List GHG as a Hazardous Air Pollutant

FWW's petition to list GHG as a hazardous air pollutant pursuant to CAA § 112 is based on a projection of GHG's indirect effects on human health and the environment. FWW points to EPA's 2009 finding that elevated concentrations of greenhouse gases in the atmosphere may

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reasonably be anticipated to endanger the public health and to endanger the public welfare of current and future generations" through climate change. FWW Petition at 3. FWW cites IPCC projections that GHG will cause "a mean surface temperature increase of 3.7°C to 4.8°C by 2100." FWW Petition at 7 (citing IPCC, "Summary for Policymakers," Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (2014)). Specifically, FWW alleges that climate change is causing or will cause the following environmental and welfare effects: harm to food production and forestry, impaired access to water, sea level rise, increased energy demand, infrastructure damage, and changes in wildlife habitat that hurt biodiversity. FWW Petition at 10. FWW also alleges that climate change will cause the following public health effects: increased mortality from heat waves, flooding, and storm surge; aggravated respiratory illness and asthma from increased ground-level ozone and plant growth; and increased food-, water-, and insect-borne diseases. FWW Petition at 11.

All of these circumstances are secondary effects of climate change to which GHG emissions are a contributing factor. They are not direct effects of exposure to GHG molecules.

The EPA concludes that it would be improper to list a substance as a hazardous air pollutant based on its *indirect* effects on human health or the environment. The text of CAA § 112 demonstrates that the statute is concerned with substances that themselves cause immediate harm to health and the environment. CAA § 112(b)(2) gives the Administrator the power to add to the list of HAP "pollutants which present, or may present, through inhalation or other routes of *exposure*, a threat of adverse human health effects . . . or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise." The parallel phrases "through . . . exposure" and "through ambient concentrations, bioaccumulation, deposition or otherwise" are best interpreted to require immediate, not secondary, health and environmental effects to justify a hazardous air pollutant listing. To be sure, the phrase "or otherwise" could be read broadly in another context to allow consideration of indirect environmental effects. But in this context, coming as it does after a list of direct means of environmental harm, "or otherwise" is best interpreted to refer to other direct mechanisms by which a HAP may cause environmental harm. *See United States v. Williams*, 553 U.S. 285, 294 (2008) ("[T]he commonsense canon of *noscitur a sociis* . . . counsels that a word is given more precise content by the neighboring words with which it is associated.").

CAA § 112's focus on direct effects distinguishes it from other provisions of the Clean Air Act that are silent as to the mechanisms by which a pollutant causes harm. For example, CAA § 202(a)(1) requires the Administrator to set emissions standards for "any air pollutant from any class . . . of new motor vehicles . . . which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." Thus, the 2009 Endangerment Finding under § 202(a)(1) did not require EPA to conclude that GHG itself directly endangers health or welfare. It was enough to find that GHG emissions would contribute to elevated temperatures, which would in turn contribute to climate change, which would in turn contribute to secondary effects, which would in turn harm health and welfare. By contrast to CAA § 202(a)(1), § 112 requires that the pollutant itself directly cause the harm—whether by

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inhalation or other routes of exposure (in the case of human health effects) or by concentration, bioaccumulation, deposition, or other direct mechanisms (in the case of the environmental effects).

Although petitions to modify the HAP list are treated in the statute's succeeding paragraph, which does not use the term "exposure," *see* CAA § 112(b)(3)(B), the statute is best interpreted as a whole to require direct harm whether the Administrator is revising the list on his own initiative pursuant to CAA § 112(b)(2) or in response to a petition pursuant to CAA § 112(b)(3). A petition to modify the HAP list is a petition "under this subsection," CAA § 112(b)(3), so the Administrator's evaluation of a pollutant's causation of adverse effects should be the same in either circumstance. *See* 82 Fed. Reg. 2357 ("CAA section 112(b)(2) provides additional guidance on how the Administrator's decision [on a petition under CAA § 112(b)(3)(B)] is to be formed by identifying carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, reproductive dysfunction, and acute or chronic toxicity as types of adverse health effects."). Thus, it would not be reasonable for the Administrator to list a substance in response to a petition under CAA § 112(b)(3)(B) that he could not list on his own initiative under CAA § 112(b)(2).

Read in this light, CAA § 112 does not permit the Administrator to list GHG as a HAP. Greenhouse gas is not emitted in concentrations that could cause direct adverse effect on human health via exposure. Human beings inhale and ingest CO_2 and other GHG in relatively high concentrations without ill effect, so no plausible exposure to these substances at the concentrations in which they operate as GHG would threaten adverse health effects. Likewise, GHG does not have a direct environmental effect "through ambient concentrations, bioaccumulation, deposition, or otherwise." GHG's adverse effects are indirect: In FWW's account, GHG traps heat in the atmosphere, which contributes to climate change, which in turn contributes to adverse environmental effects.

Further, GHG could not be regulated based on its *environmental* effects without reference to *health* effects. CAA § 112(b)(2) prohibits listing on the basis of adverse environmental effects alone any substance that is already regulated under Title VI: "No substance, practice, process or activity regulated under subchapter VI of this chapter shall be subject to regulation under this section solely due to its adverse effects on the environment." Hydrofluorocarbons (HFCs) are a subset of well-mixed GHG that are currently regulated under some sections of Title VI. Accordingly, even if FWW could identify direct (as opposed to indirect) environmental effects of GHG, EPA would be unable to list the "mix of six long-lived and directly-emitted greenhouse gases" under CAA § 112 as FWW requests,[4] because of the lack of exposure-based health effects.

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[4] FWW Petition at 1. The predicate for FWW's petition is the 2009 Endangerment Finding, which assessed the harm from these GHG collectively as a single pollutant. *See* Endangerment Finding, 74 Fed. Reg. 66,496, 66,497 (2009) ("Specifically, the Administrator is defining the 'air pollution' referred to in CAA section 202(a) to be the mix of six long-lived and directly-emitted greenhouse gases: carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6)."); *id.* at 66,516 ("In this final action, the Administrator finds that the air pollution is the combined mix of six key directly-emitted, long-lived and well-mixed greenhouse gases (henceforth 'well-mixed greenhouse gases'), which together, constitute the root cause of human-induced climate change and the resulting impacts on public health and welfare.").

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FWW's interpretation of CAA § 112 to allow listing GHG as HAP is at odds with the best evidence of Congress's intent—the list of HAP it codified with the passage of CAA § 112. Congress included in that list pollutants that present direct adverse health and environmental effects, it did not list either well-mixed GHG or individual GHG. If Congress had intended EPA to have the authority to regulate climate-forcing agents under section 112, it could have given EPA that authority expressly, similar to the direct authority given to EPA to regulate substances that cause harmful effects to the ozone layer. *See* Title VI, 104 Stat. 2649, 42 U. S. C. §§7671–7671q.

The practical consequences of FWW's interpretation further demonstrate its unreasonableness. CAA § 112 obligates EPA to regulate HAP from all major sources. The term "major source" is defined as a stationary source that emits "10 tons per year or more of any hazardous air pollutant." CAA § 112(a)(1), (c)(2). Many thousands of sources currently unregulated under CAA § 112 emit ten tons or more per year of CO_2, including buildings like schools, small apartment complexes, and hospitals. *Cf. UARG v. EPA*, 573 U.S. 302, 324 (2014). Subjecting these sources to regulation for the first time under CAA § 112 would bring about an extraordinary expansion and transformation of the CAA § 112 regulatory scheme. As the Supreme Court said in rejecting the Agency's effort to let GHG emissions trigger PSD and Title V regulation, "The fact that EPA's greenhouse-gas-inclusive interpretation . . . would place plainly excessive demands on limited governmental resources is alone a good reason for rejecting it." *UARG*, 573 U.S. at 323-24.

And as with the Agency's interpretation in *UARG*, the Petitioners' interpretation of EPA's authority under § 112 "is also unreasonable because it would bring about an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization." *UARG*, 573 U.S. at 324; *see also id.* (citing *Brown & Williamson*, 529 U.S., at 159-60 (requiring a clear statement from Congress when an agency claims to discover in a long-extant statute an unheralded power to regulate "a significant portion of the American economy"); *MCI Telecommunications Corp. v. American Telephone & Telegraph Co.*, 512 U.S. 218, 231 (1994); *Industrial Union Dept., AFL–CIO v. American Petroleum Institute*, 448 U.S. 607, 645–46 (1980) (plurality opinion)).

Other Considerations

In addition to the statutory reasons discussed above, and even if the EPA were authorized to list and regulate GHG as criteria pollutants under CAA §§ 108 and 115 and to regulate GHG as a HAP under CAA § 112, EPA is also denying these petitions as an exercise of its discretion to prioritize the allocation of its limited agency resources.

As is true for all federal agencies, the EPA has a limited budget and limited staff resources, and so has to prioritize its actions when deciding what actions to take and what actions to defer or decline to take. To illustrate how this need to prioritize limited resources impacts our decision here, we will focus on three points.

First, the EPA is required to conduct numerous actions that have mandatory statutory deadlines under the CAA, some of which are further governed by court orders and consent decrees

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imposed as the result of mandatory duty claims. For example, the EPA must review (and revise if appropriate) the NAAQS for each of the six currently listed criteria pollutants (ozone, sulfur dioxide, nitrogen dioxide, carbon monoxide, lead, and fine and course particulate matter) every five years. 42 U.S.C. § 7409(d)(1). With regards to HAP, EPA must review and revise the emission standards for each of the dozens of listed source categories every eight years. *Id.* § 7412(d)(6). Under the D.C. Circuit's recent decision in *Louisiana Environmental Action Network v. EPA*, 955 F.3d 1088 (D.C. Cir. 2020), this duty also includes filling gaps in emission standards for previously unregulated HAP and emissions units. EPA has little or no discretion to lower the priority of those actions. Based on EPA's past experience, listing and regulating GHG as criteria pollutants and HAP under CAA §§ 108, 115, and 112 would be a lengthy and resource-intensive set of tasks and would divert resources from the aforementioned mandatory reviews of existing NAAQS and NESHAP, as well as EPA's GHG regulations under CAA § 111 and other high-priority actions.

Second, even focusing just on the EPA's regulation of GHG emissions, the Agency must decide which sources of GHG to regulate first, and how to achieve that regulation. To that end, EPA has chosen to regulate GHG emissions from stationary sources under CAA § 111. *See, e.g.*, 84 Fed. Reg. 32,520 (July 9, 2019) (promulgating CAA § 111(d) emission guidelines for existing coal-fired power plants); 80 Fed. Reg. 64,510 (Oct. 23, 3015) (setting CAA § 111(b) standards of performance for new, modified, and reconstructed coal- and gas-fired power plants); 81 Fed. Reg. 59,322 & 81 Fed. Reg. 59,276 (Aug. 29, 2016) (setting CAA § 111(b) standards of performance and issuing CAA § 111(d) emission guidelines for municipal solid waste landfills). EPA, as the expert agency, is in the best position to select the appropriate statutory authority for addressing a given environmental challenge and has done so in this instance.

Further, it is important to recognize that the EPA's ongoing regulation of GHG under CAA § 111(d) would have to be halted and reversed if the EPA were to list and regulate GHG as criteria pollutants under CAA § 108 or as HAP under CAA § 112, due to the exclusions stated in CAA § 111(d)(1)(A). This would both undo significant aspects of EPA's regulation of GHG emissions to date and be a poor use of EPA's limited resources.

Conclusion

The Clean Air Act's NAAQS regime and § 115 are well suited to local pollutants that have the greatest effect on—and can be meaningfully controlled by the localities where they are emitted. That is not true of GHG, which are dispersed throughout the global atmosphere. Likewise, § 112 is designed to address HAP that cause direct health and environmental effects by exposure, concentration, or otherwise in relatively low concentrations by a few sources. These provisions are not designed to handle globally dispersed pollutants that are emitted in great amounts by myriad sources and have only indirect health and environmental effects.

Congress has the power to craft a comprehensive solution to the problem of greenhouse gas emissions, but such a solution will necessarily involve equitable participation by the other nations that emit significant amounts of GHG. EPA cannot create such a solution unilaterally, and it has not been given the statutory tools that would be necessary. Because the text and

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structure of the CAA preclude the regulation of GHG under these statutory provisions, EPA denies the petitions of CBD, IPI, and FWW, except as to the portions of the IPI petition identified in footnote 3, as to which the EPA takes no action.

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Message

From: Hamilton, Sabrina [Hamilton.Sabrina@epa.gov]
Sent: 3/2/2021 2:04:01 PM
To: Campbell, Ann [Campbell.Ann@epa.gov]
Subject: For Concurrence - Petition by the Food and Water Watch to regulate GHGs under the Clean Air Act -- OAR-21-000-2069
Attachments: GHG Petition Denial Withdrawal 2-19_Carlesco.docx; caa_112_ghg_petition.pdf; Wheeler GHG Petition Denials Jan 19, 21_2.pdf

Flag: Follow up

Ann,

This is the third one ready for Joe's concurrence. Thanks

Sabrina

-----Original Message-----
From: Faulkner, Martha <Faulkner.Martha@epa.gov>
Sent: Tuesday, March 2, 2021 8:38 AM
To: Hamilton, Sabrina <Hamilton.Sabrina@epa.gov>
Subject: FW: CMS For Concurrence - Jenny Noonan - OAR-21-000-2069

Sabrina,

Attached is a letter for your review to Ann and Joe for their concurrence. Thanks

Martha Faulkner
Correspondence Specialist – SEE Employee Office of Air and Radiation – Correspondence Unit U.S. Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue, N.W. (6101-A)
Washington, DC 20460
Tel: (202) 564-7418
Fax: (202) 501-0600

-----Original Message-----
From: cmsadmin@epa.gov <cmsadmin@epa.gov>
Sent: Tuesday, March 2, 2021 6:30 AM
To: Hamilton, Sabrina <Hamilton.Sabrina@epa.gov>; Faulkner, Martha <Faulkner.Martha@epa.gov>; Carroll, Maria <carroll.maria@epa.gov>
Subject: CMS For Concurrence - Jenny Noonan - OAR-21-000-2069

The response for control OAR-21-000-2069 has been sent to you for concurrence on 3/2/21 6:30 AM. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: OAR-21-000-2069
Control Subject: Petition by the Food and Water Watch to regulate GHGs under the Clean Air Act.
From: Carlesco, Adam

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at https://cms.epa.gov/cms. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

Mr. Adam Carlesco
Staff Attorney – Climate & Energy
Food & Water Watch
1616 P St., NW, Suite 600
Washington, D.C. 20036
[HYPERLINK "mailto:acarlesco@fwwatch.org"]

Dear Mr. Carlesco:

Ex. 5 Deliberative Process (DP)

Sincerely,

Jane Nishida
Acting Administrator

Message

From: Gustafson, Adam [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=20857A3831394ED6B0348DC4ADBCE080-GUSTAFSON,]
Sent: 12/28/2020 11:05:01 PM
To: Idsal, Anne [idsal.anne@epa.gov]; Moor, Karl [Moor.Karl@epa.gov]
CC: David Fotouhi (fotouhi.david@epa.gov) [fotouhi.david@epa.gov]
Subject: Draft Work Product
Attachments: 20201228 Draft GHG NAAQS Petition Denial.docx

DELIBERATIVE. ATTORNEY-CLIENT PRIVILEGED.

Anne and Karl,

Ex. 5 AC/DP

I'm available to discuss as needed.

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

Message

From: Gustafson, Adam [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=20857A3831394ED6B0348DC4ADBCE080-GUSTAFSON,]
Sent: 1/5/2021 3:13:47 PM
To: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]
Subject: Draft GHG petition denial
Attachments: 20210105 Draft GHG NAAQS Petition Denial.docx

Gautam and Matt,

Ex. 5 AC/DP

Ex. 5 AC/DP

Please keep this within OGC for now.

Thank you.

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

Message

From: Gustafson, Adam [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=20857A3831394ED6B0348DC4ADBCE080-GUSTAFSON,]
Sent: 1/6/2021 4:27:08 PM
To: Marks, Matthew [Marks.Matthew@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Subject: RE: Draft GHG petition denial
Attachments: CBD Petition_GHG_pollution_cap_12-2-2009.pdf; NYU IPI Petition for Rulemakings Under CAA 115, 111.pdf; FWW - CAA 112 GHG Petition.pdf

Here they are.

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Marks, Matthew <Marks.Matthew@epa.gov>
Sent: Wednesday, January 6, 2021 11:03 AM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: Draft GHG petition denial

Adam, do you happen to have the three petitions handy?

Matthew C. Marks
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: 202-564-3276
E: marks.matthew@epa.gov

From: Gustafson, Adam <Gustafson.Adam@epa.gov>
Sent: Tuesday, January 05, 2021 10:14 AM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>
Subject: Draft GHG petition denial

Gautam and Matt,

Ex. 5 AC/DP

Ex. 5 AC/DP

Please keep this within OGC for now.

Thank you.

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

Message

From: Gustafson, Adam [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=20857A3831394ED6B0348DC4ADBCE080-GUSTAFSON,]
Sent: 1/19/2021 5:02:47 PM
To: Raymond, Kelley [Raymond.Kelley@epa.gov]
Subject: RE: GHG petition denials for posting and emailing

Yes.

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Raymond, Kelley <Raymond.Kelley@epa.gov>
Sent: Tuesday, January 19, 2021 12:02 PM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Subject: Re: GHG petition denials for posting and emailing

I'm sure that I can - can I call you around 2 to ask a couple quick questions before sending?

Sent from my iPhone

On Jan 19, 2021, at 11:41 AM, Gustafson, Adam <Gustafson.Adam@epa.gov> wrote:

Kelley,

Here are the two signed documents we have discussed for posting on OAR's website:

- Denial of three petitions to regulate GHG as a NAAQS, as a cross-border pollutant under CAA 115, and as a HAP, submitted by CBD, NYU Law Institute for Policy Integrity, and Food & Water Watch, respectively;
- Denial of four petitions to reconsider the 2009 GHG Endangerment Finding, submitted by CHECC, CEI/SEPP, Liberty Packing/TPPF, and FAIR Energy Foundation.

Are you able to send these to the petitioners' email addresses on the cover letters Ex. 5 AC/DP
Ex. 5 AC/DP

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Scott, Corey <scott.corey@epa.gov>
Sent: Tuesday, January 19, 2021 11:21 AM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>

Cc: Fotouhi, David <Fotouhi.David@epa.gov>; adm15.arwheeler.email <adm15.arwheeler.email@epa.gov>
Subject: NAAQS Denial Signed

Adam,

Here is the NAAQS denial! Thanks!

Corey
<GHG NAAQS Petition Denial 2021-01-19.pdf>

Ex. 5 AC/DP

Message

From: Gustafson, Adam [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=20857A3831394ED6B0348DC4ADBCE080-GUSTAFSON,]
Sent: 1/20/2021 1:46:32 PM
To: Raymond, Kelley [Raymond.Kelley@epa.gov]
Subject: RE: GHG petition denials for posting and emailing

Any word on whether these have gone up on the website? I'm not sure where to look.

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Raymond, Kelley <Raymond.Kelley@epa.gov>
Sent: Tuesday, January 19, 2021 2:53 PM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Subject: RE: GHG petition denials for posting and emailing

Responses have been emailed, and the request has been put in for the website updates.

Kelley Raymond
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Gustafson, Adam <Gustafson.Adam@epa.gov>
Sent: Tuesday, January 19, 2021 11:41 AM
To: Raymond, Kelley <Raymond.Kelley@epa.gov>
Subject: GHG petition denials for posting and emailing

Kelley,

Here are the two signed documents we have discussed for posting on OAR's website:

- Denial of three petitions to regulate GHG as a NAAQS, as a cross-border pollutant under CAA 115, and as a HAP, submitted by CBD, NYU Law Institute for Policy Integrity, and Food & Water Watch, respectively;
- Denial of four petitions to reconsider the 2009 GHG Endangerment Finding, submitted by CHECC, CEI/SEPP, Liberty Packing/TPPF, and FAIR Energy Foundation.

Are you able to send these to the petitioners' email addresses on the cover letters Ex. 5 AC/DP
Ex. 5 AC/DP

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Scott, Corey <scott.corey@epa.gov>
Sent: Tuesday, January 19, 2021 11:21 AM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Fotouhi, David <Fotouhi.David@epa.gov>; adm15.arwheeler.email <adm15.arwheeler.email@epa.gov>
Subject: NAAQS Denial Signed

Adam,

Here is the NAAQS denial! Thanks!

Corey

Message

From: Gustafson, Adam [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=20857A3831394ED6B0348DC4ADBCE080-GUSTAFSON,]
Sent: 1/15/2021 7:05:25 PM
To: Raymond, Kelley [Raymond.Kelley@epa.gov]
Subject: Fwd: GHG NAAQS petitions
Attachments: 20210115 Draft GHG NAAQS Petition Denial.docx; ATT00001.htm

Kelley, FYI, this is what I'm planning to use as a template.

Sent from my iPhone

Begin forwarded message:

From: "Gustafson, Adam" <Gustafson.Adam@epa.gov>
Date: January 15, 2021 at 7:27:00 AM MST
To: "Fotouhi, David" <Fotouhi.David@epa.gov>
Subject: RE: GHG NAAQS petitions

Thanks, David.

Here is my final version. It is still marked draft.

Ex. 5 AC/DP

Ex. 5 AC/DP

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Thursday, January 14, 2021 11:31 PM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Subject: RE: GHG NAAQS petitions

Adam: Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP

David Fotouhi

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

From: Gustafson, Adam <Gustafson.Adam@epa.gov>
Sent: Thursday, January 14, 2021 5:19 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: RE: GHG NAAQS petitions

David,

Here is the current version. I will be going over this again tonight.

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Gustafson, Adam
Sent: Thursday, January 14, 2021 3:01 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: Re: GHG NAAQS petitions

Yes, I'll send it when I get to my hotel in a couple hours and will continue tweaking after that.

Sent from my iPhone

On Jan 14, 2021, at 12:58 PM, Fotouhi, David <Fotouhi.David@epa.gov> wrote:

I'd like to give this document a final read tonight before we send it through for signature tomorrow. When you're happy with it, could you please send me the latest draft? I'm okay if you're planning to keep tweaking it after you send it—just want to review the latest.

David Fotouhi

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

Message

From: Gustafson, Adam [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=20857A3831394ED6B0348DC4ADBCE080-GUSTAFSON,]
Sent: 1/19/2021 8:01:38 PM
To: David Fotouhi (fotouhi.david@epa.gov) [fotouhi.david@epa.gov]
Subject: FW: GHG petition denials for posting and emailing

FYI

From: Raymond, Kelley <Raymond.Kelley@epa.gov>
Sent: Tuesday, January 19, 2021 2:53 PM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Subject: RE: GHG petition denials for posting and emailing

Responses have been emailed, and the request has been put in for the website updates.

Kelley Raymond
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Gustafson, Adam <Gustafson.Adam@epa.gov>
Sent: Tuesday, January 19, 2021 11:41 AM
To: Raymond, Kelley <Raymond.Kelley@epa.gov>
Subject: GHG petition denials for posting and emailing

Kelley,

Here are the two signed documents we have discussed for posting on OAR's website:

- Denial of three petitions to regulate GHG as a NAAQS, as a cross-border pollutant under CAA 115, and as a HAP, submitted by CBD, NYU Law Institute for Policy Integrity, and Food & Water Watch, respectively;
- Denial of four petitions to reconsider the 2009 GHG Endangerment Finding, submitted by CHECC, CEI/SEPP, Liberty Packing/TPPF, and FAIR Energy Foundation.

Are you able to send these to the petitioners' email addresses on the cover letters Ex. 5 AC/DP
Ex. 5 AC/DP

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Scott, Corey <scott.corey@epa.gov>
Sent: Tuesday, January 19, 2021 11:21 AM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Fotouhi, David <Fotouhi.David@epa.gov>; adm15.arwheeler.email <adm15.arwheeler.email@epa.gov>
Subject: NAAQS Denial Signed

Adam,

Here is the NAAQS denial! Thanks!

Corey

Message

From: Gustafson, Adam [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=20857A3831394ED6B0348DC4ADBCE080-GUSTAFSON,]
Sent: 1/20/2021 4:46:40 PM
To: Grantham, Nancy [Grantham.Nancy@epa.gov]
CC: Payne, James (Jim) [payne.james@epa.gov]
Subject: RE: Petition denials for posting online

Ex. 5 AC/DP

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Gustafson, Adam
Sent: Wednesday, January 20, 2021 11:45 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>
Subject: RE: Petition denials for posting online

Nancy,

Here is where the attached NAAQS attachment should be posted Ex. 5 AC/DP
Ex. 5 AC/DP

The February 25, 2013 entry on this page should be edited Ex. 5 AC/DP
Ex. 5 AC/DP

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Gustafson, Adam
Sent: Wednesday, January 20, 2021 11:38 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>
Subject: FW: Petition denials for posting online

Nancy,

Here are the documents for posting. I will follow up with the location.

Thanks.

Adam

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Gustafson, Adam
Sent: Wednesday, January 20, 2021 11:08 AM
To: Griffin, Chris <Griffin.Chris@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: Petition denials for posting online

Chris,

David asked that these two Administrator-signed petition denials be posted on OGC's website. I believe he gave you a heads-up this might be coming. Could you please confirm that you are able to do this now?

Thank you.

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Gustafson, Adam
Sent: Tuesday, January 19, 2021 11:41 AM
To: Raymond, Kelley <Raymond.Kelley@epa.gov>
Subject: GHG petition denials for posting and emailing

Kelley,

Here are the two signed documents we have discussed for posting on OAR's website:

- Denial of three petitions to regulate GHG as a NAAQS, as a cross-border pollutant under CAA 115, and as a HAP, submitted by CBD, NYU Law Institute for Policy Integrity, and Food & Water Watch, respectively;
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Are you able to send these to the petitioners' email addresses on the cover letters Ex. 5 AC/DP
Ex. 5 AC/DP

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263

Cell: 202-836-3570

From: Scott, Corey <scott.corey@epa.gov>
Sent: Tuesday, January 19, 2021 11:21 AM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Fotouhi, David <Fotouhi.David@epa.gov>; adm15.arwheeler.email <adm15.arwheeler.email@epa.gov>
Subject: NAAQS Denial Signed

Adam,

Here is the NAAQS denial! Thanks!

Corey

Message

From: Gustafson, Adam [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=20857A3831394ED6B0348DC4ADBCE080-GUSTAFSON,]
Sent: 1/19/2021 7:56:42 PM
To: Raymond, Kelley [Raymond.Kelley@epa.gov]
Subject: RE: GHG petition denials for posting and emailing

Many thanks, Kelley.

Ex. 5 AC/DP

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Raymond, Kelley <Raymond.Kelley@epa.gov>
Sent: Tuesday, January 19, 2021 2:53 PM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Subject: RE: GHG petition denials for posting and emailing

Responses have been emailed, and the request has been put in for the website updates.

Kelley Raymond
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Gustafson, Adam <Gustafson.Adam@epa.gov>
Sent: Tuesday, January 19, 2021 11:41 AM
To: Raymond, Kelley <Raymond.Kelley@epa.gov>
Subject: GHG petition denials for posting and emailing

Kelley,

Here are the two signed documents we have discussed for posting on OAR's website:

- Denial of three petitions to regulate GHG as a NAAQS, as a cross-border pollutant under CAA 115, and as a HAP, submitted by CBD, NYU Law Institute for Policy Integrity, and Food & Water Watch, respectively;
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Are you able to send these to the petitioners' email addresses on the cover letters Ex. 5 AC/DP

Ex. 5 AC/DP

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency

Office: 202-564-7263
Cell: 202-836-3570

From: Scott, Corey <scott.corey@epa.gov>
Sent: Tuesday, January 19, 2021 11:21 AM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Fotouhi, David <Fotouhi.David@epa.gov>; adm15.arwheeler.email <adm15.arwheeler.email@epa.gov>
Subject: NAAQS Denial Signed

Adam,

Here is the NAAQS denial! Thanks!

Corey

Message

From: Gustafson, Adam [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=20857A3831394ED6B0348DC4ADBCE080-GUSTAFSON,]
Sent: 1/20/2021 4:12:47 PM
To: Lee, Terry [lee.terry@epa.gov]
CC: Griffin, Chris [Griffin.Chris@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]
Subject: FW: Petition denials for posting online
Attachments: GHG NAAQS Petition Denial 2021-01-19.pdf; GHG Endangerment Petition Denial 2021-01-19.pdf

Terry,

I got an away message from Chris. Would you please post documents on the OGC website now?

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Gustafson, Adam
Sent: Wednesday, January 20, 2021 11:08 AM
To: Griffin, Chris <Griffin.Chris@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: Petition denials for posting online

Chris,

David asked that these two Administrator-signed petition denials be posted on OGC's website. I believe he gave you a heads-up this might be coming. Could you please confirm that you are able to do this now?

Thank you.

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Gustafson, Adam
Sent: Tuesday, January 19, 2021 11:41 AM
To: Raymond, Kelley <Raymond.Kelley@epa.gov>
Subject: GHG petition denials for posting and emailing

Kelley,

Here are the two signed documents we have discussed for posting on OAR's website:

- Denial of three petitions to regulate GHG as a NAAQS, as a cross-border pollutant under CAA 115, and as a HAP, submitted by CBD, NYU Law Institute for Policy Integrity, and Food & Water Watch, respectively;
- Denial of four petitions to reconsider the 2009 GHG Endangerment Finding, submitted by CHECC, CEI/SEPP, Liberty Packing/TPPF, and FAIR Energy Foundation.

Are you able to send these to the petitioners' email addresses on the cover letters Ex. 5 AC/DP

Ex. 5 AC/DP

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Scott, Corey <scott.corey@epa.gov>
Sent: Tuesday, January 19, 2021 11:21 AM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Fotouhi, David <Fotouhi.David@epa.gov>; adm15.arwheeler.email <adm15.arwheeler.email@epa.gov>
Subject: NAAQS Denial Signed

Adam,

Here is the NAAQS denial! Thanks!

Corey

Message

From: Grantham, Nancy [Grantham.Nancy@epa.gov]
Sent: 1/20/2021 5:08:15 PM
To: Payne, James (Jim) [payne.james@epa.gov]; Gustafson, Adam [Gustafson.Adam@epa.gov]
CC: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Subject: RE: Petition denials for posting online

Thanks

Nancy Grantham
Principal Deputy Associate Administrator
Environmental Protection Agency
Office of Public Affairs
202-564-6879 (desk)
202-253-7056 (cell)
grantham.nancy@epa.gov

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Wednesday, January 20, 2021 12:06 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: Petition denials for posting online

Thank you. I'm asking Gautam in OGC to follow up on this.

From: Grantham, Nancy <Grantham.Nancy@epa.gov>
Sent: Wednesday, January 20, 2021 11:58 AM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>
Subject: RE: Petition denials for posting online

Jim – as discussed, the transition is now official, so we need to revisit this posting with the incoming team thanks ng

Nancy Grantham
Principal Deputy Associate Administrator
Environmental Protection Agency
Office of Public Affairs
202-564-6879 (desk)
202-253-7056 (cell)
grantham.nancy@epa.gov

From: Gustafson, Adam <Gustafson.Adam@epa.gov>
Sent: Wednesday, January 20, 2021 11:53 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>
Subject: RE: Petition denials for posting online

Ex. 5 AC/DP

In the text above the bullet points, please insert:

Ex. 5 AC/DP

This is the example I'm looking at: https://www.epa.gov/petitions/petition-partial-supplemental-waiver-2016-cellulosic-biofuel-volumetric-requirements

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Gustafson, Adam
Sent: Wednesday, January 20, 2021 11:45 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>
Subject: RE: Petition denials for posting online

Nancy,

Here is where the attached NAAQS attachment should be posted Ex. 5 AC/DP
Ex. 5 AC/DP

The February 25, 2013 entry on this page should be edited Ex. 5 AC/DP
Ex. 5 AC/DP

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Gustafson, Adam
Sent: Wednesday, January 20, 2021 11:38 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>
Subject: FW: Petition denials for posting online

Nancy,

Here are the documents for posting. I will follow up with the location.

Thanks.

Adam

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Gustafson, Adam
Sent: Wednesday, January 20, 2021 11:08 AM
To: Griffin, Chris <Griffin.Chris@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: Petition denials for posting online

Chris,

David asked that these two Administrator-signed petition denials be posted on OGC's website. I believe he gave you a heads-up this might be coming. Could you please confirm that you are able to do this now?

Thank you.

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Gustafson, Adam
Sent: Tuesday, January 19, 2021 11:41 AM
To: Raymond, Kelley <Raymond.Kelley@epa.gov>
Subject: GHG petition denials for posting and emailing

Kelley,

Here are the two signed documents we have discussed for posting on OAR's website:

- Denial of three petitions to regulate GHG as a NAAQS, as a cross-border pollutant under CAA 115, and as a HAP, submitted by CBD, NYU Law Institute for Policy Integrity, and Food & Water Watch, respectively;
- Denial of four petitions to reconsider the 2009 GHG Endangerment Finding, submitted by CHECC, CEI/SEPP, Liberty Packing/TPPF, and FAIR Energy Foundation.

Are you able to send these to the petitioners' email addresses on the cover letters? Ex. 5 AC/DP

Ex. 5 AC/DP

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency

Office: 202-564-7263
Cell: 202-836-3570

From: Scott, Corey <scott.corey@epa.gov>
Sent: Tuesday, January 19, 2021 11:21 AM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Fotouhi, David <Fotouhi.David@epa.gov>; adm15.arwheeler.email <adm15.arwheeler.email@epa.gov>
Subject: NAAQS Denial Signed

Adam,

Here is the NAAQS denial! Thanks!

Corey

Message

From: Graham, Cheryl [Graham.Cheryl@epa.gov]
Sent: 5/21/2019 11:36:55 AM
To: Harnett, Bill [Harnett.Bill@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Henigin, Mary [Henigin.Mary@epa.gov]; Davis, Alison [Davis.Alison@epa.gov]; Montoro, Marta [Montoro.Marta@epa.gov]; Schillo, Bruce [Schillo.Bruce@epa.gov]; Holmes, Carol [Holmes.Carol@epa.gov]; Mazakas, Pam [Mazakas.Pam@epa.gov]; Millett, John [Millett.John@epa.gov]; South, Peter [South.Peter@epa.gov]; Lipshultz, Jon (ENRD) [Jon.Lipshultz@usdoj.gov]; Wood, Anna [Wood.Anna@epa.gov]; Edwards, Crystal [Edwards.Crystal@epa.gov]; Mathias, Scott [Mathias.Scott@epa.gov]; Chapman, Apple [Chapman.Apple@epa.gov]; South, Mia [South.Mia@epa.gov]; Cortelyou-Lee, Jan [Cortelyou-Lee.Jan@epa.gov]; Smith, Kristi [Smith.Kristi@epa.gov]; Iglesias, Amber [Iglesias.Amber@epa.gov]; Schachter, Scott (ENRD) [Scott.Schachter@usdoj.gov]; Doyle, Andrew (ENRD) [Andrew.Doyle@usdoj.gov]; leslie.hill@usdoj.gov [Leslie.Hill@usdoj.gov]; Mitchell, Ken [Mitchell.Ken@epa.gov]; Wortman, Eric [Wortman.Eric@epa.gov]; Knapp, Kristien [Knapp.Kristien@epa.gov]; Purdy, Angeline (ENRD) [Angeline.Purdy@usdoj.gov]; Debra Carfora [debra.carfora@usdoj.gov]; Perez, Idalia [Perez.Idalia@epa.gov]; martha.mann@usdoj.gov [Martha.Mann@usdoj.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]; Lewis, Josh [Lewis.Josh@epa.gov]; Harlow, David [harlow.david@epa.gov]; DeLuca, Isabel [DeLuca.Isabel@epa.gov]; Dominguez, Alexander [dominguez.alexander@epa.gov]; Wehrum, Bill [Wehrum.Bill@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Woods, Clint [woods.clint@epa.gov]; McLamb, Marguerite [McLamb.Marguerite@epa.gov]; Koerber, Mike [Koerber.Mike@epa.gov]; Idsal, Anne [idsal.anne@epa.gov]
Subject: ARLO Deadline Calendar for the week of May 20, 2019
Attachments: 19-05-20 ARLO Deadline Calendar.docx

Attached is the current deadline calendar and other information that is sent out weekly from ARLO. If information in the attachment raises questions, please contact Gautam Srinivasan. Thanks

Cheryl R. Graham
OGC/ARLO
(202) 564-5473

This document has been withheld in its entirety under Ex. 5 - Attorney Client (ACP), Ex. 5 - Attorney Work Product (AWP), Ex. 5 - Deliberative Process (DPP).

Message

From: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Sent: 1/10/2021 9:50:30 PM
To: Mutz, John (Fletcher) [mutz.john@epa.gov]
CC: Razor, Lila [Razor.Lila@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]
Subject: FW: GHG petition denial
Attachments: 20210109 Draft GHG NAAQS Petition Denial +ARLO +ag.docx

Hi Fletcher. Could you please schedule the meeting Adam and David have requested below? In addition to those in the email chain, can you please add to the invite- David Orlin, Lea Anderson, Winnie Okoye, Scott Jordan and Emily Seidman? Thanks.

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Gustafson, Adam <Gustafson.Adam@epa.gov>
Sent: Saturday, January 9, 2021 11:55 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>
Subject: RE: GHG petition denial

Gautam,

Thanks for organizing this rapid response. I appreciate the helpful feedback on short notice. I've made some edits in response and left some comments in the margin. Ex. 5 AC/DP

Ex. 5 AC/DP

Let's plan to discuss on Monday. It looks like David and I are available 11:30-12:30 and 3:30-5:00.

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

This document has been withheld in its entirety under Ex. 5 - Attorney Client (ACP), Ex. 5 - Attorney Work Product (AWP), Ex. 5 - Deliberative Process (DPP).

Message

From: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
Sent: 3/1/2022 3:57:44 PM
To: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]
Subject: FW: Former EPA Administrator Andrew Wheeler's last moves on climate
Attachments: Former EPA Administrator Andrew Wheeler's last moves on climate

Gautam / Matt,

Would you please take a look at E&E's questions below, and provide a few bullets on status that we can share publicly. Thanks.

Melissa

From: Carroll, Timothy <Carroll.Timothy@epa.gov>
Sent: Tuesday, March 1, 2022 10:33 AM
To: DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Millett, John <Millett.John@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Cc: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>
Subject: RE: Former EPA Administrator Andrew Wheeler's last moves on climate

Apologies – meant to forward Kevin's earlier email. It is attached, let me know if you have trouble accessing the docs.

Tim Carroll (he/him)
Deputy Press Secretary
Environmental Protection Agency
202-384-7510 (mobile)
Twitter: @EPAPressOffice

From: DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Sent: Tuesday, March 1, 2022 10:31 AM
To: Carroll, Timothy <Carroll.Timothy@epa.gov>; Millett, John <Millett.John@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Cc: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>
Subject: RE: Former EPA Administrator Andrew Wheeler's last moves on climate

Thanks, Tim. Checking. Could you share the attachments from the original inquiry? Not that we would comment specifically on them, I'd just be interested to see for context. In addition to finding out where we are in the process on this, will check to see if we've shared the copies of the denials in past, similar inquiries. (I think we may have listed the denials but not shared copies, but I will check.)

From: Carroll, Timothy <Carroll.Timothy@epa.gov>
Sent: Tuesday, March 1, 2022 10:20 AM
To: Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Cc: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>
Subject: FW: Former EPA Administrator Andrew Wheeler's last moves on climate

Hi all, please see below from Kevin Bogardus at E&E. He's writing about the push by the last administration to deny petitions to reconsider EPA's endangerment finding on GHG in the last few weeks of the term. **Ex. 5 Attorney Client (AC)**

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

OAR – can you take a look at the petition status questions and let us know if there's anything more we can/should say about the process? It would also be good to share the withdrawals requested, if possible.

OGC – Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Let me know of any other questions or concerns here, happy to chat by phone if helpful. We have a deadline of COB tomorrow, Wednesday, March 2.

Thanks all!

Tim Carroll (he/him)
Deputy Press Secretary
Environmental Protection Agency
202-384-7510 (mobile)
Twitter: @EPAPressOffice

From: Kevin Bogardus <kbogardus@eenews.net>
Sent: Monday, February 28, 2022 5:09 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; EPA Press Office <Press@epa.gov>
Subject: Re: Former EPA Administrator Andrew Wheeler's last moves on climate

My apologies, everyone, but I forgot to link one document in my original email, which is EPA's withdrawal of Wheeler's denial of several similar petitions to have EPA regulate greenhouse gas emissions under the Clean Air Act. Here is that link (please see https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-03-05-Decision-Withdrawing-Denial.pdf). Please let me know if you have any thoughts. My deadline is close of business Wednesday, March 2. Thank you for your help!

Kevin Bogardus
E&E News Reporter
kbogardus@eenews.net
202-446-0401 (o)
202-247-7844 (c)
202-737-5299 (f)

Follow me @KevinBogardus

E&E News
122 C Street, NW, Suite 722, Washington, DC 20001
www.eenews.net
Greenwire, ClimateWire, EnergyWire, E&E Daily, E&ENews PM

From: Kevin Bogardus <kbogardus@eenews.net>
Sent: Monday, February 28, 2022 4:20 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Press <press@epa.gov>
Subject: Former EPA Administrator Andrew Wheeler's last moves on climate

Hey everyone,

It's Kevin Bogardus with E&E News. I hope all is well. I'm also copying Nancy on this email because I quote her from an email in my story.

I'm working on a story about former EPA Administrator Andrew Wheeler's last moves on climate change policy before he left EPA. I'm quoting from and linking to emails, letters and memos. I obtained several of these records under the Freedom of Information Act (please see attached).

I have a few questions about this, which are:

-- Former EPA Administrator Andrew Wheeler received denials on petitions to reconsider EPA's endangerment finding on greenhouse gas emissions as well as several similar petitions to have EPA regulate greenhouse gas emissions under the Clean Air Act (please see emails-about-endangerment-finding.pdf and emails-about-endangerment-finding-1.pdf). He signed both sets of those denials (please see https://legacy-assets.eenews.net/open_files/assets/2021/05/20/document_gw_01.pdf and https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-01-19-GHG-NAAQS-Petition-Denial-2021-01-19.pdf). EPA, however, later withdrew those denials (please see https://legacy-assets.eenews.net/open_files/assets/2021/05/20/document_gw_02.pdf).

What is the status of these petitions now at EPA? Is EPA still reviewing them? When does EPA expect to reach a decision on these petitions?

-- It is my understanding that EPA withdrew Wheeler's denials of the petitions by the New York University Law Institute for Policy Integrity to have EPA regulate greenhouse gas emissions under Section 115 of the Clean Air Act as well as by Food & Water Watch to have EPA regulate greenhouse gas emissions as a Hazardous Air Pollutant. Can you share those withdrawals with me?

-- One of EPA's withdrawals of Wheeler's denials said "an adequate justification of the denial" was not provided while another withdrawal said "the agency did not fully and fairly assess the issues raised" by the petition. Emails show EPA officials begin discussing the petition on the endangerment finding on Jan. 5, 2021, only a few weeks before the Trump administration came to an end (please see emails-about-endangerment-finding-2.pdf). Also, one email said an update on developing a draft denial of the petition "didn't sound too promising" and the agency may have to "deploy an alternative approach" (please see emails-about-endangerment-finding-3.pdf). Further, another email said one message was "not encouraging" (please see emails-about-endangerment-finding-4.pdf).

When EPA said Wheeler's denials did not provide adequate justification, nor fully and fairly assess the issues raised, did EPA mean Wheeler's denials were rushed? How would EPA characterize the process behind drafting these denials?

-- There were plans to post Wheeler's denials on EPA's website, either on the Office of Air and Radiation's website or the Office of General Counsel's website, with that latter request being made within an hour of the end of President Trump's term in office, according to a series of emails (please see emails-about-endangerment-finding-5.pdf). In addition, Adam Gustafson, then EPA's deputy

general counsel, emailed two different EPA officials, asking if they could post the denials to the OGC's website, hours after the end of the Trump administration and his own resignation from EPA (please see emails-about-endangerment-finding-6.pdf and emails-about-endangerment-finding-7.pdf). Nevertheless, with two minutes until the changeover between the Trump and Biden administrations at noon on Jan. 20, 2021, Nancy Grantham, principal deputy assistant administrator in EPA's Office of Public Affairs, said in an email, "As discussed, the transition is now official, so we need to revisit this posting with the incoming team."

Why did EPA not post Wheeler's denials on EPA's website?

-- Chris Grundler, director of EPA's Office of Atmospheric Programs, said in an email, "I will expect we will get some questions about this one," referring to EPA's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding (please see emails-about-endangerment-finding-10.pdf).

Why should EPA expect questions about this withdrawal? What did Grundler mean by that?

Also, I will be quoting from and linking to the following records in my story. Please let me know if you have any comment on the following:

-- Senior political appointees and career officials in several EPA offices were invited to a meeting to "discuss paths forward" on Wheeler's denials in February 2021, according to records (please see emails-about-endangerment-finding-8.pdf and emails-about-endangerment-finding-9.pdf).

-- Senior political appointees and career officials in EPA's Office of Air and Radiation were notified when Administrator Regan signed the withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, which wasn't normal practice but was done since they might be interested in the withdrawal, according to an email (please see emails-about-endangerment-finding-11.pdf).

-- Senior political appointees in EPA's Office of Air and Radiation were made aware of a statement EPA prepared on Administrator Regan's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, according to an email (please see emails-about-endangerment-finding-12.pdf).

Please get back to me as soon as possible. My deadline is close of business Wednesday, March 2, but the sooner you get back to me, the more it helps my reporting. Also, since I'm working from home, please email me here or call me back on my cell phone at 202-247-7844. Thank you for your help and stay safe, stay healthy!

Kevin Bogardus

E&E News Reporter

kbogardus@eenews.net

202-446-0401 (o)

202-247-7844 (c)

202-737-5299 (f)

Follow me @KevinBogardus

E&E News
122 C Street, NW, Suite 722, Washington, DC 20001
www.eenews.net
Greenwire, ClimateWire, EnergyWire, E&E Daily, E&ENews PM

Message

From: Kevin Bogardus [kbogardus@eenews.net]
Sent: 2/28/2022 9:20:27 PM
To: Hamilton, Lindsay [Hamilton.Lindsay@epa.gov]; Harney, Alethea [Harney.Alethea@epa.gov]; Carroll, Timothy [Carroll.Timothy@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; EPA Press Office [Press@epa.gov]
Subject: Former EPA Administrator Andrew Wheeler's last moves on climate
Attachments: emails-about-endangerment-finding-1.pdf; emails-about-endangerment-finding-2.pdf; emails-about-endangerment-finding-3.pdf; emails-about-endangerment-finding-4.pdf; emails-about-endangerment-finding-5.pdf; emails-about-endangerment-finding-6.pdf; emails-about-endangerment-finding-7.pdf; emails-about-endangerment-finding-8.pdf; emails-about-endangerment-finding-9.pdf; emails-about-endangerment-finding-10.pdf; emails-about-endangerment-finding-11.pdf; emails-about-endangerment-finding-12.pdf; emails-about-endangerment-finding.pdf

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What is the status of these petitions now at EPA? Is EPA still reviewing them? When does EPA expect to reach a decision on these petitions?

-- It is my understanding that EPA withdrew Wheeler's denials of the petitions by the New York University Law Institute for Policy Integrity to have EPA regulate greenhouse gas emissions under Section 115 of the Clean Air Act as well as by Food & Water Watch to have EPA regulate greenhouse gas emissions as a Hazardous Air Pollutant. Can you share those withdrawals with me?

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-- Chris Grundler, director of EPA's Office of Atmospheric Programs, said in an email, "I will expect we will get some questions about this one," referring to EPA's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding (please see emails-about-endangerment-finding-10.pdf).

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-- Senior political appointees and career officials in EPA's Office of Air and Radiation were notified when Administrator Regan signed the withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, which wasn't normal practice but was done since they might be interested in the withdrawal, according to an email (please see emails-about-endangerment-finding-11.pdf).

-- Senior political appointees in EPA's Office of Air and Radiation were made aware of a statement EPA prepared on Administrator Regan's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, according to an email (please see emails-about-endangerment-finding-12.pdf).

Please get back to me as soon as possible. My deadline is close of business Wednesday, March 2, but the sooner you get back to me, the more it helps my reporting. Also, since I'm working from home, please email me here or call me back on my cell phone at 202-247-7844. Thank you for your help and stay safe, stay healthy!

Kevin Bogardus
E&E News Reporter
kbogardus@eenews.net
202-446-0401 (o)
202-247-7844 (c)

202-737-5299 (f)

Follow me @KevinBogardus

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www.eenews.net
Greenwire, ClimateWire, EnergyWire, E&E Daily, E&ENews PM

Message

From: Grantham, Nancy [Grantham.Nancy@epa.gov]
Sent: 1/20/2021 5:08:15 PM
To: Payne, James (Jim) [payne.james@epa.gov]; Gustafson, Adam [Gustafson.Adam@epa.gov]
CC: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Subject: RE: Petition denials for posting online

Thanks

Nancy Grantham
Principal Deputy Associate Administrator
Environmental Protection Agency
Office of Public Affairs
[redacted]
grantham.nancy@epa.gov

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Wednesday, January 20, 2021 12:06 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: Petition denials for posting online

Thank you. I'm asking Gautam in OGC to follow up on this.

From: Grantham, Nancy <Grantham.Nancy@epa.gov>
Sent: Wednesday, January 20, 2021 11:58 AM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>
Subject: RE: Petition denials for posting online

Jim – as discussed, the transition is now official, so we need to revisit this posting with the incoming team thanks ng

Nancy Grantham
Principal Deputy Associate Administrator
Environmental Protection Agency
Office of Public Affairs
[redacted]
grantham.nancy@epa.gov

From: Gustafson, Adam <Gustafson.Adam@epa.gov>
Sent: Wednesday, January 20, 2021 11:53 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>
Subject: RE: Petition denials for posting online

Instead of Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP) as I saw in another example.

In the text above the bullet points, please insert:

Ex. 5 Deliberative Process (DP)

This is the example I'm looking at: https://www.epa.gov/petitions/petition-partial-supplemental-waiver-2016-cellulosic-biofuel-volumetric-requirements

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
[redacted]

From: Gustafson, Adam
Sent: Wednesday, January 20, 2021 11:45 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>
Subject: RE: Petition denials for posting online

Nancy,

Here is where the attached NAAQS attachment should be posted Ex. 5 Deliberative Process (DP)
Ex. 5 Deliberative Process (DP)

The February 25, 2013 entry on this page should be edited Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
[redacted]

From: Gustafson, Adam
Sent: Wednesday, January 20, 2021 11:38 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>
Subject: FW: Petition denials for posting online

Nancy,

Here are the documents for posting. I will follow up with the location.

Thanks.

Adam

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
[redacted]

From: Gustafson, Adam
Sent: Wednesday, January 20, 2021 11:08 AM
To: Griffin, Chris <Griffin.Chris@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: Petition denials for posting online

Chris,

David asked that these two Administrator-signed petition denials be posted on OGC's website. I believe he gave you a heads-up this might be coming. Could you please confirm that you are able to do this now?

Thank you.

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
[redacted]

From: Gustafson, Adam
Sent: Tuesday, January 19, 2021 11:41 AM
To: Raymond, Kelley <Raymond.Kelley@epa.gov>
Subject: GHG petition denials for posting and emailing

Kelley,

Here are the two signed documents we have discussed for posting on OAR's website:

- Denial of three petitions to regulate GHG as a NAAQS, as a cross-border pollutant under CAA 115, and as a HAP, submitted by CBD, NYU Law Institute for Policy Integrity, and Food & Water Watch, respectively;
- Denial of four petitions to reconsider the 2009 GHG Endangerment Finding, submitted by CHECC, CEI/SEPP, Liberty Packing/TPPF, and FAIR Energy Foundation.

Are you able to send these to the petitioners' email addresses on the cover letters with a short note directing them to Tsirigotis or Grundler as appropriate? We would prefer for this to come from OAR if possible.

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency

[redacted]

From: Scott, Corey <scott.corey@epa.gov>
Sent: Tuesday, January 19, 2021 11:21 AM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Fotouhi, David <Fotouhi.David@epa.gov>; adm15.arwheeler.email <adm15.arwheeler.email@epa.gov>
Subject: NAAQS Denial Signed

Adam,

Here is the NAAQS denial! Thanks!

Corey

Message

From: Gustafson, Adam [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=20857A3831394ED6B0348DC4ADBCE080-GUSTAFSON,]
Sent: 1/20/2021 4:12:47 PM
To: Lee, Terry [lee.terry@epa.gov]
CC: Griffin, Chris [Griffin.Chris@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]
Subject: FW: Petition denials for posting online
Attachments: GHG NAAQS Petition Denial 2021-01-19.pdf; GHG Endangerment Petition Denial 2021-01-19.pdf

Terry,

I got an away message from Chris. Would you please post documents on the OGC website now?

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
[redacted]

From: Gustafson, Adam
Sent: Wednesday, January 20, 2021 11:08 AM
To: Griffin, Chris <Griffin.Chris@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: Petition denials for posting online

Chris,

David asked that these two Administrator-signed petition denials be posted on OGC's website. I believe he gave you a heads-up this might be coming. Could you please confirm that you are able to do this now?

Thank you.

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
[redacted]

From: Gustafson, Adam
Sent: Tuesday, January 19, 2021 11:41 AM
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Subject: GHG petition denials for posting and emailing

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Here are the two signed documents we have discussed for posting on OAR's website:

Message

From: Gustafson, Adam [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=20857A3831394ED6B0348DC4ADBCE080-GUSTAFSON,]
Sent: 1/20/2021 4:15:34 PM
To: Lattimore, Kraig [lattimore.kraig@epa.gov]
CC: Griffin, Chris [Griffin.Chris@epa.gov]; Lee, Terry [lee.terry@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]
Subject: Petition denials for posting online
Attachments: GHG NAAQS Petition Denial 2021-01-19.pdf; GHG Endangerment Petition Denial 2021-01-19.pdf

Kraig,

I got an away message from Chris and Terry. Would you please post these documents on the OGC website now?

Thank you.

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
[redacted]

From: Gustafson, Adam
Sent: Wednesday, January 20, 2021 11:08 AM
To: Griffin, Chris <Griffin.Chris@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: Petition denials for posting online

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Thank you.

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
[redacted]

From: Gustafson, Adam
Sent: Tuesday, January 19, 2021 11:41 AM
To: Raymond, Kelley <Raymond.Kelley@epa.gov>
Subject: GHG petition denials for posting and emailing

Kelley,

Here are the two signed documents we have discussed for posting on OAR's website:

[SEQ CHAPTER \h \r 1]OAR Meeting Request Form
For Joe Goffman

Date of this Request: 2/9/2020

Scheduling Point of Contact: Tina Murphy

Technical Point of Contact: Rona Birnbaum

Subject: Petition Responses

Purpose: Discuss paths forward regarding two responses to petitions signed on January 19, 2020 regarding a.) CAA 108, 112 and 115 and b.) the GHG Endangerment Finding.

Next ADP Milestone: N/A

- If applicable, due date to: OP __/__/__ (_ days review); OMB: __/__/__ (expected date of OMB clearance);
- Legal deadline: (specify court-ordered, settlement agreement, court promise, etc.)
- **Other firm deadline**: **Ex. 5 Attorney Client (AC)**

First possible date for meeting: 2/12/2020
Last possible date for meeting: 2/19/2020
Duration: 1 hour

Requested Audio / Video (*Mark with "X" if requested*)

____ **Video Location(s):**
List video locations needed (e.g., RTP, DC, Regions) – HQ will set up a bridge if needed

____ **HQ Conference Line:**
If requested, HQ staff will provide in meeting invite

Invitees (please list by Office and in Outlook format, e.g. *Last, First*):
Please include the key OGC and/or Regional representatives as appropriate. Only key invitees are listed by office; others are Cc: See special instructions below.

Office/Org	Name (*Last, First*)
OAR	Carbonell, Tomas
OAP	Grundler, Chris
OAP	Kocchi, Suzie
OAP	Gunning, Paul
OAP	Birnbaum, Rona
OAQPS	Tsirigotis, Peter
OAQPS	Koerber, Mike
OAQPS	Sasser, Erika
OAQPS	Wesson, Karen
OGC	Hoffer, Melissa
OGC	Srinivasan, Gautam
OGC	Williams, Melina
OGC	Orlin, David

Please note that meeting invite for Tomas Carbonell should indicate that discussion regarding CAA 108/112/115 – related petition will occur after the Endangerment petition so he may drop off the line.

HQ Meeting Briefing Materials: Must provide to OAR IO by 4:00pm, 1 day before meeting

Appointment

From: Rakosnik, Delaney [rakosnik.delaney@epa.gov]
Sent: 2/17/2021 10:04:43 PM
To: Carbonell, Tomas [Carbonell.Tomas@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]; Kocchi, Suzanne [Kocchi.Suzanne@epa.gov]; Gunning, Paul [Gunning.Paul@epa.gov]; Birnbaum, Rona [Birnbaum.Rona@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Koerber, Mike [Koerber.Mike@epa.gov]; Sasser, Erika [Sasser.Erika@epa.gov]; Wesson, Karen [Wesson.Karen@epa.gov]; Hoffer, Melissa [Hoffer.Melissa@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Williams, Melina [Williams.Melina@epa.gov]; Orlin, David [Orlin.David@epa.gov]
CC: Anderson, Lea [anderson.lea@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]

Subject: Petition Responses
Attachments: Meeting request for Joe Goffman
Location: Microsoft Teams Meeting

Start: 2/18/2021 8:45:00 PM
End: 2/18/2021 9:30:00 PM
Show Time As: Tentative

Required Attendees: Carbonell, Tomas; Grundler, Christopher; Kocchi, Suzanne; Gunning, Paul; Birnbaum, Rona; Peter Tsirigotis (Tsirigotis.Peter@epa.gov); Mike Koerber (Koerber.Mike@epa.gov); Sasser, Erika; Wesson, Karen; Hoffer, Melissa; Srinivasan, Gautam; Williams, Melina; Orlin, David
Optional Attendees: Anderson, Lea; Seidman, Emily; Marks, Matthew

Meeting request for Joe Goffman

Microsoft Teams meeting

Join on your computer or mobile app
Click here to join the meeting
Or call in (audio only)
+1 202-991-0477,,874540989# United States, Washington DC
Phone Conference ID: 874 540 989#
Find a local number | Reset PIN
By participating in EPA hosted virtual meetings and events, you are consenting to abide by the agency's terms of use. In addition, you acknowledge that content you post may be collected and used in support of FOIA and eDiscovery activities.
Learn More | Meeting options

Message

From: Fotouhi, David [Fotouhi.David@epa.gov]
Sent: 1/19/2021 1:41:30 PM
To: adm15.arwheeler.email [adm15.arwheeler.email@epa.gov]
CC: Gunasekara, Mandy [gunasekara.Mandy@epa.gov]; Moor, Karl [Moor.Karl@epa.gov]; Gustafson, Adam [Gustafson.Adam@epa.gov]; Molina, Michael [molina.michael@epa.gov]; Scott, Corey [scott.corey@epa.gov]
Subject: For your signature--CAA Petition Denials
Attachments: 20210118d GHG Endangerment Denial w cover letter.docx; 20210118 GHG NAAQS Denial w cover letter.docx

Sir:

The following two documents are attached to this email in Word format for your signature:

- Denial of Petitions to Reconsider the EPA's Greenhouse Gas Endangerment Finding
- Denial of Petitions to Establish National Ambient Air Quality Standards for Greenhouse Gases, to Regulate Greenhouse Gases under Clean Air Act Section 115, and to Regulate Greenhouse Gases as Hazardous Air Pollutants

Please let me know if you have any questions. If you need the documents sent to you in PDF format, let me know and I would be happy to do so. Once you have signed the documents, OGC will work with OAR to post the denials to the EPA OAR webpage and send them to the petitioners. Ex. 5 Attorney Client (AC)

Best,

David

David Fotouhi

Acting General Counsel
U.S. Environmental Protection Agency
Tel: [redacted]
fotouhi.david@epa.gov

Message

From: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
Sent: 3/1/2022 3:58:50 PM
To: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]
Subject: FW: Former EPA Administrator Andrew Wheeler's last moves on climate
Attachments: Former EPA Administrator Andrew Wheeler's last moves on climate

---

From: Carroll, Timothy <Carroll.Timothy@epa.gov>
Sent: Tuesday, March 1, 2022 10:33 AM
To: DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Millett, John <Millett.John@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Cc: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>
Subject: RE: Former EPA Administrator Andrew Wheeler's last moves on climate

Apologies – meant to forward Kevin's earlier email. It is attached, let me know if you have trouble accessing the docs.

Tim Carroll (he/him)
Deputy Press Secretary
Environmental Protection Agency
202-384-7510 (mobile)
Twitter: @EPAPressOffice

From: DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Sent: Tuesday, March 1, 2022 10:31 AM
To: Carroll, Timothy <Carroll.Timothy@epa.gov>; Millett, John <Millett.John@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Cc: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>
Subject: RE: Former EPA Administrator Andrew Wheeler's last moves on climate

Thanks, Tim. Checking. Could you share the attachments from the original inquiry? Not that we would comment specifically on them, I'd just be interested to see for context. In addition to finding out where we are in the process on this, will check to see if we've shared the copies of the denials in past, similar inquiries. (I think we may have listed the denials but not shared copies, but I will check.)

From: Carroll, Timothy <Carroll.Timothy@epa.gov>
Sent: Tuesday, March 1, 2022 10:20 AM
To: Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Cc: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>
Subject: FW: Former EPA Administrator Andrew Wheeler's last moves on climate

Hi all, please see below from Kevin Bogardus at E&E. He's writing about the push by the last administration to deny petitions to reconsider EPA's endangerment finding on GHG in the last few weeks of the term. Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

OAR – can you take a look at the petition status questions and let us know if there's anything more we can/should say about the process? It would also be good to share the withdrawals requested, if possible.

OGC – Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Let me know of any other questions or concerns here, happy to chat by phone if helpful. We have a deadline of COB tomorrow, Wednesday, March 2.

Thanks all!

Tim Carroll (he/him)
Deputy Press Secretary
Environmental Protection Agency
202-384-7510 (mobile)
Twitter: @EPAPressOffice

From: Kevin Bogardus <kbogardus@eenews.net>
Sent: Monday, February 28, 2022 5:09 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; EPA Press Office <Press@epa.gov>
Subject: Re: Former EPA Administrator Andrew Wheeler's last moves on climate

My apologies, everyone, but I forgot to link one document in my original email, which is EPA's withdrawal of Wheeler's denial of several similar petitions to have EPA regulate greenhouse gas emissions under the Clean Air Act. Here is that link (please see https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-03-05-Decision-Withdrawing-Denial.pdf). Please let me know if you have any thoughts. My deadline is close of business Wednesday, March 2. Thank you for your help!

Kevin Bogardus
E&E News Reporter
kbogardus@eenews.net
202-446-0401 (o)
202-247-7844 (c)
202-737-5299 (f)

Follow me @KevinBogardus

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Greenwire, ClimateWire, EnergyWire, E&E Daily, E&ENews PM

From: Kevin Bogardus <kbogardus@eenews.net>
Sent: Monday, February 28, 2022 4:20 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Press <press@epa.gov>
Subject: Former EPA Administrator Andrew Wheeler's last moves on climate

Hey everyone,

It's Kevin Bogardus with E&E News. I hope all is well. I'm also copying Nancy on this email because I quote her from an email in my story.

I'm working on a story about former EPA Administrator Andrew Wheeler's last moves on climate change policy before he left EPA. I'm quoting from and linking to emails, letters and memos. I obtained several of these records under the Freedom of Information Act (please see attached).

I have a few questions about this, which are:

-- Former EPA Administrator Andrew Wheeler received denials on petitions to reconsider EPA's endangerment finding on greenhouse gas emissions as well as several similar petitions to have EPA regulate greenhouse gas emissions under the Clean Air Act (please see emails-about-endangerment-finding.pdf and emails-about-endangerment-finding-1.pdf). He signed both sets of those denials (please see https://legacy-assets.eenews.net/open_files/assets/2021/05/20/document_gw_01.pdf and https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-01-19-GHG-NAAQS-Petition-Denial-2021-01-19.pdf). EPA, however, later withdrew those denials (please see https://legacy-assets.eenews.net/open_files/assets/2021/05/20/document_gw_02.pdf).

What is the status of these petitions now at EPA? Is EPA still reviewing them? When does EPA expect to reach a decision on these petitions?

-- It is my understanding that EPA withdrew Wheeler's denials of the petitions by the New York University Law Institute for Policy Integrity to have EPA regulate greenhouse gas emissions under Section 115 of the Clean Air Act as well as by Food & Water Watch to have EPA regulate greenhouse gas emissions as a Hazardous Air Pollutant. Can you share those withdrawals with me?

-- One of EPA's withdrawals of Wheeler's denials said "an adequate justification of the denial" was not provided while another withdrawal said "the agency did not fully and fairly assess the issues raised" by the petition. Emails show EPA officials begin discussing the petition on the endangerment finding on Jan. 5, 2021, only a few weeks before the Trump administration came to an end (please see emails-about-endangerment-finding-2.pdf). Also, one email said an update on developing a draft denial of the petition "didn't sound too promising" and the agency may have to "deploy an alternative approach" (please see emails-about-endangerment-finding-3.pdf). Further, another email said one message was "not encouraging" (please see emails-about-endangerment-finding-4.pdf).

When EPA said Wheeler's denials did not provide adequate justification, nor fully and fairly assess the issues raised, did EPA mean Wheeler's denials were rushed? How would EPA characterize the process behind drafting these denials?

-- There were plans to post Wheeler's denials on EPA's website, either on the Office of Air and Radiation's website or the Office of General Counsel's website, with that latter request being made within an hour of the end of President Trump's term in office, according to a series of emails (please see emails-about-endangerment-finding-5.pdf). In addition, Adam Gustafson, then EPA's deputy general counsel, emailed two different EPA officials, asking if they could post the denials to the OGC's website, hours after the end of the Trump administration and his own resignation from EPA (please see emails-about-endangerment-finding-6.pdf and emails-about-endangerment-finding-7.pdf). Nevertheless, with two minutes until the changeover between the Trump and Biden administrations at noon on Jan. 20, 2021, Nancy Grantham, principal deputy assistant administrator in EPA's Office of

Public Affairs, said in an email, "As discussed, the transition is now official, so we need to revisit this posting with the incoming team."

Why did EPA not post Wheeler's denials on EPA's website?

-- Chris Grundler, director of EPA's Office of Atmospheric Programs, said in an email, "I will expect we will get some questions about this one," referring to EPA's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding (please see emails-about-endangerment-finding-10.pdf).

Why should EPA expect questions about this withdrawal? What did Grundler mean by that?

Also, I will be quoting from and linking to the following records in my story. Please let me know if you have any comment on the following:

-- Senior political appointees and career officials in several EPA offices were invited to a meeting to "discuss paths forward" on Wheeler's denials in February 2021, according to records (please see emails-about-endangerment-finding-8.pdf and emails-about-endangerment-finding-9.pdf).

-- Senior political appointees and career officials in EPA's Office of Air and Radiation were notified when Administrator Regan signed the withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, which wasn't normal practice but was done since they might be interested in the withdrawal, according to an email (please see emails-about-endangerment-finding-11.pdf).

-- Senior political appointees in EPA's Office of Air and Radiation were made aware of a statement EPA prepared on Administrator Regan's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, according to an email (please see emails-about-endangerment-finding-12.pdf).

Please get back to me as soon as possible. My deadline is close of business Wednesday, March 2, but the sooner you get back to me, the more it helps my reporting. Also, since I'm working from home, please email me here or call me back on my cell phone at 202-247-7844. Thank you for your help and stay safe, stay healthy!

Kevin Bogardus

E&E News Reporter

kbogardus@eenews.net

202-446-0401 (o)

202-247-7844 (c)

202-737-5299 (f)

Follow me @KevinBogardus

E&E News

122 C Street, NW, Suite 722, Washington, DC 20001

www.eenews.net

Message

From: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Sent: 3/1/2022 4:22:22 PM
To: Conrad, Daniel [conrad.daniel@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]
Subject: RE: Former EPA Administrator Andrew Wheeler's last moves on climate

Hold on for a bit (just cuz I haven't plowed through the chain).

++++++++++++++++++++++++++++
he/him/his
(202) 695-6287 (c)

From: Conrad, Daniel <conrad.daniel@epa.gov>
Sent: Tuesday, March 1, 2022 11:20 AM
To: Marks, Matthew <Marks.Matthew@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: Former EPA Administrator Andrew Wheeler's last moves on climate

There's a spot where they ask for OGC input in the chain below- "OGC Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

From: Marks, Matthew <Marks.Matthew@epa.gov>
Sent: Tuesday, March 01, 2022 11:07 AM
To: Conrad, Daniel <conrad.daniel@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: Former EPA Administrator Andrew Wheeler's last moves on climate

Dan, do you know what Melissa is looking for here?

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Would appreciate your thoughts here.

Matthew C. Marks
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: 202-564-3276

M: 202-603-6170
E: marks.matthew@epa.gov

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Tuesday, March 1, 2022 10:58 AM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>
Subject: FW: Former EPA Administrator Andrew Wheeler's last moves on climate

Gautam / Matt,

Would you please take a look at E&E's questions below, and provide a few bullets on status that we can share publicly. Thanks.

Melissa

From: Carroll, Timothy <Carroll.Timothy@epa.gov>
Sent: Tuesday, March 1, 2022 10:33 AM
To: DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Millett, John <Millett.John@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Cc: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>
Subject: RE: Former EPA Administrator Andrew Wheeler's last moves on climate

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Tim Carroll (he/him)
Deputy Press Secretary
Environmental Protection Agency
202-384-7510 (mobile)
Twitter: @EPAPressOffice

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Cc: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>
Subject: RE: Former EPA Administrator Andrew Wheeler's last moves on climate

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Cc: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>
Subject: FW: Former EPA Administrator Andrew Wheeler's last moves on climate

Hi all, please see below from Kevin Bogardus at E&E. He's writing about the push by the last administration to deny petitions to reconsider EPA's endangerment finding on GHG in the last few weeks of the term. Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

OAR – can you take a look at the petition status questions and let us know if there's anything more we can/should say about the process? It would also be good to share the withdrawals requested, if possible.

OGC – Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Let me know of any other questions or concerns here, happy to chat by phone if helpful. We have a deadline of COB tomorrow, Wednesday, March 2.

Thanks all!

Tim Carroll (he/him)
Deputy Press Secretary
Environmental Protection Agency
202-384-7510 (mobile)
Twitter: @EPAPressOffice

From: Kevin Bogardus <kbogardus@eenews.net>
Sent: Monday, February 28, 2022 5:09 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; EPA Press Office <Press@epa.gov>
Subject: Re: Former EPA Administrator Andrew Wheeler's last moves on climate

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Kevin Bogardus
E&E News Reporter
kbogardus@eenews.net
202-446-0401 (o)
202-247-7844 (c)
202-737-5299 (f)

Follow me @KevinBogardus

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www.eenews.net
Greenwire, ClimateWire, EnergyWire, E&E Daily, E&ENews PM

From: Kevin Bogardus <kbogardus@eenews.net>
Sent: Monday, February 28, 2022 4:20 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Press <press@epa.gov>
Subject: Former EPA Administrator Andrew Wheeler's last moves on climate

Hey everyone,

It's Kevin Bogardus with E&E News. I hope all is well. I'm also copying Nancy on this email because I quote her from an email in my story.

I'm working on a story about former EPA Administrator Andrew Wheeler's last moves on climate change policy before he left EPA. I'm quoting from and linking to emails, letters and memos. I obtained several of these records under the Freedom of Information Act (please see attached).

I have a few questions about this, which are:

-- Former EPA Administrator Andrew Wheeler received denials on petitions to reconsider EPA's endangerment finding on greenhouse gas emissions as well as several similar petitions to have EPA regulate greenhouse gas emissions under the Clean Air Act (please see emails-about-endangerment-finding.pdf and emails-about-endangerment-finding-1.pdf). He signed both sets of those denials (please see https://legacy-assets.eenews.net/open_files/assets/2021/05/20/document_gw_01.pdf and https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-01-19-GHG-NAAQS-Petition-Denial-2021-01-19.pdf). EPA, however, later withdrew those denials (please see https://legacy-assets.eenews.net/open_files/assets/2021/05/20/document_gw_02.pdf).

What is the status of these petitions now at EPA? Is EPA still reviewing them? When does EPA expect to reach a decision on these petitions?

-- It is my understanding that EPA withdrew Wheeler's denials of the petitions by the New York University Law Institute for Policy Integrity to have EPA regulate greenhouse gas emissions under Section 115 of the Clean Air Act as well as by Food & Water Watch to have EPA regulate greenhouse gas emissions as a Hazardous Air Pollutant. Can you share those withdrawals with me?

-- One of EPA's withdrawals of Wheeler's denials said "an adequate justification of the denial" was not provided while another withdrawal said "the agency did not fully and fairly assess the issues raised" by the petition. Emails show EPA officials begin discussing the petition on the endangerment finding on Jan. 5, 2021, only a few weeks before the Trump administration came to an end (please see emails-about-endangerment-finding-2.pdf). Also, one email said an update on developing a draft denial of the petition "didn't sound too promising" and the agency may have to "deploy an alternative approach" (please see emails-about-endangerment-finding-3.pdf). Further, another email said one message was "not encouraging" (please see emails-about-endangerment-finding-4.pdf).

When EPA said Wheeler's denials did not provide adequate justification, nor fully and fairly assess the issues raised, did EPA mean Wheeler's denials were rushed? How would EPA characterize the process behind drafting these denials?

-- There were plans to post Wheeler's denials on EPA's website, either on the Office of Air and Radiation's website or the Office of General Counsel's website, with that latter request being made within an hour of the end of President Trump's term in office, according to a series of emails (please see emails-about-endangerment-finding-5.pdf). In addition, Adam Gustafson, then EPA's deputy

general counsel, emailed two different EPA officials, asking if they could post the denials to the OGC's website, hours after the end of the Trump administration and his own resignation from EPA (please see emails-about-endangerment-finding-6.pdf and emails-about-endangerment-finding-7.pdf). Nevertheless, with two minutes until the changeover between the Trump and Biden administrations at noon on Jan. 20, 2021, Nancy Grantham, principal deputy assistant administrator in EPA's Office of Public Affairs, said in an email, "As discussed, the transition is now official, so we need to revisit this posting with the incoming team."

Why did EPA not post Wheeler's denials on EPA's website?

-- Chris Grundler, director of EPA's Office of Atmospheric Programs, said in an email, "I will expect we will get some questions about this one," referring to EPA's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding (please see emails-about-endangerment-finding-10.pdf).

Why should EPA expect questions about this withdrawal? What did Grundler mean by that?

Also, I will be quoting from and linking to the following records in my story. Please let me know if you have any comment on the following:

-- Senior political appointees and career officials in several EPA offices were invited to a meeting to "discuss paths forward" on Wheeler's denials in February 2021, according to records (please see emails-about-endangerment-finding-8.pdf and emails-about-endangerment-finding-9.pdf).

-- Senior political appointees and career officials in EPA's Office of Air and Radiation were notified when Administrator Regan signed the withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, which wasn't normal practice but was done since they might be interested in the withdrawal, according to an email (please see emails-about-endangerment-finding-11.pdf).

-- Senior political appointees in EPA's Office of Air and Radiation were made aware of a statement EPA prepared on Administrator Regan's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, according to an email (please see emails-about-endangerment-finding-12.pdf).

Please get back to me as soon as possible. My deadline is close of business Wednesday, March 2, but the sooner you get back to me, the more it helps my reporting. Also, since I'm working from home, please email me here or call me back on my cell phone at 202-247-7844. Thank you for your help and stay safe, stay healthy!

Kevin Bogardus

E&E News Reporter

kbogardus@eenews.net

202-446-0401 (o)

202-247-7844 (c)

202-737-5299 (f)

Follow me @KevinBogardus

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www.eenews.net
Greenwire, ClimateWire, EnergyWire, E&E Daily, E&ENews PM

Message

From: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Sent: 3/1/2022 4:52:09 PM
To: Marks, Matthew [Marks.Matthew@epa.gov]; Conrad, Daniel [conrad.daniel@epa.gov]
Subject: RE: Former EPA Administrator Andrew Wheeler's last moves on climate

Ex. 5 AC/DP

++++++++++++++++++++++++++++
he/him/his
(202) 695-6287 (c)

From: Marks, Matthew <Marks.Matthew@epa.gov>
Sent: Tuesday, March 1, 2022 11:50 AM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Subject: RE: Former EPA Administrator Andrew Wheeler's last moves on climate

Thanks for the clarification on the petitions. Ex. 5 Attorney Client (AC)
Ex. 5 Attorney Client (AC)
Ex. 5 Attorney Client (AC) Happy to have you respond to Melissa.

Matthew C. Marks
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: 202-564-3276
M: 202-603-6170
E: marks.matthew@epa.gov

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Tuesday, March 1, 2022 11:46 AM
To: Conrad, Daniel <conrad.daniel@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>
Subject: RE: Former EPA Administrator Andrew Wheeler's last moves on climate

Sorry for the delay. Ex. 5 Attorney Client (AC)
Ex. 5 Attorney Client (AC)
Ex. 5 Attorney Client (AC) I can tell Melissa that in response. You want me to do that?

Ex. 5 AC/DP

++++++++++++++++++++++++++++
he/him/his
(202) 695-6287 (c)

From: Conrad, Daniel <conrad.daniel@epa.gov>
Sent: Tuesday, March 1, 2022 11:20 AM

To: Marks, Matthew <Marks.Matthew@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: Former EPA Administrator Andrew Wheeler's last moves on climate

There's a spot where they ask for OGC input in the chain below- "OGC Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

From: Marks, Matthew <Marks.Matthew@epa.gov>
Sent: Tuesday, March 01, 2022 11:07 AM
To: Conrad, Daniel <conrad.daniel@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: Former EPA Administrator Andrew Wheeler's last moves on climate

Dan, do you know what Melissa is looking for here?

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Would appreciate your thoughts here.

Matthew C. Marks
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: 202-564-3276
M: 202-603-6170
E: marks.matthew@epa.gov

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Tuesday, March 1, 2022 10:58 AM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>
Subject: FW: Former EPA Administrator Andrew Wheeler's last moves on climate

Gautam / Matt,

Would you please take a look at E&E's questions below, and provide a few bullets on status that we can share publicly. Thanks.

Melissa

From: Carroll, Timothy <Carroll.Timothy@epa.gov>
Sent: Tuesday, March 1, 2022 10:33 AM
To: DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Millett, John <Millett.John@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Cc: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>
Subject: RE: Former EPA Administrator Andrew Wheeler's last moves on climate

Apologies – meant to forward Kevin's earlier email. It is attached, let me know if you have trouble accessing the docs.

Tim Carroll (he/him)
Deputy Press Secretary
Environmental Protection Agency
202-384-7510 (mobile)
Twitter: @EPAPressOffice

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Sent: Tuesday, March 1, 2022 10:31 AM
To: Carroll, Timothy <Carroll.Timothy@epa.gov>; Millett, John <Millett.John@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Cc: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>
Subject: RE: Former EPA Administrator Andrew Wheeler's last moves on climate

Thanks, Tim. Checking. Could you share the attachments from the original inquiry? Not that we would comment specifically on them, I'd just be interested to see for context. In addition to finding out where we are in the process on this, will check to see if we've shared the copies of the denials in past, similar inquiries. (I think we may have listed the denials but not shared copies, but I will check.)

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Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

OAR – can you take a look at the petition status questions and let us know if there's anything more we can/should say about the process? It would also be good to share the withdrawals requested, if possible.

OGC – Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Let me know of any other questions or concerns here, happy to chat by phone if helpful. We have a deadline of COB tomorrow, Wednesday, March 2.

Thanks all!

Tim Carroll (he/him)
Deputy Press Secretary
Environmental Protection Agency

202-384-7510 (mobile)
Twitter: @EPAPressOffice

From: Kevin Bogardus <kbogardus@eenews.net>
Sent: Monday, February 28, 2022 5:09 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; EPA Press Office <Press@epa.gov>
Subject: Re: Former EPA Administrator Andrew Wheeler's last moves on climate

My apologies, everyone, but I forgot to link one document in my original email, which is EPA's withdrawal of Wheeler's denial of several similar petitions to have EPA regulate greenhouse gas emissions under the Clean Air Act. Here is that link (please see https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-03-05-Decision-Withdrawing-Denial.pdf). Please let me know if you have any thoughts. My deadline is close of business Wednesday, March 2. Thank you for your help!

Kevin Bogardus
E&E News Reporter
kbogardus@eenews.net
202-446-0401 (o)
202-247-7844 (c)
202-737-5299 (f)

Follow me @KevinBogardus

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Greenwire, ClimateWire, EnergyWire, E&E Daily, E&ENews PM

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Sent: Monday, February 28, 2022 4:20 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Press <press@epa.gov>
Subject: Former EPA Administrator Andrew Wheeler's last moves on climate

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Please get back to me as soon as possible. My deadline is close of business Wednesday, March 2, but the sooner you get back to me, the more it helps my reporting. Also, since I'm working from home, please email me here or call me back on my cell phone at 202-247-7844. Thank you for your help and stay safe, stay healthy!

Kevin Bogardus

E&E News Reporter

kbogardus@eenews.net

202-446-0401 (o)

202-247-7844 (c)

202-737-5299 (f)

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Greenwire, ClimateWire, EnergyWire, E&E Daily, E&ENews PM

Message

From: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Sent: 3/1/2022 7:32:38 PM
To: Conrad, Daniel [conrad.daniel@epa.gov]
CC: Marks, Matthew [Marks.Matthew@epa.gov]
Subject: Re: Former EPA Administrator Andrew Wheeler's last moves on climate

Do it.

++++++++++++++++++++
he/him/his
(202) 695-6287 (c)

On Mar 1, 2022, at 2:15 PM, Conrad, Daniel <conrad.daniel@epa.gov> wrote:

You want me to reply to the original chain with that info?

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Tuesday, March 01, 2022 2:14 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>
Cc: Conrad, Daniel <conrad.daniel@epa.gov>
Subject: RE: Former EPA Administrator Andrew Wheeler's last moves on climate

Thank you. Ex. 5 Attorney Client (AC)
Ex. 5 Attorney Client (AC)

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Tuesday, March 1, 2022 1:01 PM
To: Marks, Matthew <Marks.Matthew@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Cc: Conrad, Daniel <conrad.daniel@epa.gov>
Subject: RE: Former EPA Administrator Andrew Wheeler's last moves on climate

Hi Melissa- Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

At any rate, let us know how you'd like to get back to Tim Carroll.

++++++++++++++++++++++++++++
he/him/his
(202) 695-6287 (c)

From: Marks, Matthew <Marks.Matthew@epa.gov>
Sent: Tuesday, March 1, 2022 11:04 AM

To: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: Former EPA Administrator Andrew Wheeler's last moves on climate

Thanks Melissa. We'll work with Dan on this.

Matthew C. Marks
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: 202-564-3276
M: 202-603-6170
E: marks.matthew@epa.gov

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Tuesday, March 1, 2022 10:58 AM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>
Subject: FW: Former EPA Administrator Andrew Wheeler's last moves on climate

Gautam / Matt,

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Melissa

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To: DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Millett, John <Millett.John@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Cc: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>
Subject: RE: Former EPA Administrator Andrew Wheeler's last moves on climate

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Tim Carroll (he/him)
Deputy Press Secretary
Environmental Protection Agency
202-384-7510 (mobile)
Twitter: @EPAPressOffice

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Greenwire, ClimateWire, EnergyWire, E&E Daily, E&ENews PM

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denial of the petition "didn't sound too promising" and the agency may have to "deploy an alternative approach" (please see emails-about-endangerment-finding-3.pdf). Further, another email said one message was "not encouraging" (please see emails-about-endangerment-finding-4.pdf).

When EPA said Wheeler's denials did not provide adequate justification, nor fully and fairly assess the issues raised, did EPA mean Wheeler's denials were rushed? How would EPA characterize the process behind drafting these denials?

-- There were plans to post Wheeler's denials on EPA's website, either on the Office of Air and Radiation's website or the Office of General Counsel's website, with that latter request being made within an hour of the end of President Trump's term in office, according to a series of emails (please see emails-about-endangerment-finding-5.pdf). In addition, Adam Gustafson, then EPA's deputy general counsel, emailed two different EPA officials, asking if they could post the denials to the OGC's website, hours after the end of the Trump administration and his own resignation from EPA (please see emails-about-endangerment-finding-6.pdf and emails-about-endangerment-finding-7.pdf). Nevertheless, with two minutes until the changeover between the Trump and Biden administrations at noon on Jan. 20, 2021, Nancy Grantham, principal deputy assistant administrator in EPA's Office of Public Affairs, said in an email, "As discussed, the transition is now official, so we need to revisit this posting with the incoming team."

Why did EPA not post Wheeler's denials on EPA's website?

-- Chris Grundler, director of EPA's Office of Atmospheric Programs, said in an email, "I will expect we will get some questions about this one," referring to EPA's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding (please see emails-about-endangerment-finding-10.pdf).

Why should EPA expect questions about this withdrawal? What did Grundler mean by that?

Also, I will be quoting from and linking to the following records in my story. Please let me know if you have any comment on the following:

-- Senior political appointees and career officials in several EPA offices were invited to a meeting to "discuss paths forward" on Wheeler's denials in February 2021, according to records (please see emails-about-endangerment-finding-8.pdf and emails-about-endangerment-finding-9.pdf).

-- Senior political appointees and career officials in EPA's Office of Air and Radiation were notified when Administrator Regan signed the withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, which wasn't normal practice but was done since they might be interested in the withdrawal, according to an email (please see emails-about-endangerment-finding-11.pdf).

-- Senior political appointees in EPA's Office of Air and Radiation were made aware of a statement EPA prepared on Administrator Regan's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, according to an email (please see emails-about-endangerment-finding-12.pdf).

Please get back to me as soon as possible. My deadline is close of business Wednesday, March 2, but the sooner you get back to me, the more it helps my reporting. Also, since I'm working from home, please email me here or call me back on my cell phone at 202-247-7844. Thank you for your help and stay safe, stay healthy!

Kevin Bogardus
E&E News Reporter
kbogardus@eenews.net
202-446-0401 (o)
202-247-7844 (c)
202-737-5299 (f)

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www.eenews.net
Greenwire, ClimateWire, EnergyWire, E&E Daily, E&ENews PM

Message

From: Graham, Cheryl [Graham.Cheryl@epa.gov]
Sent: 5/20/2019 6:01:18 PM
To: OGC ARLO [OGC_ARLO@epa.gov]
Subject: Reg Review with Justin is scheduled for 2:30 pm today in room 4530 (final agenda attached)
Attachments: Reg agenda 05202019.docx

Please DO NOT make any more changes to the SharePoint document. Thank you.

Conference Call Number: (202) 991-0477 / Conference ID: 6390831

Cheryl R. Graham

This document has been withheld in its entirety under Ex. 5 - Attorney Client (ACP), Ex. 5 - Attorney Work Product (AWP), Ex. 5 - Deliberative Process (DPP).

Appointment

From: Marks, Matthew [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=66CF58C470D84403AF7D7DFD7EFC8016-MARKS, MATTHEW]
Sent: 1/5/2021 7:34:42 PM
To: Okoye, Winifred [Okoye.Winifred@epa.gov]

Subject: GHG Petition Denials Discussion
Attachments: 20210105 Draft GHG NAAQS Petition Denial.docx
Location: Microsoft Teams Meeting

Start: 1/6/2021 4:00:00 PM
End: 1/6/2021 4:45:00 PM
Show Time As: Tentative

Required Attendees: Lea Anderson; Orlin, David; Jordan, Scott; Srinivasan, Gautam; Okoye, Winifred

Lea/David – As discussed, here is Adam's draft of the GHG petition denials. This meeting is to discuss next steps in reviewing it before circling back with Adam.

Scott, I'll give you a call later today to explain what this is about. Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC) Do not forward or discuss. Thanks!

Microsoft Teams meeting

Join on your computer or mobile app
Click here to join the meeting

Or call in (audio only)
+1 202-991-0477,,981043844# United States, Washington DC
Phone Conference ID: 981 043 844#
Find a local number | Reset PIN

By participating in EPA hosted virtual meetings and events, you are consenting to abide by the agency's terms of use. In addition, you acknowledge that content you post may be collected and used in support of FOIA and eDiscovery activities.

Learn More | Meeting options

Message

From: Williams, Melina [Williams.Melina@epa.gov]
Sent: 3/1/2022 10:01:51 PM
To: Orlin, David [Orlin.David@epa.gov]
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions
Attachments: Schwartz.SIGNED.pdf; Carlesco.SIGNED.pdf

Hi David, there's a press inquiry about the denial of the endangerment petitions (see below). OAP asked for the NYU and Food and Water Watch petitions – Ex. 5 Attorney Client (AC)
Ex. 5 Attorney Client (AC)

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

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From: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Sent: Tuesday, March 1, 2022 4:08 PM
To: Williams, Melina <Williams.Melina@epa.gov>; Hartin, Corinne <Hartin.Corinne@epa.gov>; Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Subject: FW: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

FYI, some press interest. It doesn't look like anything else is needed from us at this point, but let me know if you see otherwise.

Do any of you have copies of the following withdrawals?
-- It is my understanding that EPA withdrew Wheeler's denials of the petitions by the New York University Law Institute for Policy Integrity to have EPA regulate greenhouse gas emissions under Section 115 of the Clean Air Act as well as by Food & Water Watch to have EPA regulate greenhouse gas emissions as a Hazardous Air Pollutant. Can you share those withdrawals with me?

From: Gunning, Paul <Gunning.Paul@epa.gov>
Sent: Tuesday, March 1, 2022 3:44 PM
To: DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Schmeltz, Rachel <Schmeltz.Rachel@epa.gov>; Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Ex. 5 Deliberative Process (DP)

Paul

From: DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Sent: Tuesday, March 1, 2022 2:59 PM
To: Gunning, Paul <Gunning.Paul@epa.gov>; Schmeltz, Rachel <Schmeltz.Rachel@epa.gov>; Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Hi all,
Kevin Bogartus from E&E is planning another article about the previous administration's denial of GHG endangerment petitions, and the current administration's subsequent withdrawal of those denials. Please scroll all the way down to see all of his questions Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thanks,
Isabel

From: Carroll, Timothy <Carroll.Timothy@epa.gov>
Sent: Tuesday, March 1, 2022 10:20 AM
To: Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Cc: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>
Subject: FW: Former EPA Administrator Andrew Wheeler's last moves on climate

Hi all, please see below from Kevin Bogardus at E&E. He's writing about the push by the last administration to deny petitions to reconsider EPA's endangerment finding on GHG in the last few weeks of the term. Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

OAR – can you take a look at the petition status questions and let us know if there's anything more we can/should say about the process? It would also be good to share the withdrawals requested, if possible.

OGC – Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Let me know of any other questions or concerns here, happy to chat by phone if helpful. We have a deadline of COB tomorrow, Wednesday, March 2.

Thanks all!

Tim Carroll (he/him)
Deputy Press Secretary
Environmental Protection Agency
202-384-7510 (mobile)
Twitter: @EPAPressOffice

From: Kevin Bogardus <kbogardus@eenews.net>
Sent: Monday, February 28, 2022 5:09 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; EPA Press Office <Press@epa.gov>
Subject: Re: Former EPA Administrator Andrew Wheeler's last moves on climate

My apologies, everyone, but I forgot to link one document in my original email, which is EPA's withdrawal of Wheeler's denial of several similar petitions to have EPA regulate greenhouse gas emissions under the Clean Air Act. Here is that link (please see https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-03-05-Decision-Withdrawing-Denial.pdf). Please let me know if you have any thoughts. My deadline is close of business Wednesday, March 2. Thank you for your help!

Kevin Bogardus
E&E News Reporter
kbogardus@eenews.net
202-446-0401 (o)
202-247-7844 (c)
202-737-5299 (f)

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E&E News
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Greenwire, ClimateWire, EnergyWire, E&E Daily, E&ENews PM

From: Kevin Bogardus <kbogardus@eenews.net>
Sent: Monday, February 28, 2022 4:20 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Press <press@epa.gov>
Subject: Former EPA Administrator Andrew Wheeler's last moves on climate

Hey everyone,

It's Kevin Bogardus with E&E News. I hope all is well. I'm also copying Nancy on this email because I quote her from an email in my story.

I'm working on a story about former EPA Administrator Andrew Wheeler's last moves on climate change policy before he left EPA. I'm quoting from and linking to emails, letters and memos. I obtained several of these records under the Freedom of Information Act (please see attached).

I have a few questions about this, which are:

-- Former EPA Administrator Andrew Wheeler received denials on petitions to reconsider EPA's endangerment finding on greenhouse gas emissions as well as several similar petitions to have EPA regulate greenhouse gas emissions under the Clean Air Act (please see emails-about-endangerment-finding.pdf and emails-about-endangerment-finding-1.pdf). He signed both sets of those denials (please see https://legacy-assets.eenews.net/open_files/assets/2021/05/20/document_gw_01.pdf and https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-01-19-GHG-NAAQS-Petition-Denial-2021-01-19.pdf). EPA, however, later withdrew those denials (please see https://legacy-assets.eenews.net/open_files/assets/2021/ document 05/20/_gw_02.pdf).

What is the status of these petitions now at EPA? Is EPA still reviewing them? When does EPA expect to reach a decision on these petitions?

-- It is my understanding that EPA withdrew Wheeler's denials of the petitions by the New York University Law Institute for Policy Integrity to have EPA regulate greenhouse gas emissions under Section 115 of the Clean Air Act as well as by Food & Water Watch to have EPA regulate greenhouse gas emissions as a Hazardous Air Pollutant. Can you share those withdrawals with me?

-- One of EPA's withdrawals of Wheeler's denials said "an adequate justification of the denial" was not provided while another withdrawal said "the agency did not fully and fairly assess the issues raised" by the petition. Emails show EPA officials begin discussing the petition on the endangerment finding on Jan. 5, 2021, only a few weeks before the Trump administration came to an end (please see emails-about-endangerment-finding-2.pdf). Also, one email said an update on developing a draft denial of the petition "didn't sound too promising" and the agency may have to "deploy an alternative approach" (please see emails-about-endangerment-finding-3.pdf). Further, another email said one message was "not encouraging" (please see emails-about-endangerment-finding-4.pdf).

When EPA said Wheeler's denials did not provide adequate justification, nor fully and fairly assess the issues raised, did EPA mean Wheeler's denials were rushed? How would EPA characterize the process behind drafting these denials?

-- There were plans to post Wheeler's denials on EPA's website, either on the Office of Air and Radiation's website or the Office of General Counsel's website, with that latter request being made within an hour of the end of President Trump's term in office, according to a series of emails (please see emails-about-endangerment-finding-5.pdf). In addition, Adam Gustafson, then EPA's deputy general counsel, emailed two different EPA officials, asking if they could post the denials to the OGC's website, hours after the end of the Trump administration and his own resignation from EPA (please see emails-about-endangerment-finding-6.pdf and emails-about-endangerment-finding-7.pdf). Nevertheless, with two minutes until the changeover between the Trump and Biden administrations at noon on Jan. 20, 2021, Nancy Grantham, principal deputy assistant administrator in EPA's Office of Public Affairs, said in an email, "As discussed, the transition is now official, so we need to revisit this posting with the incoming team."

Why did EPA not post Wheeler's denials on EPA's website?

-- Chris Grundler, director of EPA's Office of Atmospheric Programs, said in an email, "I will expect we will get some questions about this one," referring to EPA's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding (please see emails-about-endangerment-finding-10.pdf).

Why should EPA expect questions about this withdrawal? What did Grundler mean by that?

Also, I will be quoting from and linking to the following records in my story. Please let me know if you have any comment on the following:

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-- Senior political appointees and career officials in EPA's Office of Air and Radiation were notified when Administrator Regan signed the withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, which wasn't normal practice but was done since they might be interested in the withdrawal, according to an email (please see emails-about-endangerment-finding-11.pdf).

-- Senior political appointees in EPA's Office of Air and Radiation were made aware of a statement EPA prepared on Administrator Regan's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, according to an email (please see emails-about-endangerment-finding-12.pdf).

Please get back to me as soon as possible. My deadline is close of business Wednesday, March 2, but the sooner you get back to me, the more it helps my reporting. Also, since I'm working from home, please email me here or call me back on my cell phone at 202-247-7844. Thank you for your help and stay safe, stay healthy!

Kevin Bogardus

E&E News Reporter

kbogardus@eenews.net

202-446-0401 (o)

202-247-7844 (c)

202-737-5299 (f)

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Message

From: Williams, Melina [Williams.Melina@epa.gov]
Sent: 3/11/2022 11:01:06 PM
To: Orlin, David [Orlin.David@epa.gov]
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Thank you! I appreciate you taking another look and am hopeful that this will be on its way by the time you're back 😊

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

Confidential communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Orlin, David <Orlin.David@epa.gov>
Sent: Friday, March 11, 2022 5:41 PM
To: Williams, Melina <Williams.Melina@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Great! Ex. 5 AC/DP I really appreciate all the painstaking, thoughtful work on it!

David Orlin
US EPA, Office of General Counsel
(202) 564-1222

From: Williams, Melina <Williams.Melina@epa.gov>
Sent: Friday, March 11, 2022 4:54 PM
To: Orlin, David <Orlin.David@epa.gov>
Subject: FW: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Just fyi, these are the edits I sent back on the letter. Thanks for the fast feedback!

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

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From: Williams, Melina
Sent: Friday, March 11, 2022 4:53 PM
To: Martinich, Jeremy <Martinich.Jeremy@epa.gov>; Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Thanks, Marcus and Jeremy. Sorry for my delay in getting to this, Ex. 5 AC/DP Ex. 5 AC/DP Happy to chat if that would be helpful!

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

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From: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Sent: Friday, March 11, 2022 9:35 AM
To: Sarofim, Marcus <Sarofim.Marcus@epa.gov>; Williams, Melina <Williams.Melina@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Thanks, Marcus. Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP

Jeremy

From: Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Sent: Thursday, March 10, 2022 3:23 PM
To: Williams, Melina <Williams.Melina@epa.gov>
Cc: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Ex. 5 AC/DP

Ex. 5 AC/DP

(but also attached because I know that files sometimes take a while before you can access them)

Thanks!

-Marcus

From: Williams, Melina <Williams.Melina@epa.gov>
Sent: Tuesday, March 8, 2022 12:00 PM
To: Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Cc: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Sounds good, thanks!

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

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From: Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Sent: Monday, March 7, 2022 5:43 PM
To: Williams, Melina <Williams.Melina@epa.gov>
Cc: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Ex. 5 AC/DP

Thanks again!

-Marcus

From: Williams, Melina <Williams.Melina@epa.gov>
Sent: Monday, March 7, 2022 4:31 PM
To: Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Cc: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Hi Marcus,

I think that's reasonable, Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks! And thanks for your patience!
Melina

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

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From: Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Sent: Monday, March 7, 2022 1:39 PM
To: Williams, Melina <Williams.Melina@epa.gov>
Cc: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Hi Melina,

With the release of the article on the Wheeler denial of the petitions (https://subscriber.politicopro.com/article/eenews/2022/03/03/inside-the-trump-epas-final-moves-on-climate-00013540), Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP

Does that sound reasonable?

Thank you,

-Marcus

From: Williams, Melina <Williams.Melina@epa.gov>
Sent: Tuesday, March 1, 2022 6:52 PM
To: Martinich, Jeremy <Martinich.Jeremy@epa.gov>; Hartin, Corinne <Hartin.Corinne@epa.gov>; Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Ex. 5 Attorney Client (AC)

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

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From: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Sent: Tuesday, March 1, 2022 6:47 PM
To: Williams, Melina <Williams.Melina@epa.gov>; Hartin, Corinne <Hartin.Corinne@epa.gov>; Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Thank you, Melina! Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Thanks,

Jeremy

From: Williams, Melina <Williams.Melina@epa.gov>
Sent: Tuesday, March 1, 2022 6:40 PM
To: Martinich, Jeremy <Martinich.Jeremy@epa.gov>; Hartin, Corinne <Hartin.Corinne@epa.gov>; Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Hi Jeremy,

Thanks for the heads up (and I'm cc'ing David, Lea, and Emily for awareness as well). I believe these are the two withdrawals you're looking for.

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

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Sent: Tuesday, March 1, 2022 3:44 PM
To: DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Schmeltz, Rachel <Schmeltz.Rachel@epa.gov>; Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Ex. 5 Deliberative Process (DP)

Paul

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Sent: Tuesday, March 1, 2022 2:59 PM
To: Gunning, Paul <Gunning.Paul@epa.gov>; Schmeltz, Rachel <Schmeltz.Rachel@epa.gov>; Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

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Ex. 5 Deliberative Process (DP)

Thanks,
Isabel

From: Carroll, Timothy <Carroll.Timothy@epa.gov>
Sent: Tuesday, March 1, 2022 10:20 AM
To: Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Cc: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>
Subject: FW: Former EPA Administrator Andrew Wheeler's last moves on climate

Hi all, please see below from Kevin Bogardus at E&E. He's writing about the push by the last administration to deny petitions to reconsider EPA's endangerment finding on GHG in the last few weeks of the term. Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

OAR – can you take a look at the petition status questions and let us know if there's anything more we can/should say about the process? It would also be good to share the withdrawals requested, if possible.

OGC – Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Let me know of any other questions or concerns here, happy to chat by phone if helpful. We have a deadline of COB tomorrow, Wednesday, March 2.

Thanks all!

Tim Carroll (he/him)
Deputy Press Secretary
Environmental Protection Agency
202-384-7510 (mobile)
Twitter: @EPAPressOffice

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Sent: Monday, February 28, 2022 5:09 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; EPA Press Office <Press@epa.gov>
Subject: Re: Former EPA Administrator Andrew Wheeler's last moves on climate

My apologies, everyone, but I forgot to link one document in my original email, which is EPA's withdrawal of Wheeler's denial of several similar petitions to have EPA regulate greenhouse gas emissions under the Clean Air Act. Here is that link (please see https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-03-05-Decision-Withdrawing-Denial.pdf). Please let me know if you have any thoughts. My deadline is close of business Wednesday, March 2. Thank you for your help!

Kevin Bogardus

E&E News Reporter

kbogardus@eenews.net

202-446-0401 (o)

202-247-7844 (c)

202-737-5299 (f)

Follow me @KevinBogardus

E&E News

122 C Street, NW, Suite 722, Washington, DC 20001

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Greenwire, ClimateWire, EnergyWire, E&E Daily, E&ENews PM

From: Kevin Bogardus <kbogardus@eenews.net>
Sent: Monday, February 28, 2022 4:20 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Press <press@epa.gov>
Subject: Former EPA Administrator Andrew Wheeler's last moves on climate

Hey everyone,

It's Kevin Bogardus with E&E News. I hope all is well. I'm also copying Nancy on this email because I quote her from an email in my story.

I'm working on a story about former EPA Administrator Andrew Wheeler's last moves on climate change policy before he left EPA. I'm quoting from and linking to emails, letters and memos. I obtained several of these records under the Freedom of Information Act (please see attached).

I have a few questions about this, which are:

-- Former EPA Administrator Andrew Wheeler received denials on petitions to reconsider EPA's endangerment finding on greenhouse gas emissions as well as several similar petitions to have EPA regulate greenhouse gas emissions under the Clean Air Act (please see emails-about-endangerment-finding.pdf and emails-about-endangerment-finding-1.pdf). He signed both sets of those denials (please see https://legacy-assets.eenews.net/open_files/assets/2021/05/20/document_gw_01.pdf and https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-01-19-GHG-NAAQS-

Petition-Denial-2021-01-19.pdf). EPA, however, later withdrew those denials (please see https://legacy-assets.eenews.net/open_files/assets/2021/05/20/document_gw_02.pdf).

What is the status of these petitions now at EPA? Is EPA still reviewing them? When does EPA expect to reach a decision on these petitions?

-- It is my understanding that EPA withdrew Wheeler's denials of the petitions by the New York University Law Institute for Policy Integrity to have EPA regulate greenhouse gas emissions under Section 115 of the Clean Air Act as well as by Food & Water Watch to have EPA regulate greenhouse gas emissions as a Hazardous Air Pollutant. Can you share those withdrawals with me?

-- One of EPA's withdrawals of Wheeler's denials said "an adequate justification of the denial" was not provided while another withdrawal said "the agency did not fully and fairly assess the issues raised" by the petition. Emails show EPA officials begin discussing the petition on the endangerment finding on Jan. 5, 2021, only a few weeks before the Trump administration came to an end (please see emails-about-endangerment-finding-2.pdf). Also, one email said an update on developing a draft denial of the petition "didn't sound too promising" and the agency may have to "deploy an alternative approach" (please see emails-about-endangerment-finding-3.pdf). Further, another email said one message was "not encouraging" (please see emails-about-endangerment-finding-4.pdf).

When EPA said Wheeler's denials did not provide adequate justification, nor fully and fairly assess the issues raised, did EPA mean Wheeler's denials were rushed? How would EPA characterize the process behind drafting these denials?

-- There were plans to post Wheeler's denials on EPA's website, either on the Office of Air and Radiation's website or the Office of General Counsel's website, with that latter request being made within an hour of the end of President Trump's term in office, according to a series of emails (please see emails-about-endangerment-finding-5.pdf). In addition, Adam Gustafson, then EPA's deputy general counsel, emailed two different EPA officials, asking if they could post the denials to the OGC's website, hours after the end of the Trump administration and his own resignation from EPA (please see emails-about-endangerment-finding-6.pdf and emails-about-endangerment-finding-7.pdf). Nevertheless, with two minutes until the changeover between the Trump and Biden administrations at noon on Jan. 20, 2021, Nancy Grantham, principal deputy assistant administrator in EPA's Office of Public Affairs, said in an email, "As discussed, the transition is now official, so we need to revisit this posting with the incoming team."

Why did EPA not post Wheeler's denials on EPA's website?

-- Chris Grundler, director of EPA's Office of Atmospheric Programs, said in an email, "I will expect we will get some questions about this one," referring to EPA's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding (please see emails-about-endangerment-finding-10.pdf).

Why should EPA expect questions about this withdrawal? What did Grundler mean by that?

Also, I will be quoting from and linking to the following records in my story. Please let me know if you have any comment on the following:

-- Senior political appointees and career officials in several EPA offices were invited to a meeting to "discuss paths forward" on Wheeler's denials in February 2021, according to records (please see emails-about-endangerment-finding-8.pdf and emails-about-endangerment-finding-9.pdf).

-- Senior political appointees and career officials in EPA's Office of Air and Radiation were notified when Administrator Regan signed the withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, which wasn't normal practice but was done since they might be interested in the withdrawal, according to an email (please see emails-about-endangerment-finding-11.pdf).

-- Senior political appointees in EPA's Office of Air and Radiation were made aware of a statement EPA prepared on Administrator Regan's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, according to an email (please see emails-about-endangerment-finding-12.pdf).

Please get back to me as soon as possible. My deadline is close of business Wednesday, March 2, but the sooner you get back to me, the more it helps my reporting. Also, since I'm working from home, please email me here or call me back on my cell phone at 202-247-7844. Thank you for your help and stay safe, stay healthy!

Kevin Bogardus

E&E News Reporter

kbogardus@eenews.net

202-446-0401 (o)

202-247-7844 (c)

202-737-5299 (f)

Follow me @KevinBogardus

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122 C Street, NW, Suite 722, Washington, DC 20001

www.eenews.net

Greenwire, ClimateWire, EnergyWire, E&E Daily, E&ENews PM

Message

From: Williams, Melina [Williams.Melina@epa.gov]
Sent: 3/11/2022 9:53:44 PM
To: Orlin, David [Orlin.David@epa.gov]
Subject: FW: DDL COB 3/2: Press inquiry re: denials of endangerment petitions
Attachments: CHECCletter (002).docx

Just fyi, these are the edits I sent back on the letter. Thanks for the fast feedback!

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

Confidential communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Williams, Melina
Sent: Friday, March 11, 2022 4:53 PM
To: Martinich, Jeremy <Martinich.Jeremy@epa.gov>; Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Thanks, Marcus and Jeremy. Sorry for my delay in getting to this, Ex. 5 AC/DP Ex. 5 AC/DP Happy to chat if that would be helpful!

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

Confidential communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Sent: Friday, March 11, 2022 9:35 AM
To: Sarofim, Marcus <Sarofim.Marcus@epa.gov>; Williams, Melina <Williams.Melina@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Thanks, Marcus. Ex. 5 AC/DP

Ex. 5 AC/DP

Jeremy

From: Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Sent: Thursday, March 10, 2022 3:23 PM
To: Williams, Melina <Williams.Melina@epa.gov>
Cc: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Ex. 5 AC/DP

Ex. 5 AC/DP

(but also attached because I know that files sometimes take a while before you can access them)

Thanks!

-Marcus

From: Williams, Melina <Williams.Melina@epa.gov>
Sent: Tuesday, March 8, 2022 12:00 PM
To: Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Cc: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Sounds good, thanks!

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

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From: Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Sent: Monday, March 7, 2022 5:43 PM
To: Williams, Melina <Williams.Melina@epa.gov>
Cc: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Ex. 5 AC/DP

Thanks again!

-Marcus

From: Williams, Melina <Williams.Melina@epa.gov>
Sent: Monday, March 7, 2022 4:31 PM
To: Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Cc: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Hi Marcus,

I think that's reasonable, Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks! And thanks for your patience!
Melina

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

Confidential communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Sent: Monday, March 7, 2022 1:39 PM
To: Williams, Melina <Williams.Melina@epa.gov>
Cc: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Hi Melina,

With the release of the article on the Wheeler denial of the petitions (https://subscriber.politicopro.com/article/eenews/2022/03/03/inside-the-trump-epas-final-moves-on-climate-00013540), Ex. 5 AC/DP

Ex. 5 AC/DP

Does that sound reasonable?

Thank you,

-Marcus

From: Williams, Melina <Williams.Melina@epa.gov>
Sent: Tuesday, March 1, 2022 6:52 PM
To: Martinich, Jeremy <Martinich.Jeremy@epa.gov>; Hartin, Corinne <Hartin.Corinne@epa.gov>; Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Ex. 5 Attorney Client (AC)

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

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From: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Sent: Tuesday, March 1, 2022 6:47 PM
To: Williams, Melina <Williams.Melina@epa.gov>; Hartin, Corinne <Hartin.Corinne@epa.gov>; Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Thank you, Melina! **Ex. 5 Attorney Client (AC)**
Ex. 5 Attorney Client (AC)

Thanks,
Jeremy

From: Williams, Melina <Williams.Melina@epa.gov>
Sent: Tuesday, March 1, 2022 6:40 PM
To: Martinich, Jeremy <Martinich.Jeremy@epa.gov>; Hartin, Corinne <Hartin.Corinne@epa.gov>; Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Hi Jeremy,

Thanks for the heads up (and I'm cc'ing David, Lea, and Emily for awareness as well). I believe these are the two withdrawals you're looking for.

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

Confidential communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Sent: Tuesday, March 1, 2022 4:08 PM
To: Williams, Melina <Williams.Melina@epa.gov>; Hartin, Corinne <Hartin.Corinne@epa.gov>; Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Subject: FW: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

FYI, some press interest. It doesn't look like anything else is needed from us at this point, but let me know if you see otherwise.

Do any of you have copies of the following withdrawals?
-- It is my understanding that EPA withdrew Wheeler's denials of the petitions by the New York University Law Institute for Policy Integrity to have EPA regulate greenhouse gas emissions under Section 115 of the Clean Air Act as well as by Food & Water Watch to have EPA regulate greenhouse gas emissions as a Hazardous Air Pollutant. Can you share those withdrawals with me?

From: Gunning, Paul <Gunning.Paul@epa.gov>
Sent: Tuesday, March 1, 2022 3:44 PM
To: DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Schmeltz, Rachel <Schmeltz.Rachel@epa.gov>; Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Ex. 5 Deliberative Process (DP)

Paul

From: DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Sent: Tuesday, March 1, 2022 2:59 PM
To: Gunning, Paul <Gunning.Paul@epa.gov>; Schmeltz, Rachel <Schmeltz.Rachel@epa.gov>; Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Hi all,
Kevin Bogartus from E&E is planning another article about the previous administration's denial of GHG endangerment petitions, and the current administration's subsequent withdrawal of those denials. Please scroll all the way down to see all of his questions - **Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

Thanks,
Isabel

From: Carroll, Timothy <Carroll.Timothy@epa.gov>
Sent: Tuesday, March 1, 2022 10:20 AM
To: Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Cc: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>
Subject: FW: Former EPA Administrator Andrew Wheeler's last moves on climate

Hi all, please see below from Kevin Bogardus at E&E. He's writing about the push by the last administration to deny petitions to reconsider EPA's endangerment finding on GHG in the last few weeks of the term. Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

OAR – can you take a look at the petition status questions and let us know if there's anything more we can/should say about the process? It would also be good to share the withdrawals requested, if possible.

OGC – Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Let me know of any other questions or concerns here, happy to chat by phone if helpful. We have a deadline of COB tomorrow, Wednesday, March 2.

Thanks all!

Tim Carroll (he/him)
Deputy Press Secretary
Environmental Protection Agency
202-384-7510 (mobile)
Twitter: @EPAPressOffice

From: Kevin Bogardus <kbogardus@eenews.net>
Sent: Monday, February 28, 2022 5:09 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; EPA Press Office <Press@epa.gov>
Subject: Re: Former EPA Administrator Andrew Wheeler's last moves on climate

My apologies, everyone, but I forgot to link one document in my original email, which is EPA's withdrawal of Wheeler's denial of several similar petitions to have EPA regulate greenhouse gas emissions under the Clean Air Act. Here is that link (please see https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-03-05-Decision-Withdrawing-Denial.pdf). Please let me know if you have any thoughts. My deadline is close of business Wednesday, March 2. Thank you for your help!

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Sent: Monday, February 28, 2022 4:20 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Press <press@epa.gov>
Subject: Former EPA Administrator Andrew Wheeler's last moves on climate

Hey everyone,

It's Kevin Bogardus with E&E News. I hope all is well. I'm also copying Nancy on this email because I quote her from an email in my story.

I'm working on a story about former EPA Administrator Andrew Wheeler's last moves on climate change policy before he left EPA. I'm quoting from and linking to emails, letters and memos. I obtained several of these records under the Freedom of Information Act (please see attached).

I have a few questions about this, which are:

-- Former EPA Administrator Andrew Wheeler received denials on petitions to reconsider EPA's endangerment finding on greenhouse gas emissions as well as several similar petitions to have EPA regulate greenhouse gas emissions under the Clean Air Act (please see emails-about-endangerment-finding.pdf and emails-about-endangerment-finding-1.pdf). He signed both sets of those denials (please see https://legacy-assets.eenews.net/open_files/assets/2021/05/20/document_gw_01.pdf and https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-01-19-GHG-NAAQS-Petition-Denial-2021-01-19.pdf). EPA, however, later withdrew those denials (please see https://legacy-assets.eenews.net/open_files/assets/2021/05/20/document_gw_02.pdf).

What is the status of these petitions now at EPA? Is EPA still reviewing them? When does EPA expect to reach a decision on these petitions?

-- It is my understanding that EPA withdrew Wheeler's denials of the petitions by the New York University Law Institute for Policy Integrity to have EPA regulate greenhouse gas emissions under Section 115 of the Clean Air Act as well as by Food & Water Watch to have EPA regulate greenhouse gas emissions as a Hazardous Air Pollutant. Can you share those withdrawals with me?

-- One of EPA's withdrawals of Wheeler's denials said "an adequate justification of the denial" was not provided while another withdrawal said "the agency did not fully and fairly assess the issues raised" by the petition. Emails show EPA officials begin discussing the petition on the endangerment finding on Jan. 5, 2021, only a few weeks before the Trump administration came to an end (please see emails-about-endangerment-finding-2.pdf). Also, one email said an update on developing a draft denial of the petition "didn't sound too promising" and the agency may have to "deploy an alternative approach" (please see emails-about-endangerment-finding-3.pdf). Further, another email said one message was "not encouraging" (please see emails-about-endangerment-finding-4.pdf).

When EPA said Wheeler's denials did not provide adequate justification, nor fully and fairly assess the issues raised, did EPA mean Wheeler's denials were rushed? How would EPA characterize the process behind drafting these denials?

-- There were plans to post Wheeler's denials on EPA's website, either on the Office of Air and Radiation's website or the Office of General Counsel's website, with that latter request being made within an hour of the end of President Trump's term in office, according to a series of emails (please see emails-about-endangerment-finding-5.pdf). In addition, Adam Gustafson, then EPA's deputy general counsel, emailed two different EPA officials, asking if they could post the denials to the OGC's website, hours after the end of the Trump administration and his own resignation from EPA (please see emails-about-endangerment-finding-6.pdf and emails-about-endangerment-finding-7.pdf). Nevertheless, with two minutes until the changeover between the Trump and Biden administrations at noon on Jan. 20, 2021, Nancy Grantham, principal deputy assistant administrator in EPA's Office of Public Affairs, said in an email, "As discussed, the transition is now official, so we need to revisit this posting with the incoming team."

Why did EPA not post Wheeler's denials on EPA's website?

-- Chris Grundler, director of EPA's Office of Atmospheric Programs, said in an email, "I will expect we will get some questions about this one," referring to EPA's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding (please see emails-about-endangerment-finding-10.pdf).

Why should EPA expect questions about this withdrawal? What did Grundler mean by that?

Also, I will be quoting from and linking to the following records in my story. Please let me know if you have any comment on the following:

-- Senior political appointees and career officials in several EPA offices were invited to a meeting to "discuss paths forward" on Wheeler's denials in February 2021, according to records (please see emails-about-endangerment-finding-8.pdf and emails-about-endangerment-finding-9.pdf).

-- Senior political appointees and career officials in EPA's Office of Air and Radiation were notified when Administrator Regan signed the withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, which wasn't normal practice but was done since they might be interested in the withdrawal, according to an email (please see emails-about-endangerment-finding-11.pdf).

-- Senior political appointees in EPA's Office of Air and Radiation were made aware of a statement EPA prepared on Administrator Regan's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, according to an email (please see emails-about-endangerment-finding-12.pdf).

Please get back to me as soon as possible. My deadline is close of business Wednesday, March 2, but the sooner you get back to me, the more it helps my reporting. Also, since I'm working from home, please email me here or call me back on my cell phone at 202-247-7844. Thank you for your help and stay safe, stay healthy!

Kevin Bogardus

E&E News Reporter

kbogardus@eenews.net

202-446-0401 (o)

202-247-7844 (c)

202-737-5299 (f)

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www.eenews.net
Greenwire, ClimateWire, EnergyWire, E&E Daily, E&ENews PM

Message

From: Martinich, Jeremy [Martinich.Jeremy@epa.gov]
Sent: 3/2/2022 12:15:37 AM
To: Orlin, David [Orlin.David@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Williams, Melina [Williams.Melina@epa.gov]; Hartin, Corinne [Hartin.Corinne@epa.gov]; Sarofim, Marcus [Sarofim.Marcus@epa.gov]
CC: Anderson, Lea [anderson.lea@epa.gov]
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Great, thanks everyone!

Jeremy

From: Orlin, David <Orlin.David@epa.gov>
Sent: Tuesday, March 1, 2022 7:01 PM
To: Seidman, Emily <seidman.emily@epa.gov>; Williams, Melina <Williams.Melina@epa.gov>; Martinich, Jeremy <Martinich.Jeremy@epa.gov>; Hartin, Corinne <Hartin.Corinne@epa.gov>; Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Cc: Anderson, Lea <anderson.lea@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

I agree—also I think they were reported (and possibly published) in the trade press when they were issued last March?

David Orlin
US EPA, Office of General Counsel
(202) 564-1222

From: Seidman, Emily <seidman.emily@epa.gov>
Sent: Tuesday, March 1, 2022 6:56 PM
To: Williams, Melina <Williams.Melina@epa.gov>; Martinich, Jeremy <Martinich.Jeremy@epa.gov>; Hartin, Corinne <Hartin.Corinne@epa.gov>; Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Ex. 5 Attorney Client (AC)

Emily Seidman | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | WJCN 7426Y | office phone: (202) 564-0906 | cell phone: (202) 794-0051

Pronouns: she/her/hers

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From: Williams, Melina <Williams.Melina@epa.gov>
Sent: Tuesday, March 01, 2022 6:52 PM
To: Martinich, Jeremy <Martinich.Jeremy@epa.gov>; Hartin, Corinne <Hartin.Corinne@epa.gov>; Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Seidman, Emily

<seidman.emily@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Ex. 5 Attorney Client (AC)

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

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From: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Sent: Tuesday, March 1, 2022 6:47 PM
To: Williams, Melina <Williams.Melina@epa.gov>; Hartin, Corinne <Hartin.Corinne@epa.gov>; Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Thank you, Melina! Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Thanks,
Jeremy

From: Williams, Melina <Williams.Melina@epa.gov>
Sent: Tuesday, March 1, 2022 6:40 PM
To: Martinich, Jeremy <Martinich.Jeremy@epa.gov>; Hartin, Corinne <Hartin.Corinne@epa.gov>; Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Hi Jeremy,

Thanks for the heads up (and I'm cc'ing David, Lea, and Emily for awareness as well). I believe these are the two withdrawals you're looking for.

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

Confidential communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Sent: Tuesday, March 1, 2022 4:08 PM
To: Williams, Melina <Williams.Melina@epa.gov>; Hartin, Corinne <Hartin.Corinne@epa.gov>; Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Subject: FW: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

FYI, some press interest. It doesn't look like anything else is needed from us at this point, but let me know if you see otherwise.

Do any of you have copies of the following withdrawals?
-- It is my understanding that EPA withdrew Wheeler's denials of the petitions by the New York University Law Institute for Policy Integrity to have EPA regulate greenhouse gas emissions under Section 115 of the Clean Air Act as well as by Food & Water Watch to have EPA regulate greenhouse gas emissions as a Hazardous Air Pollutant. Can you share those withdrawals with me?

From: Gunning, Paul <Gunning.Paul@epa.gov>
Sent: Tuesday, March 1, 2022 3:44 PM
To: DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Schmeltz, Rachel <Schmeltz.Rachel@epa.gov>; Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Ex. 5 Deliberative Process (DP)

Paul

From: DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Sent: Tuesday, March 1, 2022 2:59 PM
To: Gunning, Paul <Gunning.Paul@epa.gov>; Schmeltz, Rachel <Schmeltz.Rachel@epa.gov>; Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Hi all,
Kevin Bogartus from E&E is planning another article about the previous administration's denial of GHG endangerment petitions, and the current administration's subsequent withdrawal of those denials. Please scroll all the way down to see all of his questions -- **Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

Thanks,
Isabel

From: Carroll, Timothy <Carroll.Timothy@epa.gov>
Sent: Tuesday, March 1, 2022 10:20 AM
To: Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Cc: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>
Subject: FW: Former EPA Administrator Andrew Wheeler's last moves on climate

Hi all, please see below from Kevin Bogardus at E&E. He's writing about the push by the last administration to deny petitions to reconsider EPA's endangerment finding on GHG in the last few weeks of the term. **Ex. 5 Attorney Client (AC)**

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

OAR – can you take a look at the petition status questions and let us know if there's anything more we can/should say about the process? It would also be good to share the withdrawals requested, if possible.

OGC – Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Let me know of any other questions or concerns here, happy to chat by phone if helpful. We have a deadline of COB tomorrow, Wednesday, March 2.

Thanks all!

Tim Carroll (he/him)
Deputy Press Secretary
Environmental Protection Agency
202-384-7510 (mobile)
Twitter: @EPAPressOffice

From: Kevin Bogardus <kbogardus@eenews.net>
Sent: Monday, February 28, 2022 5:09 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; EPA Press Office <Press@epa.gov>
Subject: Re: Former EPA Administrator Andrew Wheeler's last moves on climate

My apologies, everyone, but I forgot to link one document in my original email, which is EPA's withdrawal of Wheeler's denial of several similar petitions to have EPA regulate greenhouse gas emissions under the Clean Air Act. Here is that link (please see https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-03-05-Decision-Withdrawing-Denial.pdf). Please let me know if you have any thoughts. My deadline is close of business Wednesday, March 2. Thank you for your help!

Kevin Bogardus
E&E News Reporter
kbogardus@eenews.net
202-446-0401 (o)
202-247-7844 (c)
202-737-5299 (f)

Follow me @KevinBogardus

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Greenwire, ClimateWire, EnergyWire, E&E Daily, E&ENews PM

From: Kevin Bogardus <kbogardus@eenews.net>
Sent: Monday, February 28, 2022 4:20 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Press <press@epa.gov>
Subject: Former EPA Administrator Andrew Wheeler's last moves on climate

Hey everyone,

It's Kevin Bogardus with E&E News. I hope all is well. I'm also copying Nancy on this email because I quote her from an email in my story.

I'm working on a story about former EPA Administrator Andrew Wheeler's last moves on climate change policy before he left EPA. I'm quoting from and linking to emails, letters and memos. I obtained several of these records under the Freedom of Information Act (please see attached).

I have a few questions about this, which are:

-- Former EPA Administrator Andrew Wheeler received denials on petitions to reconsider EPA's endangerment finding on greenhouse gas emissions as well as several similar petitions to have EPA regulate greenhouse gas emissions under the Clean Air Act (please see emails-about-endangerment-finding.pdf and emails-about-endangerment-finding-1.pdf). He signed both sets of those denials (please see https://legacy-assets.eenews.net/open_files/assets/2021/05/20/document_gw_01.pdf and https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-01-19-GHG-NAAQS-Petition-Denial-2021-01-19.pdf). EPA, however, later withdrew those denials (please see https://legacy-assets.eenews.net/open_files/assets/2021/05/20/document_gw_02.pdf).

What is the status of these petitions now at EPA? Is EPA still reviewing them? When does EPA expect to reach a decision on these petitions?

-- It is my understanding that EPA withdrew Wheeler's denials of the petitions by the New York University Law Institute for Policy Integrity to have EPA regulate greenhouse gas emissions under Section 115 of the Clean Air Act as well as by Food & Water Watch to have EPA regulate greenhouse gas emissions as a Hazardous Air Pollutant. Can you share those withdrawals with me?

-- One of EPA's withdrawals of Wheeler's denials said "an adequate justification of the denial" was not provided while another withdrawal said "the agency did not fully and fairly assess the issues raised" by the petition. Emails show EPA officials begin discussing the petition on the endangerment finding on Jan. 5, 2021, only a few weeks before the Trump administration came to an end (please see emails-about-endangerment-finding-2.pdf). Also, one email said an update on developing a draft denial of the petition "didn't sound too promising" and the agency may have to "deploy an alternative approach" (please see emails-about-endangerment-finding-3.pdf). Further, another email said one message was "not encouraging" (please see emails-about-endangerment-finding-4.pdf).

When EPA said Wheeler's denials did not provide adequate justification, nor fully and fairly assess the issues raised, did EPA mean Wheeler's denials were rushed? How would EPA characterize the process behind drafting these denials?

-- There were plans to post Wheeler's denials on EPA's website, either on the Office of Air and Radiation's website or the Office of General Counsel's website, with that latter request being made within an hour of the end of President Trump's term in office, according to a series of emails (please see emails-about-endangerment-finding-5.pdf). In addition, Adam Gustafson, then EPA's deputy general counsel, emailed two different EPA officials, asking if they could post the denials to the

OGC's website, hours after the end of the Trump administration and his own resignation from EPA (please see emails-about-endangerment-finding-6.pdf and emails-about-endangerment-finding-7.pdf). Nevertheless, with two minutes until the changeover between the Trump and Biden administrations at noon on Jan. 20, 2021, Nancy Grantham, principal deputy assistant administrator in EPA's Office of Public Affairs, said in an email, "As discussed, the transition is now official, so we need to revisit this posting with the incoming team."

Why did EPA not post Wheeler's denials on EPA's website?

-- Chris Grundler, director of EPA's Office of Atmospheric Programs, said in an email, "I will expect we will get some questions about this one," referring to EPA's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding (please see emails-about-endangerment-finding-10.pdf).

Why should EPA expect questions about this withdrawal? What did Grundler mean by that?

Also, I will be quoting from and linking to the following records in my story. Please let me know if you have any comment on the following:

-- Senior political appointees and career officials in several EPA offices were invited to a meeting to "discuss paths forward" on Wheeler's denials in February 2021, according to records (please see emails-about-endangerment-finding-8.pdf and emails-about-endangerment-finding-9.pdf).

-- Senior political appointees and career officials in EPA's Office of Air and Radiation were notified when Administrator Regan signed the withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, which wasn't normal practice but was done since they might be interested in the withdrawal, according to an email (please see emails-about-endangerment-finding-11.pdf).

-- Senior political appointees in EPA's Office of Air and Radiation were made aware of a statement EPA prepared on Administrator Regan's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, according to an email (please see emails-about-endangerment-finding-12.pdf).

Please get back to me as soon as possible. My deadline is close of business Wednesday, March 2, but the sooner you get back to me, the more it helps my reporting. Also, since I'm working from home, please email me here or call me back on my cell phone at 202-247-7844. Thank you for your help and stay safe, stay healthy!

Kevin Bogardus

E&E News Reporter

kbogardus@eenews.net

202-446-0401 (o)

202-247-7844 (c)

202-737-5299 (f)

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Message

From: Williams, Melina [Williams.Melina@epa.gov]
Sent: 3/1/2022 11:37:36 PM
To: Orlin, David [Orlin.David@epa.gov]
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Ok – thanks!

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

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From: Orlin, David <Orlin.David@epa.gov>
Sent: Tuesday, March 1, 2022 5:21 PM
To: Williams, Melina <Williams.Melina@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

I think it's fine to provide that—it is FOIA-able. I guess you could copy Emily and Lea on the response but I doubt they will have concerns.

thanks

David Orlin
US EPA, Office of General Counsel
(202) 564-1222

From: Williams, Melina <Williams.Melina@epa.gov>
Sent: Tuesday, March 1, 2022 5:02 PM
To: Orlin, David <Orlin.David@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Hi David, there's a press inquiry about the denial of the endangerment petitions (see below). OAP asked for the NYU and Food and Water Watch petitions – do you think it's ok to send him the attached? Should I give anyone else a heads up (eg Emily or Lea)? Or have you all already seen this through other channels?

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

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From: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Sent: Tuesday, March 1, 2022 4:08 PM
To: Williams, Melina <Williams.Melina@epa.gov>; Hartin, Corinne <Hartin.Corinne@epa.gov>; Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Subject: FW: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

FYI, some press interest. It doesn't look like anything else is needed from us at this point, but let me know if you see otherwise.

Do any of you have copies of the following withdrawals?
-- It is my understanding that EPA withdrew Wheeler's denials of the petitions by the New York University Law Institute for Policy Integrity to have EPA regulate greenhouse gas emissions under Section 115 of the Clean Air Act as well as by Food & Water Watch to have EPA regulate greenhouse gas emissions as a Hazardous Air Pollutant. Can you share those withdrawals with me?

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Sent: Tuesday, March 1, 2022 3:44 PM
To: DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Schmeltz, Rachel <Schmeltz.Rachel@epa.gov>; Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: RE: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Ex. 5 Deliberative Process (DP)

Paul

From: DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Sent: Tuesday, March 1, 2022 2:59 PM
To: Gunning, Paul <Gunning.Paul@epa.gov>; Schmeltz, Rachel <Schmeltz.Rachel@epa.gov>; Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: DDL COB 3/2: Press inquiry re: denials of endangerment petitions

Hi all,
Kevin Bogartus from E&E is planning another article about the previous administration's denial of GHG endangerment petitions, and the current administration's subsequent withdrawal of those denials. Please scroll all the way down to see all of his questions **Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

Thanks,
Isabel

From: Carroll, Timothy <Carroll.Timothy@epa.gov>
Sent: Tuesday, March 1, 2022 10:20 AM
To: Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Cc: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>
Subject: FW: Former EPA Administrator Andrew Wheeler's last moves on climate

Hi all, please see below from Kevin Bogardus at E&E. He's writing about the push by the last administration to deny petitions to reconsider EPA's endangerment finding on GHG in the last few weeks of the term **Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

OAR – can you take a look at the petition status questions and let us know if there's anything more we can/should say about the process? It would also be good to share the withdrawals requested, if possible.

OGC Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Let me know of any other questions or concerns here, happy to chat by phone if helpful. We have a deadline of COB tomorrow, Wednesday, March 2.

Thanks all!

Tim Carroll (he/him)
Deputy Press Secretary
Environmental Protection Agency
202-384-7510 (mobile)
Twitter: @EPAPressOffice

From: Kevin Bogardus <kbogardus@eenews.net>
Sent: Monday, February 28, 2022 5:09 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; EPA Press Office <Press@epa.gov>
Subject: Re: Former EPA Administrator Andrew Wheeler's last moves on climate

My apologies, everyone, but I forgot to link one document in my original email, which is EPA's withdrawal of Wheeler's denial of several similar petitions to have EPA regulate greenhouse gas emissions under the Clean Air Act. Here is that link (please see https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-03-05-Decision-Withdrawing-Denial.pdf). Please let me know if you have any thoughts. My deadline is close of business Wednesday, March 2. Thank you for your help!

Kevin Bogardus
E&E News Reporter
kbogardus@eenews.net
202-446-0401 (o)
202-247-7844 (c)
202-737-5299 (f)

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From: Kevin Bogardus <kbogardus@eenews.net>
Sent: Monday, February 28, 2022 4:20 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Press <press@epa.gov>
Subject: Former EPA Administrator Andrew Wheeler's last moves on climate

Hey everyone,

It's Kevin Bogardus with E&E News. I hope all is well. I'm also copying Nancy on this email because I quote her from an email in my story.

I'm working on a story about former EPA Administrator Andrew Wheeler's last moves on climate change policy before he left EPA. I'm quoting from and linking to emails, letters and memos. I obtained several of these records under the Freedom of Information Act (please see attached).

I have a few questions about this, which are:

-- Former EPA Administrator Andrew Wheeler received denials on petitions to reconsider EPA's endangerment finding on greenhouse gas emissions as well as several similar petitions to have EPA regulate greenhouse gas emissions under the Clean Air Act (please see emails-about-endangerment-finding.pdf and emails-about-endangerment-finding-1.pdf). He signed both sets of those denials (please see https://legacy-assets.eenews.net/open_files/assets/2021/05/20/document_gw_01.pdf and https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-01-19-GHG-NAAQS-Petition-Denial-2021-01-19.pdf). EPA, however, later withdrew those denials (please see https://legacy-assets.eenews.net/open_files/assets/2021/ document 05/20/ _gw_02.pdf).

What is the status of these petitions now at EPA? Is EPA still reviewing them? When does EPA expect to reach a decision on these petitions?

-- It is my understanding that EPA withdrew Wheeler's denials of the petitions by the New York University Law Institute for Policy Integrity to have EPA regulate greenhouse gas emissions under Section 115 of the Clean Air Act as well as by Food & Water Watch to have EPA regulate greenhouse gas emissions as a Hazardous Air Pollutant. Can you share those withdrawals with me?

-- One of EPA's withdrawals of Wheeler's denials said "an adequate justification of the denial" was not provided while another withdrawal said "the agency did not fully and fairly assess the issues raised" by the petition. Emails show EPA officials begin discussing the petition on the endangerment finding on Jan. 5, 2021, only a few weeks before the Trump administration came to an end (please see emails-about-endangerment-finding-2.pdf). Also, one email said an update on developing a draft denial of the petition "didn't sound too promising" and the agency may have to "deploy an alternative approach" (please see emails-about-endangerment-finding-3.pdf). Further, another email said one message was "not encouraging" (please see emails-about-endangerment-finding-4.pdf).

When EPA said Wheeler's denials did not provide adequate justification, nor fully and fairly assess the issues raised, did EPA mean Wheeler's denials were rushed? How would EPA characterize the process behind drafting these denials?

-- There were plans to post Wheeler's denials on EPA's website, either on the Office of Air and Radiation's website or the Office of General Counsel's website, with that latter request being made within an hour of the end of President Trump's term in office, according to a series of emails (please see emails-about-endangerment-finding-5.pdf). In addition, Adam Gustafson, then EPA's deputy general counsel, emailed two different EPA officials, asking if they could post the denials to the OGC's website, hours after the end of the Trump administration and his own resignation from EPA (please see emails-about-endangerment-finding-6.pdf and emails-about-endangerment-finding-7.pdf). Nevertheless, with two minutes until the changeover between the Trump and Biden administrations at noon on Jan. 20, 2021, Nancy Grantham, principal deputy assistant administrator in EPA's Office of

Public Affairs, said in an email, "As discussed, the transition is now official, so we need to revisit this posting with the incoming team."

Why did EPA not post Wheeler's denials on EPA's website?

-- Chris Grundler, director of EPA's Office of Atmospheric Programs, said in an email, "I will expect we will get some questions about this one," referring to EPA's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding (please see emails-about-endangerment-finding-10.pdf).

Why should EPA expect questions about this withdrawal? What did Grundler mean by that?

Also, I will be quoting from and linking to the following records in my story. Please let me know if you have any comment on the following:

-- Senior political appointees and career officials in several EPA offices were invited to a meeting to "discuss paths forward" on Wheeler's denials in February 2021, according to records (please see emails-about-endangerment-finding-8.pdf and emails-about-endangerment-finding-9.pdf).

-- Senior political appointees and career officials in EPA's Office of Air and Radiation were notified when Administrator Regan signed the withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, which wasn't normal practice but was done since they might be interested in the withdrawal, according to an email (please see emails-about-endangerment-finding-11.pdf).

-- Senior political appointees in EPA's Office of Air and Radiation were made aware of a statement EPA prepared on Administrator Regan's withdrawal of Wheeler's denial on the petition to reconsider the endangerment finding, according to an email (please see emails-about-endangerment-finding-12.pdf).

Please get back to me as soon as possible. My deadline is close of business Wednesday, March 2, but the sooner you get back to me, the more it helps my reporting. Also, since I'm working from home, please email me here or call me back on my cell phone at 202-247-7844. Thank you for your help and stay safe, stay healthy!

Kevin Bogardus

E&E News Reporter

kbogardus@eenews.net

202-446-0401 (o)

202-247-7844 (c)

202-737-5299 (f)

Follow me @KevinBogardus

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www.eenews.net

Message

From: Williams, Melina [Williams.Melina@epa.gov]
Sent: 5/11/2022 8:18:12 PM
To: Orlin, David [Orlin.David@epa.gov]
Subject: FW: Quick review and input needed

Today's the day for endangerment activity!

Ex. 5 Attorney Client (AC)

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

Confidential communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Sent: Wednesday, May 11, 2022 4:10 PM
To: Sarofim, Marcus <Sarofim.Marcus@epa.gov>; Williams, Melina <Williams.Melina@epa.gov>
Cc: Hartin, Corinne <Hartin.Corinne@epa.gov>
Subject: Quick review and input needed

Hi Marcus and Melina,

We received some questions on the recent Endg petitions denial. I've taken a stab at the first answer, please edit as you see fit. Melina, do you have thoughts on an answer for the second question?

Thanks,
Jeremy

-- EPA under the Trump administration initially denied the petitions to reconsider EPA's endangerment finding on greenhouse gases on Jan. 19, 2021. The denials were then withdrawn months later by EPA under the Biden administration. Now, EPA under the Biden administration has again denied the petitions on April 21, 2022 (please see https://www.epa.gov/system/files/documents/2022-04/cei_letter.pdf).
Why did EPA initially withdraw the denials, considering it has now again arrived at the same conclusion, which is to deny the petitions? Why not let EPA's initial denials stand when they were first issued more than a year ago in 2021?

Ex. 5 Attorney Client (AC)

-- At least one of the groups whose petition to reconsider EPA's endangerment finding on greenhouse gases was denied has said EPA's response allows them to "move forward with further litigation on the underlying issues." (please see https://www.texaspolicy.com/press/tppf-the-epa-does-not-have-unlimited-power)
Does EPA believe its decision to deny these petitions to reconsider EPA's endangerment finding on greenhouse gases will withstand legal scrutiny? Why or why not?

From: DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Sent: Wednesday, May 11, 2022 2:58 PM
To: Bremer, Kristen <Bremer.Kristen@epa.gov>; Ashley, Jackie <Ashley.Jackie@epa.gov>; Schmeltz, Rachel <Schmeltz.Rachel@epa.gov>; Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: DDL tomorrow 11AM EPA's greenhouse gas endangerment finding

Hi all,
We have some questions from E&E regarding the recent denial of petitions to reconsider the endangerment finding. CCD can you review below and advise on a response? Much of this may be covered in the comms materials in hand, but let me know what you think.

OAQPS – Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

The reporter has asked for a response by noon tomorrow. Joe and Tomás may want to review, so if you all can weigh in by COB or NLT 11AM tomorrow, that would be great.

Thanks,
Isabel

From: Carroll, Timothy <Carroll.Timothy@epa.gov>
Sent: Wednesday, May 11, 2022 2:51 PM
To: Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Cc: Conger, Nick <Conger.Nick@epa.gov>
Subject: FW: EPA's greenhouse gas endangerment finding

Hi there – see below from E&E on the recent denial of the GHG endangerment finding reconsideration. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thanks!

Tim Carroll (he/him)
Deputy Press Secretary
Environmental Protection Agency
202-384-7510 (mobile)
Twitter: @EPAPressOffice

From: Kevin Bogardus <kbogardus@eenews.net>
Sent: Wednesday, May 11, 2022 2:24 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; EPA Press Office <Press@epa.gov>
Subject: EPA's greenhouse gas endangerment finding

Hey everyone,

It's Kevin Bogardus with E&E News. I hope all is well.

I'm working on a story about EPA denying petitions to reconsider EPA's endangerment finding on greenhouse gases (please https://www.epa.gov/climate-change/2022-denial-petitions-

reconsideration-rulemaking-or-reopening-endangerment-and-cause).The decision came after EPA had withdrawn earlier denials of the petitions to reconsider EPA's endangerment finding on greenhouse gases. EPA also sent letters to the petitioners about the decision. I will quote from and link to these records in my story.

I have a few questions about this, which are:

-- EPA under the Trump administration initially denied the petitions to reconsider EPA's endangerment finding on greenhouse gases on Jan. 19, 2021. The denials were then withdrawn months later by EPA under the Biden administration. Now, EPA under the Biden administration has again denied the petitions on April 21, 2022 (please see https://www.epa.gov/system/files/documents/2022-04/cei_letter.pdf).

Why did EPA initially withdraw the denials, considering it has now again arrived at the same conclusion, which is to deny the petitions? Why not let EPA's initial denials stand when they were first issued more than a year ago in 2021?

-- At least one of the groups whose petition to reconsider EPA's endangerment finding on greenhouse gases was denied has said EPA's response allows them to "move forward with further litigation on the underlying issues." (please see https://www.texaspolicy.com/press/tppf-the-epa-does-not-have-unlimited-power)

Does EPA believe its decision to deny these petitions to reconsider EPA's endangerment finding on greenhouse gases will withstand legal scrutiny? Why or why not?

-- EPA under the Trump administration also initially denied other petitions dealing with climate change policy on Jan. 19, 2021, including one by the New York University Law Institute for Policy Integrity to have EPA regulate greenhouse gas emissions under Section 115 of the Clean Air Act; one by Food & Water Watch to have EPA regulate greenhouse gas emissions as a Hazardous Air Pollutant; and one by the Center for Biological and 350.org to have EPA set National Ambient Air Quality Standards for greenhouse gas emissions. The denials were then withdrawn months later by EPA under the Biden administration. Those groups later told me EPA had not communicated with them since EPA withdrew the denials of their petitions (please see https://www.eenews.net/articles/inside-the-trump-epas-final-moves-on-climate/).

What is the status of these denials? Has EPA responded to any of these groups about their petitions since EPA withdrew the denials of their petitions? If so, please share those responses with me.

Please get back to me as soon as possible. My deadline is noon ET Thursday, May 12, but the sooner you get back to me, the more it helps my reporting. Also, since I'm working from home, please email me here or call my cell phone at 202-247-7844. Thank you for your help and stay safe, stay healthy!

Kevin Bogardus

E&E News Reporter

kbogardus@eenews.net

202-446-0401 (o)

202-247-7844 (c)

202-737-5299 (f)

Follow me @KevinBogardus

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1000 Wilson Boulevard, 8th Floor, Arlington, VA 22209
www.eenews.net
Greenwire, ClimateWire, EnergyWire, E&E Daily, E&ENews PM

Message

From: Sasser, Erika [Sasser.Erika@epa.gov]
Sent: 1/12/2021 6:35:49 PM
To: Orlin, David [Orlin.David@epa.gov]
CC: Wesson, Karen [Wesson.Karen@epa.gov]
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Thanks. I had just heard that OAR referred the questions to OAP instead of OAQPS, but of course we are happy to assist as needed. Mike Koerber just called me also; we will stay tuned.

From: Orlin, David <Orlin.David@epa.gov>
Sent: Tuesday, January 12, 2021 1:31 PM
To: Sasser, Erika <Sasser.Erika@epa.gov>
Subject: Fwd: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Fyi

David Orlin
(202) 564-1222

Begin forwarded message:

From: "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>
Date: January 12, 2021 at 1:27:16 PM EST
To: "Tsirigotis, Peter" <Tsirigotis.Peter@epa.gov>, "Grundler, Christopher" <grundler.christopher@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>
Cc: "Gunning, Paul" <Gunning.Paul@epa.gov>, "Birnbaum, Rona" <Birnbaum.Rona@epa.gov>, "Seidman, Emily" <seidman.emily@epa.gov>, "Kocchi, Suzanne" <Kocchi.Suzanne@epa.gov>, "Koerber, Mike" <Koerber.Mike@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Yes, I'll set up something asap. I imagine it will be hard to get everyone but will do my best.

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Sent: Tuesday, January 12, 2021 1:14 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Gunning, Paul <Gunning.Paul@epa.gov>; Birnbaum, Rona <Birnbaum.Rona@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Kocchi, Suzanne <Kocchi.Suzanne@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Hi Chris. I am generally aware of these petitions Ex. 5 AC/AWP/DP
Ex. 5 AC/AWP/DP
Gautam, can you guys set up something?

From: Grundler, Christopher <grundler.christopher@epa.gov>
Sent: Tuesday, January 12, 2021 1:02 PM
To: Orlin, David <Orlin.David@epa.gov>

Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Gunning, Paul <Gunning.Paul@epa.gov>; Birnbaum, Rona <Birnbaum.Rona@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Kocchi, Suzanne <Kocchi.Suzanne@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Hi David:
Long time no see/hear! Hope you and the family are well.

Ex. 5 AC/AWP/DP

Peter, can you weigh in on what this is about, and what it takes to respond? Are your folks involved? What is our normal process?

Thanks,

Chris

Christopher Grundler, Director
Office of Atmospheric Programs
U.S. Environmental Protection Agency
202.343.9140 (o)
734.645.5221 (m)

From: Orlin, David <Orlin.David@epa.gov>
Sent: Tuesday, January 12, 2021 12:21 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Gunning, Paul <Gunning.Paul@epa.gov>; Birnbaum, Rona <Birnbaum.Rona@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Sorry– Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

thanks

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Orlin, David
Sent: Tuesday, January 12, 2021 11:05 AM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Gunning, Paul <Gunning.Paul@epa.gov>; Birnbaum, Rona <Birnbaum.Rona@epa.gov>
Subject: draft denial of pending petitions to regulate GHG under CAA 108/112/115

Chris,

Ex. 5 AC/AWP/DP

I have attached copies of the petitions being responded to, as well as Adam's current draft Ex. 5 AC/AWP/DP Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Thanks very much for any assistance OAP may be able to provide on this for ARLO to incorporate by noon tomorrow, and please feel free to have anyone contact me if it would be helpful to discuss further.

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Message

From: Martinich, Jeremy [Martinich.Jeremy@epa.gov]
Sent: 5/12/2022 1:07:29 PM
To: Williams, Melina [Williams.Melina@epa.gov]; Sarofim, Marcus [Sarofim.Marcus@epa.gov]
CC: Hartin, Corinne [Hartin.Corinne@epa.gov]; Orlin, David [Orlin.David@epa.gov]
Subject: RE: Quick review and input needed

Great, thank you! I like the text in brackets, and will pass that along. Thanks for the quick responses, everyone!

Jeremy

From: Williams, Melina <Williams.Melina@epa.gov>
Sent: Thursday, May 12, 2022 9:04 AM
To: Sarofim, Marcus <Sarofim.Marcus@epa.gov>; Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Cc: Hartin, Corinne <Hartin.Corinne@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: RE: Quick review and input needed

Good morning, all,

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

Confidential communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Williams, Melina
Sent: Wednesday, May 11, 2022 4:51 PM
To: Sarofim, Marcus <Sarofim.Marcus@epa.gov>; Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Cc: Hartin, Corinne <Hartin.Corinne@epa.gov>
Subject: RE: Quick review and input needed

Thanks, Marcus. Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

Confidential communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Sent: Wednesday, May 11, 2022 4:26 PM
To: Martinich, Jeremy <Martinich.Jeremy@epa.gov>; Williams, Melina <Williams.Melina@epa.gov>
Cc: Hartin, Corinne <Hartin.Corinne@epa.gov>
Subject: RE: Quick review and input needed

See below for my proposed changes to the first answer, highlighted (including a bracketed comment that I'm not sure about), and then a quick draft of a response to the second question (but could definitely use a lawyer's review)

-Marcus

-- EPA under the Trump administration initially denied the petitions to reconsider EPA's endangerment finding on greenhouse gases on Jan. 19, 2021. The denials were then withdrawn months later by EPA under the Biden administration. Now, EPA under the Biden administration has again denied the petitions on April 21, 2022 (please see https://www.epa.gov/system/files/documents/2022-04/cei_letter.pdf).
Why did EPA initially withdraw the denials, considering it has now again arrived at the same conclusion, which is to deny the petitions? Why not let EPA's initial denials stand when they were first issued more than a year ago in 2021?

Ex. 5 Attorney Client (AC)

-- At least one of the groups whose petition to reconsider EPA's endangerment finding on greenhouse gases was denied has said EPA's response allows them to "move forward with further litigation on the underlying issues." (please see https://www.texaspolicy.com/press/tppf-the-epa-does-not-have-unlimited-power)
Does EPA believe its decision to deny these petitions to reconsider EPA's endangerment finding on greenhouse gases will withstand legal scrutiny? Why or why not?

Ex. 5 Attorney Client (AC)

From: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Sent: Wednesday, May 11, 2022 4:10 PM
To: Sarofim, Marcus <Sarofim.Marcus@epa.gov>; Williams, Melina <Williams.Melina@epa.gov>
Cc: Hartin, Corinne <Hartin.Corinne@epa.gov>
Subject: Quick review and input needed

Hi Marcus and Melina,

We received some questions on the recent Endg petitions denial. I've taken a stab at the first answer, please edit as you see fit. Melina, do you have thoughts on an answer for the second question?

Thanks,
Jeremy

-- EPA under the Trump administration initially denied the petitions to reconsider EPA's endangerment finding on greenhouse gases on Jan. 19, 2021. The denials were then withdrawn months later by EPA under the Biden administration. Now, EPA under the Biden administration has again denied the petitions on April 21, 2022 (please see https://www.epa.gov/system/files/documents/2022-04/cei_letter.pdf).
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Ex. 5 Attorney Client (AC)

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Does EPA believe its decision to deny these petitions to reconsider EPA's endangerment finding on greenhouse gases will withstand legal scrutiny? Why or why not?

From: DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Sent: Wednesday, May 11, 2022 2:58 PM
To: Bremer, Kristen <Bremer.Kristen@epa.gov>; Ashley, Jackie <Ashley.Jackie@epa.gov>; Schmeltz, Rachel <Schmeltz.Rachel@epa.gov>; Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: DDL tomorrow 11AM EPA's greenhouse gas endangerment finding

Hi all,
We have some questions from E&E regarding the recent denial of petitions to reconsider the endangerment finding. CCD can you review below and advise on a response? Much of this may be covered in the comms materials in hand, but let me know what you think.

OAQPS **Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

The reporter has asked for a response by noon tomorrow. Joe and Tomás may want to review, so if you all can weigh in by COB or NLT 11AM tomorrow, that would be great.

Thanks,
Isabel

From: Carroll, Timothy <Carroll.Timothy@epa.gov>
Sent: Wednesday, May 11, 2022 2:51 PM
To: Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Cc: Conger, Nick <Conger.Nick@epa.gov>
Subject: FW: EPA's greenhouse gas endangerment finding

Hi there – see below from E&E on the recent denial of the GHG endangerment finding reconsideration. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thanks!

Tim Carroll (he/him)
Deputy Press Secretary
Environmental Protection Agency
202-384-7510 (mobile)
Twitter: @EPAPressOffice

From: Kevin Bogardus <kbogardus@eenews.net>
Sent: Wednesday, May 11, 2022 2:24 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; EPA Press Office <Press@epa.gov>
Subject: EPA's greenhouse gas endangerment finding

Hey everyone,

It's Kevin Bogardus with E&E News. I hope all is well.

I'm working on a story about EPA denying petitions to reconsider EPA's endangerment finding on greenhouse gases (please https://www.epa.gov/climate-change/2022-denial-petitions-reconsideration-rulemaking-or-reopening-endangerment-and-cause).The decision came after EPA had withdrawn earlier denials of the petitions to reconsider EPA's endangerment finding on greenhouse gases. EPA also sent letters to the petitioners about the decision. I will quote from and link to these records in my story.

I have a few questions about this, which are:

-- EPA under the Trump administration initially denied the petitions to reconsider EPA's endangerment finding on greenhouse gases on Jan. 19, 2021. The denials were then withdrawn months later by EPA under the Biden administration. Now, EPA under the Biden administration has again denied the petitions on April 21, 2022 (please see https://www.epa.gov/system/files/documents/2022-04/cei_letter.pdf).

Why did EPA initially withdraw the denials, considering it has now again arrived at the same conclusion, which is to deny the petitions? Why not let EPA's initial denials stand when they were first issued more than a year ago in 2021?

-- At least one of the groups whose petition to reconsider EPA's endangerment finding on greenhouse gases was denied has said EPA's response allows them to "move forward with further litigation on the underlying issues." (please see https://www.texaspolicy.com/press/tppf-the-epa-does-not-have-unlimited-power)

Does EPA believe its decision to deny these petitions to reconsider EPA's endangerment finding on greenhouse gases will withstand legal scrutiny? Why or why not?

-- EPA under the Trump administration also initially denied other petitions dealing with climate change policy on Jan. 19, 2021, including one by the New York University Law Institute for Policy Integrity to have EPA regulate greenhouse gas emissions under Section 115 of the Clean Air Act; one by Food &

Water Watch to have EPA regulate greenhouse gas emissions as a Hazardous Air Pollutant; and one by the Center for Biological and 350.org to have EPA set National Ambient Air Quality Standards for greenhouse gas emissions. The denials were then withdrawn months later by EPA under the Biden administration. Those groups later told me EPA had not communicated with them since EPA withdrew the denials of their petitions (please see https://www.eenews.net/articles/inside-the-trump-epas-final-moves-on-climate/).

What is the status of these denials? Has EPA responded to any of these groups about their petitions since EPA withdrew the denials of their petitions? If so, please share those responses with me.

Please get back to me as soon as possible. My deadline is noon ET Thursday, May 12, but the sooner you get back to me, the more it helps my reporting. Also, since I'm working from home, please email me here or call my cell phone at 202-247-7844. Thank you for your help and stay safe, stay healthy!

Kevin Bogardus

E&E News Reporter

kbogardus@eenews.net

202-446-0401 (o)

202-247-7844 (c)

202-737-5299 (f)

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Greenwire, ClimateWire, EnergyWire, E&E Daily, E&ENews PM

Message

From: Wesson, Karen [Wesson.Karen@epa.gov]
Sent: 9/1/2022 5:26:44 PM
To: Orlin, David [Orlin.David@epa.gov]
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

Thanks, David. I think this write-up summarizes things nicely. (I learned several things reading this that I didn't realize--i.e. a number of petitions/requests). Thank you!

From: Orlin, David <Orlin.David@epa.gov>
Sent: Tuesday, August 30, 2022 6:09 PM
To: Wesson, Karen <Wesson.Karen@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

Is this helpful?

David Orlin
US EPA, Office of General Counsel
(202) 564-1222

From: Wesson, Karen <Wesson.Karen@epa.gov>
Sent: Tuesday, August 30, 2022 4:09 PM
To: Orlin, David <Orlin.David@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

Do you have time…? If so, that would be great!

From: Orlin, David <Orlin.David@epa.gov>
Sent: Tuesday, August 30, 2022 4:01 PM
To: Wesson, Karen <Wesson.Karen@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

Do you want me to try and take a crack at something?

David Orlin
US EPA, Office of General Counsel
(202) 564-1222

From: Wesson, Karen <Wesson.Karen@epa.gov>
Sent: Tuesday, August 30, 2022 3:59 PM
To: Williams, Melina <Williams.Melina@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

Ex. 5 Attorney Client (AC)

From: Williams, Melina <Williams.Melina@epa.gov>
Sent: Tuesday, August 30, 2022 2:23 PM
To: Orlin, David <Orlin.David@epa.gov>; Wesson, Karen <Wesson.Karen@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

Ex. 5 Attorney Client (AC)

Environmentalists Bolster Years-Old Petition For EPA To Set CO2 NAAQS

April 14, 2021

Environmentalists are supplementing their years-old petition for EPA to set a national ambient air quality standard (NAAQS) for carbon dioxide, submitting additional data on the science that has evolved since their original 2009 petition to the agency that the Trump EPA rejected but the Biden administration reinstated.

The Center for Biological Diversity (CBD) and 350.org sent an April 14 letter to EPA Administrator Michael Regan offering new scientific information in support of their petition to set a CO2 NAAQS.

The groups filed the supplement after the agency March 4 withdrew the Trump administration's Jan. 19 petition denial, an action that broadened the agency's statutory options for regulating greenhouse gases under the Clean Air Act as officials reconsider their approaches for cutting GHGs from power plants and other sectors."We are pleased that the [EPA] is 'further consider[ing] the important issues raised' in the 2009 Petition," the groups' letter says, citing the petition's reinstatement by then-acting Administrator Jane Nishada.

"In light of this fact and that the 2009 Petition has now been pending for more than a decade, we write to provide some additional information regarding developments in climate research and policy since 2009, and address some of the concerns raised in the Petition denial," the letter says.

New information includes that the warming potential of certain greenhouse gases, such as methane, "has been revised upwards;" information on "additional and more extreme dangers of climate change to public health and the planet has been published; and limiting warming to 1.5 [degrees Celsius] with little or no overshoot requires a more rapid phase out of [CO2] emissions than would have been necessary had reductions begun sooner."

Also, research into nationwide carbon budgets and climate policy developments since 2009 "provide an even clearer pathway to establishing a national [GHG] pollution cap than was evident in 2009, while case law helps indicate how these emissions reductions can be apportioned among the states," the letter notes.

EPA declined to comment on the new letter.

The groups also renew their arguments that EPA is obligated to regulate CO2 under the NAAQS program, saying that listing CO2 and other GHGs as a criteria pollutant "remains mandatory under the Clean Air Act. It is imperative that the United States now take bold actions to address climate change" and the NAAQS program is the air law's "most far-reaching and important tool for doing so."

Free-market and other critics of climate rules have long opposed regulation of CO2 as a criteria pollutant, though Brittany Bolen, the Trump EPA's policy chief and senior counsel, said recently that proceeding with such an approach is unlikely to move quickly.

NAAQS reviews are rigorous and require multiple steps, especially because the Biden EPA is also expected to revive the role of the Clean Air Scientific Advisory Committee that offers input on the development of such standards, adding another layer of review to the process, which already "takes years," Bolen told *Inside EPA* in a recent interview.

"I think for the time that they're there . . . this is not going to be accomplished in a first term. I believe this is more of a leverage point, exploring next steps."

National Framework

But the environmental groups argue that listing CO2 as a criteria pollutant would provide a national framework for addressing the most pervasive forms of emissions from numerous sources and is "best suited to the regulation of" GHGs, they add in the letter to Regan.

The NAAQS program also activates the "widest possible approach to tackling" GHGs, "and offers states maximum flexibility to choose the measures, across multiple sectors, which will allow each state to achieve its emission reduction requirements."

The groups stress that reductions of other criteria pollutants under sections 108-110 of the air law, such as ozone and particulate matter, "have provided large economic benefits and have been achieved during periods of rapid economic growth."

Finally, the letter endorses simultaneous GHG reduction programs under other sections of the air law -- such as 115 addressing foreign emissions, 111 for stationary sources, and 202, 213 and 231 for mobile sources. They say these rules "have an important role to play and will complement a national pollution standard. But incremental approaches such as the Clean Power Plan [power plant GHG rule under section 111] have not delivered the urgently needed pollution reductions. Seeing a national science-based standard is critical to protecting the health and welfare of the nation."

In an accompanying press release the groups say they reinforced their original petition in response to EPA reopening consideration of it, pointing out that the urgency of the climate crisis has grown exponentially in the last 12 years.

"We have such an abundance of evidence of the dangers [GHG] pollution poses to human health and survival," Maya Golden-Krasner, director of CBD's Climate Law Institute, said. "Every flood, fire and superstorm reminds us how desperately we need bold EPA action, right now."

Natalia Mebane, 350.org's policy director, added, "The Supreme Court decided years ago that the executive branch can regulate carbon as an air pollutant. The EPA has a duty to enforce the laws that protect our air, water and climate. The Biden administration has already taken great steps to reduce our carbon emissions, and we call on them to use their full authority to combat the climate crisis."

Last month, Golden-Krasner told *Inside EPA* that EPA was giving "serious consideration" to setting a secondary CO2 NAAQS to protect the environment, rather than a primary one to protect human health, in a bid to have the rule survive review by a conservative high court. She said while the group prefers it set both, "there may be some aspects" to a secondary-only approach "that makes sense" because it would offer more flexibility on compliance timelines.

But not all environmentalists are on board with the idea of a CO2 NAAQS, with groups such as the Natural Resources Defense Council arguing that the best approach is for EPA to issue a new round of section 111 rules, known as new source performance standards.

Meanwhile, some conservatives including the *Wall Street Journal* editorial page are warning that EPA's plan to tighten the ozone NAAQS could be a "backdoor" way to regulate CO2 citing work by acting air chief Joe Goffman while at Harvard University in 2019 with Democratic state attorneys general (AGs) to pitch this option. On Jan. 19, 16 Democratic AGs filed suit over the Trump EPA's decision to retain the ozone NAAQS. -- *Dawn Reeves* (dreeves@iwpnews.com)

Melina Williams (she/her) | US EPA | Office of General Counsel | Air & Radiation Law Office | (202) 564-3406

The contents of this e-mail and any attachments to it may contain deliberative-process, attorney-client, attorney work product, or otherwise privileged material. Do not distribute outside of EPA or DOJ.

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

Confidential communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Orlin, David <Orlin.David@epa.gov>
Sent: Tuesday, August 30, 2022 12:18 PM
To: Wesson, Karen <Wesson.Karen@epa.gov>
Cc: Williams, Melina <Williams.Melina@epa.gov>
Subject: FW: EPA reverses last-minute Trump denial of greenhouse gas petitions

Ex. 5 Attorney Client (AC)

David Orlin
US EPA, Office of General Counsel
(202) 564-1222

EPA reverses last-minute Trump denial of greenhouse gas petitions

By Alex Guillén

03/05/2021 05:23 PM EST

The EPA this week reversed the last-second denial by the Trump administration of three long-pending petitions seeking greater regulation of greenhouse gases under the Clean Air Act.

The move does not mean the EPA will grant the petitions, but does keep them alive for potential future action as the Biden administration considers more aggressive climate regulations.

Background: The Center for Biological Diversity in 2009 petitioned the EPA to regulate greenhouse gases under the National Ambient Air Quality Standards, the same program that sets limits for pollutants such as particulate matter and ground-level ozone. New York University's Institute for Policy Integrity in 2013 petitioned the EPA to regulate greenhouse gases under Section 115 of the Clean Air Act, a little-used provision that deals with international pollution. And Food & Water Watch in 2019 petitioned the EPA to address greenhouse gases under Section 112, the hazardous air pollutant program.

All three petitions had been pending without answer for years as the Obama administration and the Trump administration focused on regulating stationary sources via Section 111, first through the Clean Power Plan and later the Affordable Clean Energy rule.

Wheeler denials: On his last full day in office, then-Administrator Andrew Wheeler denied all three petitions in a previously unreported action. Those parts of the Clean Air Act are not "well suited" to address the diffuse, global nature of greenhouse gas pollution, Wheeler wrote.

"Congress has the power to craft a comprehensive solution to the problem of greenhouse gas emissions, but such a solution will necessarily involve equitable participation by the other nations that emit significant amounts of GHG," Wheeler wrote at the time. "EPA cannot create such a solution unilaterally, and it has not been given the statutory tools that would be necessary."

Coincidentally, Wheeler's denial came on the same day that the D.C. Circuit Court of Appeals struck down his ACE rule for not fully considering the range of regulatory options under Section 111.

The reversal: The Biden EPA on Thursday withdrew its denial of the petitions, sending similar letters to all three organizations.

"I am withdrawing the denial of your petition, as the agency did not fully and fairly assess the issues raised by the petition," acting Administrator Jane Nishida wrote to CBD. "The EPA intends to further consider the important issues raised by your petition before responding."

The reversal does not necessarily mean the EPA will grant any of the petitions, but Maya Golden-Krasner, deputy director of CBD's Climate Law Institute, said she is hopeful that it indicates the EPA will take the petitions seriously.

"The climate crisis is now much more urgent even than eight years ago, so we think really now this is the best path forward," she said.

The EPA did not immediately return questions about the withdrawals.

Context: All three of the petitions' policy proposals are more legally fraught and logistically complicated than the Section 111 strategy. For example, under a carbon dioxide NAAQS, states would have to craft a plan to reduce emissions within their borders, even though CO2 pollution settles roughly evenly throughout the atmosphere. Section 115 has never been significantly tested, and Section 112 has only been used for pollutants that are direct threats to human health, not pollutants like carbon dioxide that are primarily indirect threats.

But some environmentalists have advocated for such strategies because they offer more comprehensive, economy-wide approaches to reducing greenhouse gases than Section 111. That provision requires separate regulations for each individual industry — for example, power plants, oil and gas production, petrochemicals, cement production, and so on. Each sector would require its own rulemaking taking multiple years, and each is responsible for diminishing portions of U.S. emissions.

To view online:
https://subscriber.politicopro.com/article/2021/03/epa-reverses-last-minute-trump-denial-of-greenhouse-gas-petitions-3987432

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This email was sent to clayton.margie@epa.gov by:
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1000 Wilson Blvd.
Arlington, VA 22209
USA

Message

From: Williams, Melina [Williams.Melina@epa.gov]
Sent: 4/15/2019 2:02:01 PM
To: Orlin, David [Orlin.David@epa.gov]; Sasser, Erika [Sasser.Erika@epa.gov]
Subject: RE: CAA Rulemaking Petition for EPA's Office of Air and Radiation

David's memory matches mine, and I don't have anything more about the CBD petition.

Melina Williams | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3406 | fax: (202) 564-5603

The contents of this e-mail and any attachments to it may contain deliberative-process, attorney-client, attorney work product, or otherwise privileged material. Do not distribute outside of EPA or DOJ.

From: Orlin, David
Sent: Friday, April 12, 2019 12:49 PM
To: Sasser, Erika <Sasser.Erika@epa.gov>; Williams, Melina <Williams.Melina@epa.gov>
Subject: RE: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Ex. 5 AC/DP

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Sasser, Erika
Sent: Friday, April 12, 2019 9:52 AM
To: Williams, Melina <Williams.Melina@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Ex. 5 AC/DP

From: Koerber, Mike
Sent: Monday, April 08, 2019 8:19 AM
To: Lassiter, Penny <Lassiter.Penny@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>; Wayland, Richard <Wayland.Richard@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Husk, Martin <Husk.Martin@epa.gov>; Ward, Hillary <Ward.Hillary@epa.gov>; Mathias, Scott <Mathias.Scott@epa.gov>
Subject: Fwd: CAA Rulemaking Petition for EPA's Office of Air and Radiation

FYI

Sent from my iPhone

Begin forwarded message:

From: "Lewis, Josh" <Lewis.Josh@epa.gov>
Date: April 5, 2019 at 4:26:44 PM EDT

To: "Koerber, Mike" <Koerber.Mike@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>
Subject: FW: CAA Rulemaking Petition for EPA's Office of Air and Radiation

This came in to our office today. Elliott: can you remind me if OGC has a preference on how this is logged/in and tracked? Mike, appreciate any thoughts from OAQPS too. Thanks.

From: Adam Carlesco <acarlesco@fwwatch.org>
Sent: Wednesday, April 3, 2019 4:01 PM
To: Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Subject: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Ms. Raksonik,

Thank you for the guidance on how to formally submit this proposed rulemaking petition. I have attached our petition and look forward to the Office of Air and Radiation's review of this proposal. Would the Assistant Administrator like a hardcopy mailed to the EPA offices?

Sincerely,
Adam Carlesco

Adam Carlesco
Staff Attorney, Climate & Energy
Food & Water Watch
Office: 202.683.4925
acarlesco@fwwatch.org
1616 P Street NW, Suite 300
Washington, DC 20036

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Message

From: Williams, Melina [Williams.Melina@epa.gov]
Sent: 5/12/2022 12:44:36 PM
To: Orlin, David [Orlin.David@epa.gov]
Subject: RE: Quick review and input needed

Ok, thanks!

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

Confidential communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Orlin, David <Orlin.David@epa.gov>
Sent: Thursday, May 12, 2022 8:39 AM
To: Williams, Melina <Williams.Melina@epa.gov>
Subject: RE: Quick review and input needed

Thanks— Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

David Orlin
US EPA, Office of General Counsel
(202) 564-1222

From: Williams, Melina <Williams.Melina@epa.gov>
Sent: Wednesday, May 11, 2022 6:19 PM
To: Orlin, David <Orlin.David@epa.gov>
Subject: FW: Quick review and input needed

FYI, this is where this currently stands.

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

Confidential communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Sent: Wednesday, May 11, 2022 4:52 PM
To: Williams, Melina <Williams.Melina@epa.gov>; Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Cc: Hartin, Corinne <Hartin.Corinne@epa.gov>
Subject: RE: Quick review and input needed

As usual, I defer to Melina's edits. They make sense to me.

From: Williams, Melina <Williams.Melina@epa.gov>
Sent: Wednesday, May 11, 2022 4:51 PM

To: Sarofim, Marcus <Sarofim.Marcus@epa.gov>; Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Cc: Hartin, Corinne <Hartin.Corinne@epa.gov>
Subject: RE: Quick review and input needed

Thanks, Marcus Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

Confidential communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Sarofim, Marcus <Sarofim.Marcus@epa.gov>
Sent: Wednesday, May 11, 2022 4:26 PM
To: Martinich, Jeremy <Martinich.Jeremy@epa.gov>; Williams, Melina <Williams.Melina@epa.gov>
Cc: Hartin, Corinne <Hartin.Corinne@epa.gov>
Subject: RE: Quick review and input needed

See below for my proposed changes to the first answer, highlighted (including a bracketed comment that I'm not sure about), and then a quick draft of a response to the second question (but could definitely use a lawyer's review)

-Marcus

-- EPA under the Trump administration initially denied the petitions to reconsider EPA's endangerment finding on greenhouse gases on Jan. 19, 2021. The denials were then withdrawn months later by EPA under the Biden administration. Now, EPA under the Biden administration has again denied the petitions on April 21, 2022 (please see https://www.epa.gov/system/files/documents/2022-04/cei_letter.pdf).
Why did EPA initially withdraw the denials, considering it has now again arrived at the same conclusion, which is to deny the petitions? Why not let EPA's initial denials stand when they were first issued more than a year ago in 2021?

Ex. 5 Attorney Client (AC)

-- At least one of the groups whose petition to reconsider EPA's endangerment finding on greenhouse gases was denied has said EPA's response allows them to "move forward with further litigation on the underlying issues." (please see https://www.texaspolicy.com/press/tppf-the-epa-does-not-have-unlimited-power)
Does EPA believe its decision to deny these petitions to reconsider EPA's endangerment finding on greenhouse gases will withstand legal scrutiny? Why or why not?

Ex. 5 Attorney Client (AC)

From: Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Sent: Wednesday, May 11, 2022 4:10 PM
To: Sarofim, Marcus <Sarofim.Marcus@epa.gov>; Williams, Melina <Williams.Melina@epa.gov>
Cc: Hartin, Corinne <Hartin.Corinne@epa.gov>
Subject: Quick review and input needed

Hi Marcus and Melina,

We received some questions on the recent Endg petitions denial. I've taken a stab at the first answer, please edit as you see fit. Melina, do you have thoughts on an answer for the second question?

Thanks,
Jeremy

-- EPA under the Trump administration initially denied the petitions to reconsider EPA's endangerment finding on greenhouse gases on Jan. 19, 2021. The denials were then withdrawn months later by EPA under the Biden administration. Now, EPA under the Biden administration has again denied the petitions on April 21, 2022 (please see https://www.epa.gov/system/files/documents/2022-04/cei_letter.pdf).
Why did EPA initially withdraw the denials, considering it has now again arrived at the same conclusion, which is to deny the petitions? Why not let EPA's initial denials stand when they were first issued more than a year ago in 2021?

Ex. 5 Attorney Client (AC)

-- At least one of the groups whose petition to reconsider EPA's endangerment finding on greenhouse gases was denied has said EPA's response allows them to "move forward with further litigation on the underlying issues." (please see https://www.texaspolicy.com/press/tppf-the-epa-does-not-have-unlimited-power)
Does EPA believe its decision to deny these petitions to reconsider EPA's endangerment finding on greenhouse gases will withstand legal scrutiny? Why or why not?

From: DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Sent: Wednesday, May 11, 2022 2:58 PM
To: Bremer, Kristen <Bremer.Kristen@epa.gov>; Ashley, Jackie <Ashley.Jackie@epa.gov>; Schmeltz, Rachel <Schmeltz.Rachel@epa.gov>; Martinich, Jeremy <Martinich.Jeremy@epa.gov>
Subject: DDL tomorrow 11AM EPA's greenhouse gas endangerment finding

Hi all,
We have some questions from E&E regarding the recent denial of petitions to reconsider the endangerment finding. CCD can you review below and advise on a response? Much of this may be covered in the comms materials in hand, but let me know what you think.

OAQPS – **Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

The reporter has asked for a response by noon tomorrow. Joe and Tomás may want to review, so if you all can weigh in by COB or NLT 11AM tomorrow, that would be great.

Thanks,
Isabel

From: Carroll, Timothy <Carroll.Timothy@epa.gov>
Sent: Wednesday, May 11, 2022 2:51 PM
To: Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>
Cc: Conger, Nick <Conger.Nick@epa.gov>
Subject: FW: EPA's greenhouse gas endangerment finding

Hi there – see below from E&E on the recent denial of the GHG endangerment finding reconsideration. Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thanks!

Tim Carroll (he/him)
Deputy Press Secretary
Environmental Protection Agency
202-384-7510 (mobile)
Twitter: @EPAPressOffice

From: Kevin Bogardus <kbogardus@eenews.net>
Sent: Wednesday, May 11, 2022 2:24 PM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Harney, Alethea <Harney.Alethea@epa.gov>; Carroll, Timothy <Carroll.Timothy@epa.gov>; EPA Press Office <Press@epa.gov>
Subject: EPA's greenhouse gas endangerment finding

Hey everyone,

It's Kevin Bogardus with E&E News. I hope all is well.

I'm working on a story about EPA denying petitions to reconsider EPA's endangerment finding on greenhouse gases (please https://www.epa.gov/climate-change/2022-denial-petitions-reconsideration-rulemaking-or-reopening-endangerment-and-cause).The decision came after EPA had withdrawn earlier denials of the petitions to reconsider EPA's endangerment finding on greenhouse gases. EPA also sent letters to the petitioners about the decision. I will quote from and link to these records in my story.

I have a few questions about this, which are:

-- EPA under the Trump administration initially denied the petitions to reconsider EPA's endangerment finding on greenhouse gases on Jan. 19, 2021. The denials were then withdrawn months later by EPA under the Biden administration. Now, EPA under the Biden administration has again denied the petitions on April 21, 2022 (please see https://www.epa.gov/system/files/documents/2022-04/cei_letter.pdf).

Why did EPA initially withdraw the denials, considering it has now again arrived at the same conclusion, which is to deny the petitions? Why not let EPA's initial denials stand when they were first issued more than a year ago in 2021?

-- At least one of the groups whose petition to reconsider EPA's endangerment finding on greenhouse gases was denied has said EPA's response allows them to "move forward with further litigation on the underlying issues." (please see https://www.texaspolicy.com/press/tppf-the-epa-does-not-have-unlimited-power)

Does EPA believe its decision to deny these petitions to reconsider EPA's endangerment finding on greenhouse gases will withstand legal scrutiny? Why or why not?

-- EPA under the Trump administration also initially denied other petitions dealing with climate change policy on Jan. 19, 2021, including one by the New York University Law Institute for Policy Integrity to have EPA regulate greenhouse gas emissions under Section 115 of the Clean Air Act; one by Food & Water Watch to have EPA regulate greenhouse gas emissions as a Hazardous Air Pollutant; and one by the Center for Biological and 350.org to have EPA set National Ambient Air Quality Standards for greenhouse gas emissions. The denials were then withdrawn months later by EPA under the Biden administration. Those groups later told me EPA had not communicated with them since EPA withdrew the denials of their petitions (please see https://www.eenews.net/articles/inside-the-trump-epas-final-moves-on-climate/).

What is the status of these denials? Has EPA responded to any of these groups about their petitions since EPA withdrew the denials of their petitions? If so, please share those responses with me.

Please get back to me as soon as possible. My deadline is noon ET Thursday, May 12, but the sooner you get back to me, the more it helps my reporting. Also, since I'm working from home, please email me here or call my cell phone at 202-247-7844. Thank you for your help and stay safe, stay healthy!

Kevin Bogardus

E&E News Reporter

kbogardus@eenews.net

202-446-0401 (o)

202-247-7844 (c)

202-737-5299 (f)

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Greenwire, ClimateWire, EnergyWire, E&E Daily, E&ENews PM

Message

From: Sasser, Erika [Sasser.Erika@epa.gov]
Sent: 2/22/2021 9:14:01 PM
To: Terry, Sara [Terry.Sara@epa.gov]
CC: Orlin, David [Orlin.David@epa.gov]
Subject: FW: current draft withdrawal
Attachments: GHG petition denial withdrawal 2-19.docx

OAQPS is good with this response (thanks David!). Ex. 5 AC/DP
Ex. 5 AC/DP
Ex. 5 AC/DP

From: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Sent: Monday, February 22, 2021 3:50 PM
To: Sasser, Erika <Sasser.Erika@epa.gov>
Subject: FW: current draft withdrawal

Im good with this erika Ex. 5 AC/DP

From: Orlin, David <Orlin.David@epa.gov>
Sent: Monday, February 22, 2021 3:18 PM
To: Sasser, Erika <Sasser.Erika@epa.gov>
Cc: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: RE: current draft withdrawal

Thanks, Erika. Here is a cleaned up version that I would consider final. Ex. 5 AC/DP
Ex. 5 AC/DP

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Sasser, Erika <Sasser.Erika@epa.gov>
Sent: Friday, February 19, 2021 9:59 AM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: RE: current draft withdrawal

Thanks, David. Here are some reactions from OAQPS. We like the short and sweet approach.

From: Orlin, David <Orlin.David@epa.gov>
Sent: Thursday, February 18, 2021 4:18 PM
To: Sasser, Erika <Sasser.Erika@epa.gov>
Subject: current draft withdrawal

David Orlin
U.S. EPA, Office of General Counsel

(202) 564-1222

This document has been withheld in its entirety under Ex. 5 - Attorney Client (ACP), Ex. 5 - Attorney Work Product (AWP), Ex. 5 - Deliberative Process (DPP).

Message

From: Sasser, Erika [Sasser.Erika@epa.gov]
Sent: 2/19/2021 2:58:46 PM
To: Orlin, David [Orlin.David@epa.gov]
CC: Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]
Subject: RE: current draft withdrawal
Attachments: GHG petition denial withdrawal 2-9 OAQPS.docx

Flag: Follow up

Thanks, David. Here are some reactions from OAQPS. We like the short and sweet approach.

From: Orlin, David <Orlin.David@epa.gov>
Sent: Thursday, February 18, 2021 4:18 PM
To: Sasser, Erika <Sasser.Erika@epa.gov>
Subject: current draft withdrawal

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

This document has been withheld in its entirety under Ex. 5 - Attorney Client (ACP), Ex. 5 - Attorney Work Product (AWP), Ex. 5 - Deliberative Process (DPP).

Message

From: Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]
Sent: 2/4/2021 4:25:12 PM
To: Orlin, David [Orlin.David@epa.gov]
CC: Talty, Mark [Talty.Mark@epa.gov]
Subject: RE: draft GHG petition denial
Attachments: GHG petition denial withdrawal.docx; image2021-01-19-105137.pdf; GHG petitions

Thanks David. I took a look and do not have comments. I'm also including Mark, who works on rulemaking petitions for CCILO and may also take a look at this.

Ryland (Shengzhi) Li
US EPA, Office of General Counsel
(202) 564-6787

From: Orlin, David <Orlin.David@epa.gov>
Sent: Thursday, February 4, 2021 9:17 AM
To: Li, Ryland (Shengzhi) <Li.Ryland@epa.gov>
Subject: draft GHG petition denial

Hi Ryland,

Thanks for your help thinking about the withdrawals of these petition denials. As you might remember there are two—one from enviros on regulating GHGs under various provisions and one from CEI on the endangerment finding. I've put together a first draft Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP Draft should be attached, along with the denial and the original petitions, in case those are helpful.

Thanks!

GHG petition denial withdrawal.docx

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

This document has been withheld in its entirety under Ex. 5 - Attorney Client (ACP), Ex. 5 - Attorney Work Product (AWP), Ex. 5 - Deliberative Process (DPP).

Message

From: Terry, Sara [Terry.Sara@epa.gov]
Sent: 3/4/2021 3:21:12 PM
To: Orlin, David [Orlin.David@epa.gov]
Subject: RE: Mailing petition letters

I'll check with Angela.

Thanks
Sara

From: Orlin, David <Orlin.David@epa.gov>
Sent: Thursday, March 04, 2021 10:20 AM
To: Terry, Sara <Terry.Sara@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: RE: Mailing petition letters

Thanks for the help and update, Sara! Do you know if they will also email a copy? I hate to ask, but given the USPS delays I figured I should.

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Terry, Sara <Terry.Sara@epa.gov>
Sent: Thursday, March 04, 2021 10:18 AM
To: Orlin, David <Orlin.David@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: FW: Mailing petition letters

FYI. They will be mailed directly from the OA.

Sara

From: Moritz, Brigette <Moritz.Brigette@epa.gov>
Sent: Thursday, March 04, 2021 10:13 AM
To: Terry, Sara <Terry.Sara@epa.gov>
Cc: Noonan, Jenny <Noonan.Jenny@epa.gov>; Faulkner, Martha <Faulkner.Martha@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Palmer, Angela.D <Palmer.Angela.D@epa.gov>; Hackel, Angela <Hackel.Angela@epa.gov>
Subject: Mailing petition letters

Hi Sara,
The letters for these petitions are in for signature. Do you want Angela Hackel in OA to mail them or do you want them to be returned to you in OAR for mailing?

OAR-21-000-2063 Petition by the Institute for Policy Integrity to regulate GHGs under the Clean Air Act.
OAR-21-000-2069 Petition by the Food and Water Watch to regulate GHGs under the Clean Air Act.
OAR-21-000-2056 Petition by the Center for Biodiversity and 350.org to regulate GHGs under the Clean Air Act

Thanks.

Brigette A Moritz
Writer/Editor
Office of the Executive Secretariat
(202) 564-5777

Message

From: Terry, Sara [Terry.Sara@epa.gov]
Sent: 3/4/2021 4:17:39 PM
To: Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Orlin, David [Orlin.David@epa.gov]; Koerber, Mike [Koerber.Mike@epa.gov]; Sasser, Erika [Sasser.Erika@epa.gov]
CC: Noonan, Jenny [Noonan.Jenny@epa.gov]
Subject: RE: Mailing petition letters

Hi Peter,

We can pull it from CMS.

Sara

From: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Sent: Thursday, March 04, 2021 11:16 AM
To: Terry, Sara <Terry.Sara@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>
Subject: RE: Mailing petition letters

Thanks Sara. Can the AO get us a signed copy?

From: Terry, Sara <Terry.Sara@epa.gov>
Sent: Thursday, March 04, 2021 10:18 AM
To: Orlin, David <Orlin.David@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: FW: Mailing petition letters

FYI. They will be mailed directly from the OA.

Sara

From: Moritz, Brigette <Moritz.Brigette@epa.gov>
Sent: Thursday, March 04, 2021 10:13 AM
To: Terry, Sara <Terry.Sara@epa.gov>
Cc: Noonan, Jenny <Noonan.Jenny@epa.gov>; Faulkner, Martha <Faulkner.Martha@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Palmer, Angela.D <Palmer.Angela.D@epa.gov>; Hackel, Angela <Hackel.Angela@epa.gov>
Subject: Mailing petition letters

Hi Sara,
The letters for these petitions are in for signature. Do you want Angela Hackel in OA to mail them or do you want them to be returned to you in OAR for mailing?

OAR-21-000-2063 Petition by the Institute for Policy Integrity to regulate GHGs under the Clean Air Act.
OAR-21-000-2069 Petition by the Food and Water Watch to regulate GHGs under the Clean Air Act.
OAR-21-000-2056 Petition by the Center for Biodiversity and 350.org to regulate GHGs under the Clean Air Act

Thanks.

Brigette A Moritz

Writer/Editor
Office of the Executive Secretariat
(202) 564-5777

Message

From: Terry, Sara [Terry.Sara@epa.gov]
Sent: 3/4/2021 4:26:56 PM
To: Orlin, David [Orlin.David@epa.gov]
Subject: RE: Mailing petition letters

No worries. I'll check CMS later this afternoon and pull the signed responses.

Sara

From: Orlin, David <Orlin.David@epa.gov>
Sent: Thursday, March 04, 2021 11:23 AM
To: Terry, Sara <Terry.Sara@epa.gov>
Subject: RE: Mailing petition letters

Thank you—sorry for all the questions/email! 😊

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Terry, Sara <Terry.Sara@epa.gov>
Sent: Thursday, March 04, 2021 11:18 AM
To: Orlin, David <Orlin.David@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>
Subject: FW: Mailing petition letters

This note from Angela implies they will be signed today.

Sara

From: Hackel, Angela <Hackel.Angela@epa.gov>
Sent: Thursday, March 04, 2021 10:21 AM
To: Terry, Sara <Terry.Sara@epa.gov>
Cc: Noonan, Jenny <Noonan.Jenny@epa.gov>; Moritz, Brigette <Moritz.Brigette@epa.gov>; Faulkner, Martha <Faulkner.Martha@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Palmer, Angela.D <Palmer.Angela.D@epa.gov>; Scott, Blanche <scott.blanche@epa.gov>; Morgan, Ruthw <morgan.ruthw@epa.gov>
Subject: Re: Mailing petition letters

Great, I will put them in the mail today after Acting Administrator Nishida signs them.

Thanks,

Angela

Angela Hackel
Senior Advisor
Office of the Administrator
Office of Public Affairs
U.S. Environmental Protection Agency
Office: 202.566.2977
Cell: 202.763.3945

On Mar 4, 2021, at 10:16 AM, Terry, Sara <Terry.Sara@epa.gov> wrote:

Agreed!

Thanks all,
Sara

From: Noonan, Jenny <Noonan.Jenny@epa.gov>
Sent: Thursday, March 04, 2021 10:16 AM
To: Moritz, Brigette <Moritz.Brigette@epa.gov>; Terry, Sara <Terry.Sara@epa.gov>
Cc: Faulkner, Martha <Faulkner.Martha@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Palmer, Angela.D <Palmer.Angela.D@epa.gov>; Hackel, Angela <Hackel.Angela@epa.gov>; Scott, Blanche <scott.blanche@epa.gov>
Subject: RE: Mailing petition letters

Hi Brigette –

I hope Sara won't mind me replying on behalf of our office. Yes! We would greatly appreciate Angela closing these out and mailing them.

Thanks,
Jenny

From: Moritz, Brigette <Moritz.Brigette@epa.gov>
Sent: Thursday, March 04, 2021 10:13 AM
To: Terry, Sara <Terry.Sara@epa.gov>
Cc: Noonan, Jenny <Noonan.Jenny@epa.gov>; Faulkner, Martha <Faulkner.Martha@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Palmer, Angela.D <Palmer.Angela.D@epa.gov>; Hackel, Angela <Hackel.Angela@epa.gov>
Subject: Mailing petition letters

Hi Sara,
The letters for these petitions are in for signature. Do you want Angela Hackel in OA to mail them or do you want them to be returned to you in OAR for mailing?

OAR-21-000-2063 Petition by the Institute for Policy Integrity to regulate GHGs under the Clean Air Act.
OAR-21-000-2069 Petition by the Food and Water Watch to regulate GHGs under the Clean Air Act.
OAR-21-000-2056 Petition by the Center for Biodiversity and 350.org to regulate GHGs under the Clean Air Act

Thanks.

Brigette A Moritz
Writer/Editor
Office of the Executive Secretariat
(202) 564-5777

Message

From: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Sent: 3/4/2021 4:27:37 PM
To: Orlin, David [Orlin.David@epa.gov]
Subject: RE: Mailing petition letters

Thanks.

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Orlin, David <Orlin.David@epa.gov>
Sent: Thursday, March 4, 2021 11:24 AM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: FW: Mailing petition letters

FYI—GHG 108/112/115 petition denial letter will be signed and mailed today, and I believe OAR will also be emailing copies.

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Terry, Sara <Terry.Sara@epa.gov>
Sent: Thursday, March 04, 2021 11:18 AM
To: Orlin, David <Orlin.David@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>
Subject: FW: Mailing petition letters

This note from Angela implies they will be signed today.

Sara

From: Hackel, Angela <Hackel.Angela@epa.gov>
Sent: Thursday, March 04, 2021 10:21 AM
To: Terry, Sara <Terry.Sara@epa.gov>
Cc: Noonan, Jenny <Noonan.Jenny@epa.gov>; Moritz, Brigette <Moritz.Brigette@epa.gov>; Faulkner, Martha <Faulkner.Martha@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Palmer, Angela.D <Palmer.Angela.D@epa.gov>; Scott, Blanche <scott.blanche@epa.gov>; Morgan, Ruthw <morgan.ruthw@epa.gov>
Subject: Re: Mailing petition letters

Great, I will put them in the mail today after Acting Administrator Nishida signs them.

Thanks,

Angela

Angela Hackel
Senior Advisor
Office of the Administrator
Office of Public Affairs

U.S. Environmental Protection Agency
Office: 202.566.2977
Cell: 202.763.3945

On Mar 4, 2021, at 10:16 AM, Terry, Sara <Terry.Sara@epa.gov> wrote:

Agreed!

Thanks all,
Sara

From: Noonan, Jenny <Noonan.Jenny@epa.gov>
Sent: Thursday, March 04, 2021 10:16 AM
To: Moritz, Brigette <Moritz.Brigette@epa.gov>; Terry, Sara <Terry.Sara@epa.gov>
Cc: Faulkner, Martha <Faulkner.Martha@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Palmer, Angela.D <Palmer.Angela.D@epa.gov>; Hackel, Angela <Hackel.Angela@epa.gov>; Scott, Blanche <scott.blanche@epa.gov>
Subject: RE: Mailing petition letters

Hi Brigette –

I hope Sara won't mind me replying on behalf of our office. Yes! We would greatly appreciate Angela closing these out and mailing them.

Thanks,
Jenny

From: Moritz, Brigette <Moritz.Brigette@epa.gov>
Sent: Thursday, March 04, 2021 10:13 AM
To: Terry, Sara <Terry.Sara@epa.gov>
Cc: Noonan, Jenny <Noonan.Jenny@epa.gov>; Faulkner, Martha <Faulkner.Martha@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Palmer, Angela.D <Palmer.Angela.D@epa.gov>; Hackel, Angela <Hackel.Angela@epa.gov>
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OAR-21-000-2069 Petition by the Food and Water Watch to regulate GHGs under the Clean Air Act.
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Thanks.

Brigette A Moritz
Writer/Editor
Office of the Executive Secretariat
(202) 564-5777

Message

From: Williams, Melina [Williams.Melina@epa.gov]
Sent: 3/8/2021 4:39:22 PM
To: Orlin, David [Orlin.David@epa.gov]
Subject: FW: EPA reverses last-minute Trump denial of greenhouse gas petitions

I think for the other withdrawal, we just sent Melissa an fyi copy when it went up to Joe. I was assuming we'd doing the same here, but let me know if we should do something else.

Melina Williams | US EPA | Office of General Counsel | Air & Radiation Law Office | Mail Code 2344A | phone: (202) 564-3406 | fax: (202) 564-5603

The contents of this e-mail and any attachments to it may contain deliberative-process, attorney-client, attorney work product, or otherwise privileged material. Do not distribute outside of EPA or DOJ.

From: Birnbaum, Rona <Birnbaum.Rona@epa.gov>
Sent: Monday, March 8, 2021 11:37 AM
To: Williams, Melina <Williams.Melina@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

Will do…it's now with Chris.
Thanks, Rona

From: Williams, Melina <Williams.Melina@epa.gov>
Sent: Monday, March 08, 2021 11:20 AM
To: Birnbaum, Rona <Birnbaum.Rona@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

Thanks, Rona. Let us know if you have any questions as this moves forward.

Melina Williams | US EPA | Office of General Counsel | Air & Radiation Law Office | Mail Code 2344A | phone: (202) 564-3406 | fax: (202) 564-5603

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From: Birnbaum, Rona <Birnbaum.Rona@epa.gov>
Sent: Saturday, March 6, 2021 5:22 PM
To: Williams, Melina <Williams.Melina@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: Fwd: EPA reverses last-minute Trump denial of greenhouse gas petitions

This is the NAAQS-related letter Ex. 5 AC/DP
Ex. 5 AC/DP

Sent from my iPhone

Begin forwarded message:

From: "Clayton, Margie" <Clayton.Margie@epa.gov>
Date: March 5, 2021 at 5:25:11 PM EST
To: "Birnbaum, Rona" <Birnbaum.Rona@epa.gov>, "Irving, Bill" <Irving.Bill@epa.gov>, "Franklin, Pamela" <Franklin.Pamela@epa.gov>, "Banks, Julius" <Banks.Julius@epa.gov>, "Fawcett, Allen" <Fawcett.Allen@epa.gov>,

"Gunning, Paul" <Gunning.Paul@epa.gov>, "Schmeltz, Rachel" <Schmeltz.Rachel@epa.gov>
Subject: FW: EPA reverses last-minute Trump denial of greenhouse gas petitions

---

From: POLITICO Pro Energy
Sent: Friday, March 5, 2021 5:24:38 PM (UTC-05:00) Eastern Time (US & Canada)
To: Clayton, Margie
Subject: EPA reverses last-minute Trump denial of greenhouse gas petitions

EPA reverses last-minute Trump denial of greenhouse gas petitions

By Alex Guillén

03/05/2021 05:23 PM EST

The EPA this week reversed the last-second denial by the Trump administration of three long-pending petitions seeking greater regulation of greenhouse gases under the Clean Air Act.

The move does not mean the EPA will grant the petitions, but does keep them alive for potential future action as the Biden administration considers more aggressive climate regulations.

Background: The Center for Biological Diversity in 2009 petitioned the EPA to regulate greenhouse gases under the National Ambient Air Quality Standards, the same program that sets limits for pollutants such as particulate matter and ground-level ozone. New York University's Institute for Policy Integrity in 2013 petitioned the EPA to regulate greenhouse gases under Section 115 of the Clean Air Act, a little-used provision that deals with international pollution. And Food & Water Watch in 2019 petitioned the EPA to address greenhouse gases under Section 112, the hazardous air pollutant program.

All three petitions had been pending without answer for years as the Obama administration and the Trump administration focused on regulating stationary sources via Section 111, first through the Clean Power Plan and later the Affordable Clean Energy rule.

Wheeler denials: On his last full day in office, then-Administrator Andrew Wheeler denied all three petitions in a previously unreported action. Those parts of the Clean Air Act are not "well suited" to address the diffuse, global nature of greenhouse gas pollution, Wheeler wrote.

"Congress has the power to craft a comprehensive solution to the problem of greenhouse gas emissions, but such a solution will necessarily involve equitable participation by the other nations that emit significant amounts of GHG," Wheeler wrote at the time. "EPA cannot create such a solution unilaterally, and it has not been given the statutory tools that would be necessary."

Coincidentally, Wheeler's denial came on the same day that the D.C. Circuit Court of Appeals struck down his ACE rule for not fully considering the range of regulatory options under Section 111.

The reversal: The Biden EPA on Thursday withdrew its denial of the petitions, sending similar letters to all three organizations.

"I am withdrawing the denial of your petition, as the agency did not fully and fairly assess the issues raised by the petition," acting Administrator Jane Nishida wrote to CBD. "The EPA intends to further consider the important issues raised by your petition before responding."

The reversal does not necessarily mean the EPA will grant any of the petitions, but Maya Golden-Krasner, deputy director of CBD's Climate Law Institute, said she is hopeful that it indicates the EPA will take the petitions seriously.

"The climate crisis is now much more urgent even than eight years ago, so we think really now this is the best path forward," she said.

The EPA did not immediately return questions about the withdrawals.

Context: All three of the petitions' policy proposals are more legally fraught and logistically complicated than the Section 111 strategy. For example, under a carbon dioxide NAAQS, states would have to craft a plan to reduce emissions within their borders, even though CO2 pollution settles roughly evenly throughout the atmosphere. Section 115 has never been significantly tested, and Section 112 has only been used for pollutants that are direct threats to human health, not pollutants like carbon dioxide that are primarily indirect threats.

But some environmentalists have advocated for such strategies because they offer more comprehensive, economy-wide approaches to reducing greenhouse gases than Section 111. That provision requires separate regulations for each individual industry — for example, power plants, oil and gas production, petrochemicals, cement production, and so on. Each sector would require its own rulemaking taking multiple years, and each is responsible for diminishing portions of U.S. emissions.

To view online:
https://subscriber.politicopro.com/article/2021/03/epa-reverses-last-minute-trump-denial-of-greenhouse-gas-petitions-3987432

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Arlington, VA 22209
USA

Message

From: Williams, Melina [Williams.Melina@epa.gov]
Sent: 3/9/2021 4:49:35 PM
To: Orlin, David [Orlin.David@epa.gov]
Subject: FW: EPA reverses last-minute Trump denial of greenhouse gas petitions
Attachments: draft withdrawal letter for denial of petition seeking regulation of GHGs under 109/112/115

This makes sense to me – does it seem okay to you?

I found what you sent Melissa for the other petition letter so would plan to do something similar here, unless we should use CTS or some other mechanism? I was a little late to staff lunch, but it sounded like the new system wasn't up and running yet?

Thanks,
Melina

Melina Williams | US EPA | Office of General Counsel | Air & Radiation Law Office | Mail Code 2344A | phone: (202) 564-3406 | fax: (202) 564-5603

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From: Birnbaum, Rona <Birnbaum.Rona@epa.gov>
Sent: Tuesday, March 9, 2021 11:10 AM
To: Orlin, David <Orlin.David@epa.gov>; Williams, Melina <Williams.Melina@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

Ok, thanks. Given that, it makes sense for you all to go ahead and share the draft with your front office so that when Joe gets it for review, it will already have had OGC review. Sound ok?

From: Orlin, David <Orlin.David@epa.gov>
Sent: Tuesday, March 09, 2021 10:59 AM
To: Birnbaum, Rona <Birnbaum.Rona@epa.gov>; Williams, Melina <Williams.Melina@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

OAQPS has those letters—they put them in the signature chain (in CMS?) (and it took a week or so for them to make their way from OAQPS to OA)

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Birnbaum, Rona <Birnbaum.Rona@epa.gov>
Sent: Tuesday, March 09, 2021 10:56 AM
To: Williams, Melina <Williams.Melina@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

With the other ones…Do you know which office (OAR or OGC) sent it on to the acting Administrator for signature?
We're also going to need to develop a desk statement for OPA on this one given that the others received press.
David, should I forward those signed letters to OAQPS or do they already have them?
Thanks, Rona

From: Williams, Melina <Williams.Melina@epa.gov>
Sent: Tuesday, March 09, 2021 10:50 AM
To: Birnbaum, Rona <Birnbaum.Rona@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

Hi Rona,

I also wanted to ask about whether you had a sense of when it might go to Joe? We haven't yet shared it with our FO, because we wanted to see whether you all had any concerns or edits first, so I'm just trying to think through how to coordinate those steps.

Thanks,
Melina

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Will do…it's now with Chris.
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Sent: Saturday, March 6, 2021 5:22 PM
To: Williams, Melina <Williams.Melina@epa.gov>; Orlin, David <Orlin.David@epa.gov>
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This is the NAAQS-related letter Ex. 5 AC/DP
Ex. 5 AC/DP

Sent from my iPhone

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Date: March 5, 2021 at 5:25:11 PM EST
To: "Birnbaum, Rona" <Birnbaum.Rona@epa.gov>, "Irving, Bill" <Irving.Bill@epa.gov>, "Franklin, Pamela" <Franklin.Pamela@epa.gov>, "Banks, Julius" <Banks.Julius@epa.gov>, "Fawcett, Allen" <Fawcett.Allen@epa.gov>, "Gunning, Paul" <Gunning.Paul@epa.gov>, "Schmeltz, Rachel" <Schmeltz.Rachel@epa.gov>
Subject: FW: EPA reverses last-minute Trump denial of greenhouse gas petitions

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Sent: Friday, March 5, 2021 5:24:38 PM (UTC-05:00) Eastern Time (US & Canada)
To: Clayton, Margie
Subject: EPA reverses last-minute Trump denial of greenhouse gas petitions

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03/05/2021 05:23 PM EST

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To view online:
https://subscriber.politicopro.com/article/2021/03/epa-reverses-last-minute-trump-denial-of-greenhouse-gas-petitions-3987432

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Arlington, VA 22209
USA

Message

From: Orlin, David [Orlin.David@epa.gov]
Sent: 2/19/2021 9:58:01 PM
To: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
CC: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Williams, Melina [Williams.Melina@epa.gov]
Subject: draft withdrawal letter for denial of petition seeking regulation of GHGs under 109/112/115
Attachments: GHG petition denial withdrawal 2-19.docx

Melissa,

FYI, following up on the briefing we had for Joe this week: Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP

I plan to forward the letter to OAQPS to put into the signature chain for the Administrator's office next week, but please let me know if you have any edits or concerns.

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

This document has been withheld in its entirety under Ex. 5 - Attorney Client (ACP), Ex. 5 - Attorney Work Product (AWP), Ex. 5 - Deliberative Process (DPP).

Message

From: Williams, Melina [Williams.Melina@epa.gov]
Sent: 3/11/2021 12:39:43 AM
To: Birnbaum, Rona [Birnbaum.Rona@epa.gov]; Orlin, David [Orlin.David@epa.gov]
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

Thanks, Rona. David and I touched base, **Ex. 5 AC/DP**. I sent the draft to Melissa yesterday evening, let her know that we expected it would start up the signature chain shortly, and asked that she let me know if she had any questions or concerns. I'll let you know if she has any feedback.

Do you all have any additional steps before putting it in the signature chain? Roughly how long do you think the process would take?

Melina Williams | US EPA | Office of General Counsel | Air & Radiation Law Office | Mail Code 2344A | phone: (202) 564-3406 | fax: (202) 564-5603

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U.S. EPA, Office of General Counsel
(202) 564-1222

From: Birnbaum, Rona <Birnbaum.Rona@epa.gov>
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To: Williams, Melina <Williams.Melina@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>
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With the other ones…Do you know which office (OAR or OGC) sent it on to the acting Administrator for signature?
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Thanks,
Melina

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Melina Williams | US EPA | Office of General Counsel | Air & Radiation Law Office | Mail Code 2344A | phone: (202) 564-3406 | fax: (202) 564-5603

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Subject: Fwd: EPA reverses last-minute Trump denial of greenhouse gas petitions

This is the NAAQS-related letter Ex. 5 AC/DP
Ex. 5 AC/DP

Sent from my iPhone

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Date: March 5, 2021 at 5:25:11 PM EST

To: "Birnbaum, Rona" <Birnbaum.Rona@epa.gov>, "Irving, Bill" <Irving.Bill@epa.gov>, "Franklin, Pamela" <Franklin.Pamela@epa.gov>, "Banks, Julius" <Banks.Julius@epa.gov>, "Fawcett, Allen" <Fawcett.Allen@epa.gov>, "Gunning, Paul" <Gunning.Paul@epa.gov>, "Schmeltz, Rachel" <Schmeltz.Rachel@epa.gov>
Subject: FW: EPA reverses last-minute Trump denial of greenhouse gas petitions

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Sent: Friday, March 5, 2021 5:24:38 PM (UTC-05:00) Eastern Time (US & Canada)
To: Clayton, Margie
Subject: EPA reverses last-minute Trump denial of greenhouse gas petitions

EPA reverses last-minute Trump denial of greenhouse gas petitions

By Alex Guillén

03/05/2021 05:23 PM EST

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The move does not mean the EPA will grant the petitions, but does keep them alive for potential future action as the Biden administration considers more aggressive climate regulations.

Background: The Center for Biological Diversity in 2009 petitioned the EPA to regulate greenhouse gases under the National Ambient Air Quality Standards, the same program that sets limits for pollutants such as particulate matter and ground-level ozone. New York University's Institute for Policy Integrity in 2013 petitioned the EPA to regulate greenhouse gases under Section 115 of the Clean Air Act, a little-used provision that deals with international pollution. And Food & Water Watch in 2019 petitioned the EPA to address greenhouse gases under Section 112, the hazardous air pollutant program.

All three petitions had been pending without answer for years as the Obama administration and the Trump administration focused on regulating stationary sources via Section 111, first through the Clean Power Plan and later the Affordable Clean Energy rule.

Wheeler denials: On his last full day in office, then-Administrator Andrew Wheeler denied all three petitions in a previously unreported action. Those parts of the Clean Air Act are not "well suited" to address the diffuse, global nature of greenhouse gas pollution, Wheeler wrote.

"Congress has the power to craft a comprehensive solution to the problem of greenhouse gas emissions, but such a solution will necessarily involve equitable participation by the other nations that emit significant amounts of GHG," Wheeler wrote at the time. "EPA cannot create such a solution unilaterally, and it has not been given the statutory tools that would be necessary."

Coincidentally, Wheeler's denial came on the same day that the D.C. Circuit Court of Appeals struck down his ACE rule for not fully considering the range of regulatory options under Section 111.

The reversal: The Biden EPA on Thursday withdrew its denial of the petitions, sending similar letters to all three organizations.

"I am withdrawing the denial of your petition, as the agency did not fully and fairly assess the issues raised by the petition," acting Administrator Jane Nishida wrote to CBD. "The EPA intends to further consider the important issues raised by your petition before responding."

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"The climate crisis is now much more urgent even than eight years ago, so we think really now this is the best path forward," she said.

The EPA did not immediately return questions about the withdrawals.

Context: All three of the petitions' policy proposals are more legally fraught and logistically complicated than the Section 111 strategy. For example, under a carbon dioxide NAAQS, states would have to craft a plan to reduce emissions within their borders, even though CO2 pollution settles roughly evenly throughout the atmosphere. Section 115 has never been significantly tested, and Section 112 has only been used for pollutants that are direct threats to human health, not pollutants like carbon dioxide that are primarily indirect threats.

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Sent: 8/30/2022 9:50:55 PM
To: Wesson, Karen [Wesson.Karen@epa.gov]
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

Will try and put something together—may or may not be that useful but it would be a start

David Orlin
US EPA, Office of General Counsel
(202) 564-1222

From: Wesson, Karen <Wesson.Karen@epa.gov>
Sent: Tuesday, August 30, 2022 4:09 PM
To: Orlin, David <Orlin.David@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

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From: Orlin, David <Orlin.David@epa.gov>
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To: Wesson, Karen <Wesson.Karen@epa.gov>
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Sent: Tuesday, August 30, 2022 3:59 PM
To: Williams, Melina <Williams.Melina@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

Ex. 5 AC/DP

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To: Orlin, David <Orlin.David@epa.gov>; Wesson, Karen <Wesson.Karen@epa.gov>
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"In light of this fact and that the 2009 Petition has now been pending for more than a decade, we write to provide some additional information regarding developments in climate research and policy since 2009, and address some of the concerns raised in the Petition denial," the letter says.

New information includes that the warming potential of certain greenhouse gases, such as methane, "has been revised upwards;" information on "additional and more extreme dangers of climate change to public health and the planet has been published; and limiting warming to 1.5 [degrees Celsius] with little or no overshoot requires a more rapid phase out of [CO2] emissions than would have been necessary had reductions begun sooner."

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EPA declined to comment on the new letter.

The groups also renew their arguments that EPA is obligated to regulate CO2 under the NAAQS program, saying that listing CO2 and other GHGs as a criteria pollutant "remains mandatory under the Clean Air Act. It is imperative that the United States now take bold actions to address climate change" and the NAAQS program is the air law's "most far-reaching and important tool for doing so."

Free-market and other critics of climate rules have long opposed regulation of CO2 as a criteria pollutant, though Brittany Bolen, the Trump EPA's policy chief and senior counsel, said recently that proceeding with such an approach is unlikely to move quickly.

NAAQS reviews are rigorous and require multiple steps, especially because the Biden EPA is also expected to revive the role of the Clean Air Scientific Advisory Committee that offers input on the development of such standards, adding another layer of review to the process, which already "takes years," Bolen told *Inside EPA* in a recent interview.

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National Framework

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Natalia Mebane, 350.org's policy director, added, "The Supreme Court decided years ago that the executive branch can regulate carbon as an air pollutant. The EPA has a duty to enforce the laws that protect our air, water and climate. The Biden administration has already taken great steps to reduce our carbon emissions, and we call on them to use their full authority to combat the climate crisis."

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Meanwhile, some conservatives including the *Wall Street Journal* editorial page are warning that EPA's plan to tighten the ozone NAAQS could be a "backdoor" way to regulate CO2 citing work by acting air chief Joe Goffman while at Harvard University in 2019 with Democratic state attorneys general (AGs) to pitch this option. On Jan. 19, 16 Democratic AGs filed suit over the Trump EPA's decision to retain the ozone NAAQS. -- *Dawn Reeves* (dreeves@iwpnews.com)

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Melina Williams (she/hers) | U.S. Environmental Protection Agency
Office of General Counsel | (202) 564-3406

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From: Orlin, David <Orlin.David@epa.gov>
Sent: Tuesday, August 30, 2022 12:18 PM
To: Wesson, Karen <Wesson.Karen@epa.gov>
Cc: Williams, Melina <Williams.Melina@epa.gov>
Subject: FW: EPA reverses last-minute Trump denial of greenhouse gas petitions

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Sent: 7/13/2021 4:48:09 PM
To: Haley Nicholson [haleyn@lclark.edu]
Subject: FW: GHG petition
Attachments: 20210109 Draft GHG NAAQS Petition Denial +ARLO +ag.docx

Forwarding because of continued laptop issues

David Orlin
US EPA, Office of General Counsel
(202) 564-1222

From: Orlin, David
Sent: Friday, July 2, 2021 3:27 PM
To: Nicholson, Haley <Nicholson.Haley@epa.gov>
Subject: FW: GHG petition

Haley,

Per our conversation I think January 4 was the first I heard of this petition response. In the attached Jan 10 draft you can see various staff comments and in some cases the responses of Adam Gustafson (our then deputy general counsel). I'd be happy to talk through any of these points whenever we can catch up next.

David Orlin
US EPA, Office of General Counsel
(202) 564-1222

Message

From: Orlin, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AA64DAD518D64C5F9801EB9BB15B7EC3-DORLIN]
Sent: 9/1/2022 6:39:04 PM
To: Vijayan, Abi [Vijayan.Abi@epa.gov]; Williams, Melina [Williams.Melina@epa.gov]
Subject: pending requests to regulate GHGs (esp as NAAQS)
Attachments: Pending requests to regulate Greenhouse Gases.docx

Ex. 5 AC/DP

Ex. 5 AC/DP -Melina let me know if I am missing any or otherwise need correction...)

David Orlin
US EPA, Office of General Counsel
(202) 564-1222

This document has been withheld in its entirety under Ex. 5 - Attorney Client (ACP), Ex. 5 - Attorney Work Product (AWP), Ex. 5 - Deliberative Process (DPP).

Message

From: Orlin, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AA64DAD518D64C5F9801EB9BB15B7EC3-DORLIN]
Sent: 8/30/2022 10:09:11 PM
To: Wesson, Karen [Wesson.Karen@epa.gov]
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

Orlin, David has shared a OneDrive for Business file with you. To view it, click the link below.

Pending requests to regulate Greenhouse Gases.docx

Is this helpful?

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But some environmentalists have advocated for such strategies because they offer more comprehensive, economy-wide approaches to reducing greenhouse gases than Section 111. That provision requires separate regulations for each individual industry — for example, power plants, oil and gas production, petrochemicals, cement production, and so on. Each sector would require its own rulemaking taking multiple years, and each is responsible for diminishing portions of U.S. emissions.

To view online:
https://subscriber.politicopro.com/article/2021/03/epa-reverses-last-minute-trump-denial-of-greenhouse-gas-petitions-3987432

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

Message

From: Orlin, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AA64DAD518D64C5F9801EB9BB15B7EC3-DORLIN]
Sent: 7/2/2021 7:20:26 PM
To: Haley Nicholson [haleyn@lclark.edu]
CC: Nicholson, Haley [Nicholson.Haley@epa.gov]
Subject: GHG petition withdrawl
Attachments: Siegel.PDF; Schwartz.SIGNED.pdf; Boeve.SIGNED.pdf; Carlesco.SIGNED.pdf

Haley,

Here are the signed withdrawal letters, in case they are of interest, and here is one of the articles I mentioned--
https://insideepa.com/daily-news/environmentalists-bolster-years-old-petition-epa-set-co2-naaqs

David Orlin
US EPA, Office of General Counsel
(202) 564-1222

From: Terry, Sara <Terry.Sara@epa.gov>
Sent: Thursday, March 4, 2021 5:49 PM
To: Noonan, Jenny <Noonan.Jenny@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: FW: Mailing petition letters

Who should email these out?

Sara

From: Hackel, Angela <Hackel.Angela@epa.gov>
Sent: Thursday, March 04, 2021 5:37 PM
To: Terry, Sara <Terry.Sara@epa.gov>
Subject: RE: Mailing petition letters

Hi Sara,

Here you go.

Thanks,

Angela

Angela Hackel
Senior Advisor
Office of the Administrator
Office of Public Affairs
U.S. Environmental Protection Agency
Washington, DC 20460
Office: 202.566.2977
Cell: 202.763.3945

From: Terry, Sara <Terry.Sara@epa.gov>
Sent: Thursday, March 4, 2021 3:56 PM
To: Hackel, Angela <Hackel.Angela@epa.gov>
Subject: RE: Mailing petition letters

Are you going to send .pdfs? Or do I need to go grab them from CMS?

Sara

From: Hackel, Angela <Hackel.Angela@epa.gov>
Sent: Thursday, March 04, 2021 3:54 PM
To: Terry, Sara <Terry.Sara@epa.gov>
Cc: Noonan, Jenny <Noonan.Jenny@epa.gov>
Subject: RE: Mailing petition letters

Great will do! I will send the tracking numbers when I get them.

Thanks,

Angela

From: Terry, Sara <Terry.Sara@epa.gov>
Sent: Thursday, March 4, 2021 3:53 PM
To: Hackel, Angela <Hackel.Angela@epa.gov>
Cc: Noonan, Jenny <Noonan.Jenny@epa.gov>
Subject: RE: Mailing petition letters

That's probably a good idea, though we'll also be emailing them.

Sara

From: Hackel, Angela <Hackel.Angela@epa.gov>
Sent: Thursday, March 04, 2021 3:50 PM
To: Terry, Sara <Terry.Sara@epa.gov>
Cc: Noonan, Jenny <Noonan.Jenny@epa.gov>
Subject: RE: Mailing petition letters

Hi Sara and Jenny,

I hope all is well. I will be putting things in the mail tomorrow. Did you want me to send things certified so that we can track them?

I am getting the last letters signed shortly, so hopefully by the end of the day, everything is closed out in CMS—and sent back to you.

Thanks,

Angela

Angela Hackel
Senior Advisor
Office of the Administrator
Office of Public Affairs
U.S. Environmental Protection Agency
Washington, DC 20460
Office: 202.566.2977
Cell: 202.763.3945

From: Hackel, Angela
Sent: Thursday, March 4, 2021 10:31 AM
To: Terry, Sara <Terry.Sara@epa.gov>
Subject: RE: Mailing petition letters

I will be getting this into CMS. It is my understanding that OAR emails the letters out to folks.

Thanks,

Angela

Angela Hackel
Senior Advisor
Office of the Administrator
Office of Public Affairs
U.S. Environmental Protection Agency
Washington, DC 20460
Office: 202.566.2977
Cell: 202.763.3945

From: Terry, Sara <Terry.Sara@epa.gov>
Sent: Thursday, March 4, 2021 10:22 AM
To: Hackel, Angela <Hackel.Angela@epa.gov>
Subject: FW: Mailing petition letters

Hi Angela,

Hope you are doing well. Will these also be emailed? OGC is asking.

Thanks
Sara

From: Moritz, Brigette <Moritz.Brigette@epa.gov>
Sent: Thursday, March 04, 2021 10:13 AM

To: Terry, Sara <Terry.Sara@epa.gov>
Cc: Noonan, Jenny <Noonan.Jenny@epa.gov>; Faulkner, Martha <Faulkner.Martha@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Palmer, Angela.D <Palmer.Angela.D@epa.gov>; Hackel, Angela <Hackel.Angela@epa.gov>
Subject: Mailing petition letters

Hi Sara,
The letters for these petitions are in for signature. Do you want Angela Hackel in OA to mail them or do you want them to be returned to you in OAR for mailing?

OAR-21-000-2063 Petition by the Institute for Policy Integrity to regulate GHGs under the Clean Air Act.
OAR-21-000-2069 Petition by the Food and Water Watch to regulate GHGs under the Clean Air Act.
OAR-21-000-2056 Petition by the Center for Biodiversity and 350.org to regulate GHGs under the Clean Air Act

Thanks.

Brigette A Moritz
Writer/Editor
Office of the Executive Secretariat
(202) 564-5777

Message

From: Orlin, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AA64DAD518D64C5F9801EB9BB15B7EC3-DORLIN]
Sent: 2/10/2021 1:46:08 AM
To: Sasser, Erika [Sasser.Erika@epa.gov]; Wesson, Karen [Wesson.Karen@epa.gov]
Subject: RE: meeting request
Attachments: GHG petition denial withdrawal 2-9.docx

Hi,

I don't think we need paper, Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

I am attaching a draft of the withdrawal letter for the OAQPS petition denial, Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Happy to find some time to talk about the letter or briefing if you think it's worthwhile.

On a couple of unrelated matters I wanted to thank you for accommodating us on the PM NAAQS briefing.

Ex. 5 AC/AWP/DP

I am assuming you (like us, frankly) are fine deferring to DOJ but wanted to give you a heads up and a chance to object, if nothing else about the poor process.

Thanks,

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Sasser, Erika <Sasser.Erika@epa.gov>
Sent: Tuesday, February 09, 2021 12:06 PM

To: Wesson, Karen <Wesson.Karen@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: FW: meeting request

Do you think we need to prepare paper? If so, let's keep it short and sweet; Ex. 5 AC/DP

Ex. 5 AC/DP

From: Birnbaum, Rona <Birnbaum.Rona@epa.gov>
Sent: Tuesday, February 09, 2021 9:58 AM
To: Sasser, Erika <Sasser.Erika@epa.gov>; Wesson, Karen <Wesson.Karen@epa.gov>
Cc: Gunning, Paul <Gunning.Paul@epa.gov>
Subject: meeting request

Hi Erika and Karen, per Chris and Peter's discussion, we just sent up a meeting request to discuss the petition responses with Joe and Melissa (OGC). We are preparing, with OGC, a 1-pager for the endangerment discussion … if you plan to prepare a separate 1-pager for the other petition response, feel free to send that to me and I can send them to the front office simultaneously.
Thanks, Rona

Message

From: Orlin, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AA64DAD518D64C5F9801EB9BB15B7EC3-DORLIN]
Sent: 2/4/2021 2:16:50 PM
To: Ryland Li (Shengzhi) (Li.Ryland@epa.gov) [Li.Ryland@epa.gov]
Subject: draft GHG petition denial
Attachments:image2021-01-19-105137.pdf; GHG petitions

Orlin, David has shared a OneDrive for Business file with you. To view it, click the link below.

GHG petition denial withdrawal.docx

Hi Ryland,

Thanks for your help thinking about the withdrawals of these petition denials. As you might remember there are two—one from enviros on regulating GHGs under various provisions and one from CEI on the endangerment finding. I've put together a first draft Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP Draft should be attached, along with the denial and the original petitions, in case those are helpful.

Thanks!

GHG petition denial withdrawal.docx

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

Message

From: Orlin, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AA64DAD518D64C5F9801EB9BB15B7EC3-DORLIN]
Sent: 3/4/2021 4:13:17 PM
To: Terry, Sara [Terry.Sara@epa.gov]; Sasser, Erika [Sasser.Erika@epa.gov]
Subject: RE: Mailing petition letters

Thanks very much for checking, Sara. One last question (sorry!)—does the fact that the letters are in for signature mean they will be signed today (or maybe tomorrow, or maybe whenever the next batch of documents are signed)?

Erika— I think someone should at least flag for Tomas or Joe that the letters have gone out but that it would take an extra step to email them, and see if he wants us to do that (let me know if you'd like me to send a note, but I don't think I have access to CMS so not sure if that makes the most sense)

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Terry, Sara <Terry.Sara@epa.gov>
Sent: Thursday, March 04, 2021 11:01 AM
To: Orlin, David <Orlin.David@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>
Subject: RE: Mailing petition letters

It seems that the OA does not email them, but once there is a signed response in CMS, then those can be pulled and emailed.

Sara

From: Orlin, David <Orlin.David@epa.gov>
Sent: Thursday, March 04, 2021 10:20 AM
To: Terry, Sara <Terry.Sara@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: RE: Mailing petition letters

Thanks for the help and update, Sara! Do you know if they will also email a copy? I hate to ask, but given the USPS delays I figured I should.

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Terry, Sara <Terry.Sara@epa.gov>
Sent: Thursday, March 04, 2021 10:18 AM
To: Orlin, David <Orlin.David@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Sasser, Erika <Sasser.Erika@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: FW: Mailing petition letters

FYI. They will be mailed directly from the OA.

Sara

From: Moritz, Brigette <Moritz.Brigette@epa.gov>
Sent: Thursday, March 04, 2021 10:13 AM
To: Terry, Sara <Terry.Sara@epa.gov>
Cc: Noonan, Jenny <Noonan.Jenny@epa.gov>; Faulkner, Martha <Faulkner.Martha@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Palmer, Angela.D <Palmer.Angela.D@epa.gov>; Hackel, Angela <Hackel.Angela@epa.gov>
Subject: Mailing petition letters

Hi Sara,
The letters for these petitions are in for signature. Do you want Angela Hackel in OA to mail them or do you want them to be returned to you in OAR for mailing?

OAR-21-000-2063 Petition by the Institute for Policy Integrity to regulate GHGs under the Clean Air Act.
OAR-21-000-2069 Petition by the Food and Water Watch to regulate GHGs under the Clean Air Act.
OAR-21-000-2056 Petition by the Center for Biodiversity and 350.org to regulate GHGs under the Clean Air Act

Thanks.

Brigette A Moritz
Writer/Editor
Office of the Executive Secretariat
(202) 564-5777

Message

From: Orlin, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AA64DAD518D64C5F9801EB9BB15B7EC3-DORLIN]
Sent: 2/19/2021 9:58:01 PM
To: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
CC: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Williams, Melina [Williams.Melina@epa.gov]
Subject: draft withdrawal letter for denial of petition seeking regulation of GHGs under 109/112/115
Attachments: GHG petition denial withdrawal 2-19.docx

Melissa,

FYI, following up on the briefing we had for Joe this week Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP please let me know if you have any edits or concerns.

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

Message

From: Orlin, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AA64DAD518D64C5F9801EB9BB15B7EC3-DORLIN]
Sent: 3/5/2021 2:04:16 PM
To: Terry, Sara [Terry.Sara@epa.gov]
CC: Noonan, Jenny [Noonan.Jenny@epa.gov]
Subject: Re: Mailing petition letters

Sounds good to me, thanks!

David Orlin
(202) 564-1222

On Mar 5, 2021, at 7:47 AM, Terry, Sara <Terry.Sara@epa.gov> wrote:

I'd say go for it.

Sara

From: Noonan, Jenny <Noonan.Jenny@epa.gov>
Sent: Friday, March 05, 2021 6:17 AM
To: Terry, Sara <Terry.Sara@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: RE: Mailing petition letters

I can do it if that is appropriate or I can see if Mike/Peter would like to do it.

From: Terry, Sara <Terry.Sara@epa.gov>
Sent: Thursday, March 04, 2021 5:57 PM
To: Orlin, David <Orlin.David@epa.gov>; Noonan, Jenny <Noonan.Jenny@epa.gov>
Subject: RE: Mailing petition letters

I will say that's probably the fasted option. Ex. 5 AC/DP

Ex. 5 AC/DP

Sara

From: Orlin, David <Orlin.David@epa.gov>
Sent: Thursday, March 04, 2021 5:56 PM
To: Terry, Sara <Terry.Sara@epa.gov>; Noonan, Jenny <Noonan.Jenny@epa.gov>
Subject: RE: Mailing petition letters

Ex. 5 AC/DP

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Orlin, David
Sent: Thursday, March 04, 2021 5:53 PM
To: Terry, Sara <Terry.Sara@epa.gov>; Noonan, Jenny <Noonan.Jenny@epa.gov>
Subject: RE: Mailing petition letters

In my house it would be the last person to touch their nose.

Sorry, long day of zoom, Ex. 5 AC/DP

Ex. 5 AC/DP

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Terry, Sara <Terry.Sara@epa.gov>
Sent: Thursday, March 04, 2021 5:49 PM
To: Noonan, Jenny <Noonan.Jenny@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: FW: Mailing petition letters

Who should email these out?

Sara

From: Hackel, Angela <Hackel.Angela@epa.gov>
Sent: Thursday, March 04, 2021 5:37 PM
To: Terry, Sara <Terry.Sara@epa.gov>
Subject: RE: Mailing petition letters

Hi Sara,

Here you go.

Thanks,

Angela

Angela Hackel
Senior Advisor
Office of the Administrator
Office of Public Affairs
U.S. Environmental Protection Agency
Washington, DC 20460
Office: 202.566.2977
Cell: 202.763.3945

From: Terry, Sara <Terry.Sara@epa.gov>
Sent: Thursday, March 4, 2021 3:56 PM

To: Hackel, Angela <Hackel.Angela@epa.gov>
Subject: RE: Mailing petition letters

Are you going to send .pdfs? Or do I need to go grab them from CMS?

Sara

From: Hackel, Angela <Hackel.Angela@epa.gov>
Sent: Thursday, March 04, 2021 3:54 PM
To: Terry, Sara <Terry.Sara@epa.gov>
Cc: Noonan, Jenny <Noonan.Jenny@epa.gov>
Subject: RE: Mailing petition letters

Great will do! I will send the tracking numbers when I get them.

Thanks,

Angela

From: Terry, Sara <Terry.Sara@epa.gov>
Sent: Thursday, March 4, 2021 3:53 PM
To: Hackel, Angela <Hackel.Angela@epa.gov>
Cc: Noonan, Jenny <Noonan.Jenny@epa.gov>
Subject: RE: Mailing petition letters

That's probably a good idea, though we'll also be emailing them.

Sara

From: Hackel, Angela <Hackel.Angela@epa.gov>
Sent: Thursday, March 04, 2021 3:50 PM
To: Terry, Sara <Terry.Sara@epa.gov>
Cc: Noonan, Jenny <Noonan.Jenny@epa.gov>
Subject: RE: Mailing petition letters

Hi Sara and Jenny,

I hope all is well. I will be putting things in the mail tomorrow. Did you want me to send things certified so that we can track them?

I am getting the last letters signed shortly, so hopefully by the end of the day, everything is closed out in CMS—and sent back to you.

Thanks,

Angela

Angela Hackel
Senior Advisor
Office of the Administrator
Office of Public Affairs

U.S. Environmental Protection Agency
Washington, DC 20460
Office: 202.566.2977
Cell: 202.763.3945

From: Hackel, Angela
Sent: Thursday, March 4, 2021 10:31 AM
To: Terry, Sara <Terry.Sara@epa.gov>
Subject: RE: Mailing petition letters

I will be getting this into CMS. It is my understanding that OAR emails the letters out to folks.

Thanks,

Angela

Angela Hackel
Senior Advisor
Office of the Administrator
Office of Public Affairs
U.S. Environmental Protection Agency
Washington, DC 20460
Office: 202.566.2977
Cell: 202.763.3945

From: Terry, Sara <Terry.Sara@epa.gov>
Sent: Thursday, March 4, 2021 10:22 AM
To: Hackel, Angela <Hackel.Angela@epa.gov>
Subject: FW: Mailing petition letters

Hi Angela,

Hope you are doing well. Will these also be emailed? OGC is asking.

Thanks
Sara

From: Moritz, Brigette <Moritz.Brigette@epa.gov>
Sent: Thursday, March 04, 2021 10:13 AM
To: Terry, Sara <Terry.Sara@epa.gov>
Cc: Noonan, Jenny <Noonan.Jenny@epa.gov>; Faulkner, Martha <Faulkner.Martha@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Palmer, Angela.D <Palmer.Angela.D@epa.gov>; Hackel, Angela <Hackel.Angela@epa.gov>
Subject: Mailing petition letters

Hi Sara,
The letters for these petitions are in for signature. Do you want Angela Hackel in OA to mail them or do you want them to be returned to you in OAR for mailing?

OAR-21-000-2063 Petition by the Institute for Policy Integrity to regulate GHGs under the Clean Air Act.
OAR-21-000-2069 Petition by the Food and Water Watch to regulate GHGs under the Clean Air Act.
OAR-21-000-2056 Petition by the Center for Biodiversity and 350.org to regulate GHGs under the Clean Air Act

Thanks.

Brigette A Moritz
Writer/Editor
Office of the Executive Secretariat
(202) 564-5777

Message

From: Orlin, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AA64DAD518D64C5F9801EB9BB15B7EC3-DORLIN]
Sent: 2/19/2021 3:56:19 PM
To: Williams, Melina [Williams.Melina@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Subject: FW: current draft withdrawal
Attachments: GHG petition denial withdrawal 2-9 OAQPS.docx

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Sasser, Erika <Sasser.Erika@epa.gov>
Sent: Friday, February 19, 2021 9:59 AM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: RE: current draft withdrawal

Thanks, David. Here are some reactions from OAQPS. We like the short and sweet approach.

From: Orlin, David <Orlin.David@epa.gov>
Sent: Thursday, February 18, 2021 4:18 PM
To: Sasser, Erika <Sasser.Erika@epa.gov>
Subject: current draft withdrawal

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

Message

From: Orlin, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AA64DAD518D64C5F9801EB9BB15B7EC3-DORLIN]
Sent: 3/10/2021 1:09:04 AM
To: Williams, Melina [Williams.Melina@epa.gov]
Subject: Re: EPA reverses last-minute Trump denial of greenhouse gas petitions

Yep (Cerassio??) thanks.

Sent from my iPhone

On Mar 9, 2021, at 7:05 PM, Williams, Melina <Williams.Melina@epa.gov> wrote:

Ex. 5 AC/DP

Melina Williams | US EPA | Office of General Counsel | Air & Radiation Law Office | Mail Code 2344A | phone: (202) 564-3406 | fax: (202) 564-5603

The contents of this e-mail and any attachments to it may contain deliberative-process, attorney-client, attorney work product, or otherwise privileged material. Do not distribute outside of EPA or DOJ.

From: Williams, Melina
Sent: Tuesday, March 9, 2021 6:00 PM
To: Orlin, David <Orlin.David@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

Ok, thanks. That all sounds good. Helen is the new CCILO associate, right?

Melina Williams | US EPA | Office of General Counsel | Air & Radiation Law Office | Mail Code 2344A | phone: (202) 564-3406 | fax: (202) 564-5603

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From: Orlin, David <Orlin.David@epa.gov>
Sent: Tuesday, March 9, 2021 5:58 PM
To: Williams, Melina <Williams.Melina@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

Ex. 5 Attorney Client (AC)

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Orlin, David
Sent: Tuesday, March 09, 2021 5:51 PM

To: Williams, Melina <Williams.Melina@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

I don't think we need to use it for something like this. Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Thanks!

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Williams, Melina <Williams.Melina@epa.gov>
Sent: Tuesday, March 09, 2021 2:53 PM
To: Orlin, David <Orlin.David@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

Sorry, just as a correction to my email below, I'm realizing from reg review that there does seem to be a CTS system that folks are currently using. I'm still not sure whether we'd use it for something like this, but would welcome your feedback about that.

Thanks!

Melina Williams | US EPA | Office of General Counsel | Air & Radiation Law Office | Mail Code 2344A | phone: (202) 564-3406 | fax: (202) 564-5603

The contents of this e-mail and any attachments to it may contain deliberative-process, attorney-client, attorney work product, or otherwise privileged material. Do not distribute outside of EPA or DOJ.

From: Williams, Melina
Sent: Tuesday, March 9, 2021 11:50 AM
To: Orlin, David <Orlin.David@epa.gov>
Subject: FW: EPA reverses last-minute Trump denial of greenhouse gas petitions

This makes sense to me – does it seem okay to you?

I found what you sent Melissa for the other petition letter so would plan to do something similar here, unless we should use CTS or some other mechanism? I was a little late to staff lunch, but it sounded like the new system wasn't up and running yet?

Thanks,
Melina

Melina Williams | US EPA | Office of General Counsel | Air & Radiation Law Office | Mail Code 2344A | phone: (202) 564-3406 | fax: (202) 564-5603

The contents of this e-mail and any attachments to it may contain deliberative-process, attorney-client, attorney work product, or otherwise privileged material. Do not distribute outside of EPA or DOJ.

From: Birnbaum, Rona <Birnbaum.Rona@epa.gov>
Sent: Tuesday, March 9, 2021 11:10 AM
To: Orlin, David <Orlin.David@epa.gov>; Williams, Melina <Williams.Melina@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

Ok, thanks. Given that, it makes sense for you all to go ahead and share the draft with your front office so that when Joe gets it for review, it will already have had OGC review. Sound ok?

From: Orlin, David <Orlin.David@epa.gov>
Sent: Tuesday, March 09, 2021 10:59 AM
To: Birnbaum, Rona <Birnbaum.Rona@epa.gov>; Williams, Melina <Williams.Melina@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

OAQPS has those letters—they put them in the signature chain (in CMS?) (and it took a week or so for them to make their way from OAQPS to OA)

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Birnbaum, Rona <Birnbaum.Rona@epa.gov>
Sent: Tuesday, March 09, 2021 10:56 AM
To: Williams, Melina <Williams.Melina@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

With the other ones…Do you know which office (OAR or OGC) sent it on to the acting Administrator for signature?
We're also going to need to develop a desk statement for OPA on this one given that the others received press.
David, should I forward those signed letters to OAQPS or do they already have them?
Thanks, Rona

From: Williams, Melina <Williams.Melina@epa.gov>
Sent: Tuesday, March 09, 2021 10:50 AM
To: Birnbaum, Rona <Birnbaum.Rona@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

Hi Rona,

I also wanted to ask about whether you had a sense of when it might go to Joe? We haven't yet shared it with our FO, because we wanted to see whether you all had any concerns or edits first, so I'm just trying to think through how to coordinate those steps.

Thanks,
Melina

Melina Williams | US EPA | Office of General Counsel | Air & Radiation Law Office | Mail Code 2344A | phone: (202) 564-3406 | fax: (202) 564-5603

The contents of this e-mail and any attachments to it may contain deliberative-process, attorney-client, attorney work product, or otherwise privileged material. Do not distribute outside of EPA or DOJ.

From: Birnbaum, Rona <Birnbaum.Rona@epa.gov>
Sent: Monday, March 8, 2021 11:37 AM
To: Williams, Melina <Williams.Melina@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

Will do...it's now with Chris.
Thanks, Rona

From: Williams, Melina <Williams.Melina@epa.gov>
Sent: Monday, March 08, 2021 11:20 AM
To: Birnbaum, Rona <Birnbaum.Rona@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: RE: EPA reverses last-minute Trump denial of greenhouse gas petitions

Thanks, Rona. Let us know if you have any questions as this moves forward.

Melina Williams | US EPA | Office of General Counsel | Air & Radiation Law Office | Mail Code 2344A | phone: (202) 564-3406 | fax: (202) 564-5603

The contents of this e-mail and any attachments to it may contain deliberative-process, attorney-client, attorney work product, or otherwise privileged material. Do not distribute outside of EPA or DOJ.

From: Birnbaum, Rona <Birnbaum.Rona@epa.gov>
Sent: Saturday, March 6, 2021 5:22 PM
To: Williams, Melina <Williams.Melina@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: Fwd: EPA reverses last-minute Trump denial of greenhouse gas petitions

This is the NAAQS-related letter Ex. 5 AC/DP
Ex. 5 AC/DP

Sent from my iPhone

Begin forwarded message:

From: "Clayton, Margie" <Clayton.Margie@epa.gov>
Date: March 5, 2021 at 5:25:11 PM EST
To: "Birnbaum, Rona" <Birnbaum.Rona@epa.gov>, "Irving, Bill" <Irving.Bill@epa.gov>, "Franklin, Pamela" <Franklin.Pamela@epa.gov>, "Banks, Julius" <Banks.Julius@epa.gov>, "Fawcett, Allen" <Fawcett.Allen@epa.gov>, "Gunning, Paul" <Gunning.Paul@epa.gov>, "Schmeltz, Rachel" <Schmeltz.Rachel@epa.gov>
Subject: FW: EPA reverses last-minute Trump denial of greenhouse gas petitions

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From: POLITICO Pro Energy
Sent: Friday, March 5, 2021 5:24:38 PM (UTC-05:00) Eastern Time (US & Canada)
To: Clayton, Margie
Subject: EPA reverses last-minute Trump denial of greenhouse gas petitions

EPA reverses last-minute Trump denial of greenhouse gas petitions

By Alex Guillén

03/05/2021 05:23 PM EST

The EPA this week reversed the last-second denial by the Trump administration of three long-pending petitions seeking greater regulation of greenhouse gases under the Clean Air Act.

The move does not mean the EPA will grant the petitions, but does keep them alive for potential future action as the Biden administration considers more aggressive climate regulations.

Background: The Center for Biological Diversity in 2009 petitioned the EPA to regulate greenhouse gases under the National Ambient Air Quality Standards, the same program that sets limits for pollutants such as particulate matter and ground-level ozone. New York University's Institute for Policy Integrity in 2013 petitioned the EPA to regulate greenhouse gases under Section 115 of the

Clean Air Act, a little-used provision that deals with international pollution. And Food & Water Watch in 2019 petitioned the EPA to address greenhouse gases under Section 112, the hazardous air pollutant program.

All three petitions had been pending without answer for years as the Obama administration and the Trump administration focused on regulating stationary sources via Section 111, first through the Clean Power Plan and later the Affordable Clean Energy rule.

Wheeler denials: On his last full day in office, then-Administrator Andrew Wheeler denied all three petitions in a previously unreported action. Those parts of the Clean Air Act are not "well suited" to address the diffuse, global nature of greenhouse gas pollution, Wheeler wrote.

"Congress has the power to craft a comprehensive solution to the problem of greenhouse gas emissions, but such a solution will necessarily involve equitable participation by the other nations that emit significant amounts of GHG," Wheeler wrote at the time. "EPA cannot create such a solution unilaterally, and it has not been given the statutory tools that would be necessary."

Coincidentally, Wheeler's denial came on the same day that the D.C. Circuit Court of Appeals struck down his ACE rule for not fully considering the range of regulatory options under Section 111.

The reversal: The Biden EPA on Thursday withdrew its denial of the petitions, sending similar letters to all three organizations.

"I am withdrawing the denial of your petition, as the agency did not fully and fairly assess the issues raised by the petition," acting Administrator Jane Nishida wrote to CBD. "The EPA intends to further consider the important issues raised by your petition before responding."

The reversal does not necessarily mean the EPA will grant any of the petitions, but Maya Golden-Krasner, deputy director of CBD's Climate Law Institute, said she is hopeful that it indicates the EPA will take the petitions seriously.

"The climate crisis is now much more urgent even than eight years ago, so we think really now this is the best path forward," she said.

The EPA did not immediately return questions about the withdrawals.

Context: All three of the petitions' policy proposals are more legally fraught and logistically complicated than the Section 111 strategy. For example, under a carbon dioxide NAAQS, states would have to craft a plan to reduce emissions within their borders, even though CO2 pollution settles roughly evenly throughout the atmosphere. Section 115 has never been significantly tested, and Section 112 has only been used for pollutants that are direct threats to human health, not pollutants like carbon dioxide that are primarily indirect threats.

But some environmentalists have advocated for such strategies because they offer more comprehensive, economy-wide approaches to reducing greenhouse gases than Section 111. That provision requires separate regulations for each individual industry — for example, power plants, oil and gas production, petrochemicals, cement production, and so on. Each sector would require its own rulemaking taking multiple years, and each is responsible for diminishing portions of U.S. emissions.

To view online:
https://subscriber.politicopro.com/article/2021/03/epa-reverses-last-minute-trump-denial-of-greenhouse-gas-petitions-3987432

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

Message

From: Orlin, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AA64DAD518D64C5F9801EB9BB15B7EC3-DORLIN]
Sent: 2/22/2021 10:42:48 PM
To: Sasser, Erika [Sasser.Erika@epa.gov]; Terry, Sara [Terry.Sara@epa.gov]
Subject: RE: current draft withdrawal
Attachments: GHG petitions

In case it's helpful, the attached email has the three petitions that were denied in the letter Erika sent. Ex. 5 AC/DP
Ex. 5 AC/DP

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Sasser, Erika <Sasser.Erika@epa.gov>
Sent: Monday, February 22, 2021 4:36 PM
To: Terry, Sara <Terry.Sara@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>
Subject: RE: current draft withdrawal

There were 3 incoming petitions, from 2009, 2019 and some other intervening year. They were submitted by different people, requesting different things, but we issued a single joint denial (attached). Ex. 5 AC/DP
Ex. 5 AC/DP

From: Terry, Sara <Terry.Sara@epa.gov>
Sent: Monday, February 22, 2021 4:31 PM
To: Sasser, Erika <Sasser.Erika@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>
Subject: RE: current draft withdrawal

Yes. I can work with Kristal to enter it and have it move up through the chain. Ex. 5 AC/DP
Ex. 5 AC/DP

Sara

From: Sasser, Erika <Sasser.Erika@epa.gov>
Sent: Monday, February 22, 2021 4:14 PM
To: Terry, Sara <Terry.Sara@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>
Subject: FW: current draft withdrawal

OAQPS is good with this response (thanks David!). Ex. 5 AC/DP
Ex. 5 AC/DP
Ex. 5 AC/DP

From: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Sent: Monday, February 22, 2021 3:50 PM
To: Sasser, Erika <Sasser.Erika@epa.gov>
Subject: FW: current draft withdrawal

Im good with this erika. Ex. 5 AC/DP

From: Orlin, David <Orlin.David@epa.gov>
Sent: Monday, February 22, 2021 3:18 PM
To: Sasser, Erika <Sasser.Erika@epa.gov>
Cc: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: RE: current draft withdrawal

Thanks, Erika. Here is a cleaned up version that I would consider final. Ex. 5 AC/DP
Ex. 5 AC/DP

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Sasser, Erika <Sasser.Erika@epa.gov>
Sent: Friday, February 19, 2021 9:59 AM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: RE: current draft withdrawal

Thanks, David. Here are some reactions from OAQPS. We like the short and sweet approach.

From: Orlin, David <Orlin.David@epa.gov>
Sent: Thursday, February 18, 2021 4:18 PM
To: Sasser, Erika <Sasser.Erika@epa.gov>
Subject: current draft withdrawal

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

Message

From: Orlin, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AA64DAD518D64C5F9801EB9BB15B7EC3-DORLIN]
Sent: 3/9/2021 3:40:00 PM
To: Birnbaum, Rona [Birnbaum.Rona@epa.gov]
CC: Williams, Melina [Williams.Melina@epa.gov]
Subject: FW: Mailing petition letters
Attachments: Siegel.PDF; Schwartz.SIGNED.pdf; Boeve.SIGNED.pdf; Carlesco.SIGNED.pdf

Just FYI, here are the other signed letters— Ex. 5 AC/DP

Ex. 5 AC/DP

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Terry, Sara <Terry.Sara@epa.gov>
Sent: Thursday, March 04, 2021 5:49 PM
To: Noonan, Jenny <Noonan.Jenny@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: FW: Mailing petition letters

Who should email these out?

Sara

From: Hackel, Angela <Hackel.Angela@epa.gov>
Sent: Thursday, March 04, 2021 5:37 PM
To: Terry, Sara <Terry.Sara@epa.gov>
Subject: RE: Mailing petition letters

Hi Sara,

Here you go.

Thanks,

Angela

Angela Hackel
Senior Advisor
Office of the Administrator
Office of Public Affairs
U.S. Environmental Protection Agency
Washington, DC 20460
Office: 202.566.2977
Cell: 202.763.3945

From: Terry, Sara <Terry.Sara@epa.gov>
Sent: Thursday, March 4, 2021 3:56 PM
To: Hackel, Angela <Hackel.Angela@epa.gov>
Subject: RE: Mailing petition letters

Are you going to send .pdfs? Or do I need to go grab them from CMS?

Sara

From: Hackel, Angela <Hackel.Angela@epa.gov>
Sent: Thursday, March 04, 2021 3:54 PM
To: Terry, Sara <Terry.Sara@epa.gov>
Cc: Noonan, Jenny <Noonan.Jenny@epa.gov>
Subject: RE: Mailing petition letters

Great will do! I will send the tracking numbers when I get them.

Thanks,

Angela

From: Terry, Sara <Terry.Sara@epa.gov>
Sent: Thursday, March 4, 2021 3:53 PM
To: Hackel, Angela <Hackel.Angela@epa.gov>
Cc: Noonan, Jenny <Noonan.Jenny@epa.gov>
Subject: RE: Mailing petition letters

That's probably a good idea, though we'll also be emailing them.

Sara

From: Hackel, Angela <Hackel.Angela@epa.gov>
Sent: Thursday, March 04, 2021 3:50 PM
To: Terry, Sara <Terry.Sara@epa.gov>
Cc: Noonan, Jenny <Noonan.Jenny@epa.gov>
Subject: RE: Mailing petition letters

Hi Sara and Jenny,

I hope all is well. I will be putting things in the mail tomorrow. Did you want me to send things certified so that we can track them?

I am getting the last letters signed shortly, so hopefully by the end of the day, everything is closed out in CMS—and sent back to you.

Thanks,

Angela

Angela Hackel

Senior Advisor
Office of the Administrator
Office of Public Affairs
U.S. Environmental Protection Agency
Washington, DC 20460
Office: 202.566.2977
Cell: 202.763.3945

From: Hackel, Angela
Sent: Thursday, March 4, 2021 10:31 AM
To: Terry, Sara <Terry.Sara@epa.gov>
Subject: RE: Mailing petition letters

I will be getting this into CMS. It is my understanding that OAR emails the letters out to folks.

Thanks,

Angela

Angela Hackel
Senior Advisor
Office of the Administrator
Office of Public Affairs
U.S. Environmental Protection Agency
Washington, DC 20460
Office: 202.566.2977
Cell: 202.763.3945

From: Terry, Sara <Terry.Sara@epa.gov>
Sent: Thursday, March 4, 2021 10:22 AM
To: Hackel, Angela <Hackel.Angela@epa.gov>
Subject: FW: Mailing petition letters

Hi Angela,

Hope you are doing well. Will these also be emailed? OGC is asking.

Thanks
Sara

From: Moritz, Brigette <Moritz.Brigette@epa.gov>
Sent: Thursday, March 04, 2021 10:13 AM
To: Terry, Sara <Terry.Sara@epa.gov>

Cc: Noonan, Jenny <Noonan.Jenny@epa.gov>; Faulkner, Martha <Faulkner.Martha@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Palmer, Angela.D <Palmer.Angela.D@epa.gov>; Hackel, Angela <Hackel.Angela@epa.gov>
Subject: Mailing petition letters

Hi Sara,
The letters for these petitions are in for signature. Do you want Angela Hackel in OA to mail them or do you want them to be returned to you in OAR for mailing?

OAR-21-000-2063 Petition by the Institute for Policy Integrity to regulate GHGs under the Clean Air Act.
OAR-21-000-2069 Petition by the Food and Water Watch to regulate GHGs under the Clean Air Act.
OAR-21-000-2056 Petition by the Center for Biodiversity and 350.org to regulate GHGs under the Clean Air Act

Thanks.

Brigette A Moritz
Writer/Editor
Office of the Executive Secretariat
(202) 564-5777

Message

From: Srinivasan, Gautam [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D69332838210416BA51779B19025F832-GSRINIVA]
Sent: 3/5/2021 9:19:52 PM
To: Conrad, Daniel [conrad.daniel@epa.gov]
Subject: RE: Media Inquiry: Politico re CBD petition

Ex. 5 AC/DP

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Conrad, Daniel <conrad.daniel@epa.gov>
Sent: Friday, March 5, 2021 4:06 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: FW: Media Inquiry: Politico re CBD petition

Ex. 5 AC/DP

From: Jones, Enesta <Jones.Enesta@epa.gov>
Sent: Friday, March 05, 2021 3:58 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Millett, John <Millett.John@epa.gov>
Subject: Media Inquiry: Politico re CBD petition

Hi all,
Please advise on a response here,
Enesta
DDL is today.

FYI the Jan. 19 denial he is referring to: https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-01-19-GHG-NAAQS-Petition-Denial-2021-01-19.pdf

Yesterday's withdraw of the denial: https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-03-05-Decision-Withdrawing-Denial.pdf

The Center for Biological Diversity says EPA has undone the Jan. 19 denial of its petition to regulate greenhouse gases under the NAAQS program. They shared a Jan. 19 letter that also denied petitions from the Institute for Policy Integrity to regulate GHGs under Section 115 of the Clean Air Act and another from Food & Water Watch seeking Section 112 regulation of GHGs.

Ex. 5 AC/DP

Message

From: Srinivasan, Gautam [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D69332838210416BA51779B19025F832-GSRINIVA]
Sent: 1/11/2021 8:39:02 PM
To: Rodman, Sonja [Rodman.Sonja@epa.gov]
Subject: FW: GHG petition
Attachments: 20210109 Draft GHG NAAQS Petition Denial +ARLO +ag.docx

Hi Sonja. I should have sent this to you as well. As before, if you have no time for this, I understand.

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Srinivasan, Gautam
Sent: Sunday, January 10, 2021 4:55 PM
To: Orlin, David <Orlin.David@epa.gov>; Anderson, Lea <anderson.lea@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>
Subject: GHG petition

Hi all. FYI attached are Adam's responses to the comments on the GHG petition denial. He and David have asked to meet on Monday, and I have asked Fletcher to include you all. If you are willing and able to make the meeting, that would be appreciated. If you are not, that is also 100% fine, but Matt and I may circle back with specific questions. Thanks.
++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

Message

From: Srinivasan, Gautam [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D69332838210416BA51779B19025F832-GSRINIVA]
Sent: 1/12/2021 7:54:13 PM
To: Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)
Attachments: 20210111 Draft GHG NAAQS Petition Denial clean.docx

Ok. Talk to you tomorrow.

Attaching the "it" FYI in response your prior email.
++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Sent: Tuesday, January 12, 2021 2:50 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Just saw Chris's response. Ex. 5 AC/AWP/DP

From: Grundler, Christopher <grundler.christopher@epa.gov>
Sent: Tuesday, January 12, 2021 2:39 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Gautam— Ex. 5 AC/AWP/DP
Ex. 5 AC/AWP/DP

Christopher Grundler, Director
Office of Atmospheric Programs
U.S. Environmental Protection Agency
202.343.9140 (o)
734.645.5221 (m)

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Tuesday, January 12, 2021 2:37 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

++++++++++++++++++++++++++++
(202) 564-5647 (o)

(202) 695-6287 (c)

From: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Sent: Tuesday, January 12, 2021 2:10 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

10 am works for me…

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Tuesday, January 12, 2021 1:33 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

10a tomorrow is the earliest I can find, unless you're free at 5p today.

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Sent: Tuesday, January 12, 2021 1:14 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Gunning, Paul <Gunning.Paul@epa.gov>; Birnbaum, Rona <Birnbaum.Rona@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Kocchi, Suzanne <Kocchi.Suzanne@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Hi Chris. Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Gautam, can you guys set up something?

From: Grundler, Christopher <grundler.christopher@epa.gov>
Sent: Tuesday, January 12, 2021 1:02 PM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Gunning, Paul <Gunning.Paul@epa.gov>; Birnbaum, Rona <Birnbaum.Rona@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Kocchi, Suzanne <Kocchi.Suzanne@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Hi David:
Long time no see/hear! Hope you and the family are well.

Ex. 5 AC/AWP/DP

Peter, can you weigh in on what this is about, and what it takes to respond? Are your folks involved? What is our normal process?

Thanks,

Chris

Christopher Grundler, Director
Office of Atmospheric Programs
U.S. Environmental Protection Agency
202.343.9140 (o)
734.645.5221 (m)

From: Orlin, David <Orlin.David@epa.gov>
Sent: Tuesday, January 12, 2021 12:21 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Gunning, Paul <Gunning.Paul@epa.gov>; Birnbaum, Rona <Birnbaum.Rona@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Sorry— Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

thanks

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Orlin, David
Sent: Tuesday, January 12, 2021 11:05 AM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Gunning, Paul <Gunning.Paul@epa.gov>; Birnbaum, Rona <Birnbaum.Rona@epa.gov>
Subject: draft denial of pending petitions to regulate GHG under CAA 108/112/115

Chris,

Ex. 5 AC/AWP/DP

I have attached copies of the petitions being responded to, Ex. 5 AC/AWP/DP
Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Thanks very much for any assistance OAP may be able to provide on this for ARLO to incorporate by noon tomorrow, and please feel free to have anyone contact me if it would be helpful to discuss further.

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Message

From: Srinivasan, Gautam [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D69332838210416BA51779B19025F832-GSRINIVA]
Sent: 1/12/2021 7:42:54 PM
To: Grundler, Christopher [grundler.christopher@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Ok. I'm free until 3 if you want to talk now. Or we can talk at the 10a tomorrow.

Ex. 5 AC/AWP/DP

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Grundler, Christopher <grundler.christopher@epa.gov>
Sent: Tuesday, January 12, 2021 2:39 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Gautam— Ex. 5 AC/AWP/DP
Ex. 5 AC/AWP/DP

Christopher Grundler, Director
Office of Atmospheric Programs
U.S. Environmental Protection Agency
202.343.9140 (o)
734.645.5221 (m)

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Tuesday, January 12, 2021 2:37 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Sent: Tuesday, January 12, 2021 2:10 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

10 am works for me…

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Tuesday, January 12, 2021 1:33 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

10a tomorrow is the earliest I can find, unless you're free at 5p today.

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Sent: Tuesday, January 12, 2021 1:14 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Gunning, Paul <Gunning.Paul@epa.gov>; Birnbaum, Rona <Birnbaum.Rona@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Kocchi, Suzanne <Kocchi.Suzanne@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Hi Chris. Ex. 5 AC/AWP/DP
Ex. 5 AC/AWP/DP

Gautam, can you guys set up something?

From: Grundler, Christopher <grundler.christopher@epa.gov>
Sent: Tuesday, January 12, 2021 1:02 PM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Gunning, Paul <Gunning.Paul@epa.gov>; Birnbaum, Rona <Birnbaum.Rona@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Kocchi, Suzanne <Kocchi.Suzanne@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Hi David:
Long time no see/hear! Hope you and the family are well.

Ex. 5 AC/AWP/DP

Peter, can you weigh in on what this is about, and what it takes to respond? Are your folks involved? What is our normal process?

Thanks,

Chris

Christopher Grundler, Director
Office of Atmospheric Programs
U.S. Environmental Protection Agency
202.343.9140 (o)
734.645.5221 (m)

From: Orlin, David <Orlin.David@epa.gov>
Sent: Tuesday, January 12, 2021 12:21 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Gunning, Paul <Gunning.Paul@epa.gov>; Birnbaum, Rona <Birnbaum.Rona@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Sorry– Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

thanks

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Orlin, David
Sent: Tuesday, January 12, 2021 11:05 AM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Gunning, Paul <Gunning.Paul@epa.gov>; Birnbaum, Rona <Birnbaum.Rona@epa.gov>
Subject: draft denial of pending petitions to regulate GHG under CAA 108/112/115

Chris,

Ex. 5 AC/AWP/DP

I have attached copies of the petitions being responded to, Ex. 5 AC/AWP/DP
Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Thanks very much for any assistance OAP may be able to provide on this for ARLO to incorporate by noon tomorrow, and please feel free to have anyone contact me if it would be helpful to discuss further.

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Message

From: Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]
Sent: 1/12/2021 7:48:21 PM
To: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Ex. 5 AC/AWP/DP

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Tuesday, January 12, 2021 2:37 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

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(202) 564-5647 (o)
(202) 695-6287 (c)

From: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>
Sent: Tuesday, January 12, 2021 2:10 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

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Sent: Tuesday, January 12, 2021 1:33 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

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(202) 564-5647 (o)
(202) 695-6287 (c)

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To: Grundler, Christopher <grundler.christopher@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Gunning, Paul <Gunning.Paul@epa.gov>; Birnbaum, Rona <Birnbaum.Rona@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Kocchi, Suzanne <Kocchi.Suzanne@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Hi Chris, Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Gautam, can you guys set up something?

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Sent: Tuesday, January 12, 2021 1:02 PM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Gunning, Paul <Gunning.Paul@epa.gov>; Birnbaum, Rona <Birnbaum.Rona@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Kocchi, Suzanne <Kocchi.Suzanne@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

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Ex. 5 AC/AWP/DP

Peter, can you weigh in on what this is about, and what it takes to respond? Are your folks involved? What is our normal process?

Thanks,

Chris

Christopher Grundler, Director
Office of Atmospheric Programs
U.S. Environmental Protection Agency
202.343.9140 (o)
734.645.5221 (m)

From: Orlin, David <Orlin.David@epa.gov>
Sent: Tuesday, January 12, 2021 12:21 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Gunning, Paul <Gunning.Paul@epa.gov>; Birnbaum, Rona <Birnbaum.Rona@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>
Subject: RE: draft denial of pending petitions to regulate GHG under CAA 108/112/115 (correction)

Sorry— Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

thanks

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Orlin, David
Sent: Tuesday, January 12, 2021 11:05 AM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Gunning, Paul <Gunning.Paul@epa.gov>; Birnbaum, Rona <Birnbaum.Rona@epa.gov>
Subject: draft denial of pending petitions to regulate GHG under CAA 108/112/115

Chris,

Ex. 5 AC/AWP/DP

I have attached copies of the petitions being responded to, Ex. 5 AC/AWP/DP
Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Thanks very much for any assistance OAP may be able to provide on this for ARLO to incorporate by noon tomorrow, and please feel free to have anyone contact me if it would be helpful to discuss further.

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Message

From: Payne, James (Jim) [payne.james@epa.gov]
Sent: 1/20/2021 6:39:43 PM
To: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Subject: Re: Petition denials for posting online

Call? Ex. 6 Personal Privacy (PP)

Sent from my iPhone

On Jan 20, 2021, at 1:16 PM, Srinivasan, Gautam <Srinivasan.Gautam@epa.gov> wrote:

Hi Jim. Apologies, but I'm a little unclear on the ask. Ex. 5 AC/DP

Ex. 5 AC/DP

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Wednesday, January 20, 2021 12:06 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: Petition denials for posting online

Thank you. I'm asking Gautam in OGC to follow up on this.

From: Grantham, Nancy <Grantham.Nancy@epa.gov>
Sent: Wednesday, January 20, 2021 11:58 AM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>
Subject: RE: Petition denials for posting online

Jim – as discussed, the transition is now official, so we need to revisit this posting with the incoming team thanks ng

Nancy Grantham
Principal Deputy Associate Administrator
Environmental Protection Agency
Office of Public Affairs
202-564-6879 (desk)
202-253-7056 (cell)
grantham.nancy@epa.gov

From: Gustafson, Adam <Gustafson.Adam@epa.gov>
Sent: Wednesday, January 20, 2021 11:53 AM

To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>
Subject: RE: Petition denials for posting online

Ex. 5 AC/DP

In the text above the bullet points, please insert:

Ex. 5 AC/DP

This is the example I'm looking at: https://www.epa.gov/petitions/petition-partial-supplemental-waiver-2016-cellulosic-biofuel-volumetric-requirements

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Gustafson, Adam
Sent: Wednesday, January 20, 2021 11:45 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>
Subject: RE: Petition denials for posting online

Nancy,

Here is where the attached NAAQS attachment should be posted Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

The February 25, 2013 entry on this page should be edited Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Gustafson, Adam
Sent: Wednesday, January 20, 2021 11:38 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>
Subject: FW: Petition denials for posting online

Nancy,

Here are the documents for posting. I will follow up with the location.

Thanks.

Adam

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Gustafson, Adam
Sent: Wednesday, January 20, 2021 11:08 AM
To: Griffin, Chris <Griffin.Chris@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: Petition denials for posting online

Chris,

David asked that these two Administrator-signed petition denials be posted on OGC's website. I believe he gave you a heads-up this might be coming. Could you please confirm that you are able to do this now?

Thank you.

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Gustafson, Adam
Sent: Tuesday, January 19, 2021 11:41 AM
To: Raymond, Kelley <Raymond.Kelley@epa.gov>
Subject: GHG petition denials for posting and emailing

Kelley,

Here are the two signed documents we have discussed for posting on OAR's website:

- Denial of three petitions to regulate GHG as a NAAQS, as a cross-border pollutant under CAA 115, and as a HAP, submitted by CBD, NYU Law Institute for Policy Integrity, and Food & Water Watch, respectively;
- Denial of four petitions to reconsider the 2009 GHG Endangerment Finding, submitted by CHECC, CEI/SEPP, Liberty Packing/TPPF, and FAIR Energy Foundation.

Are you able to send these to the petitioners' email addresses on the cover letters Ex. 5 AC/DP

Ex. 5 AC/DP

Adam Gustafson
Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Office: 202-564-7263
Cell: 202-836-3570

From: Scott, Corey <scott.corey@epa.gov>
Sent: Tuesday, January 19, 2021 11:21 AM
To: Gustafson, Adam <Gustafson.Adam@epa.gov>
Cc: Fotouhi, David <Fotouhi.David@epa.gov>; adm15.arwheeler.email <adm15.arwheeler.email@epa.gov>
Subject: NAAQS Denial Signed

Adam,

Here is the NAAQS denial! Thanks!

Corey

Message

From: EPAExecSec [EPAExecSec@epa.gov]
Sent: 1/21/2021 6:51:58 PM
To: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Moritz, Brigette [Moritz.Brigette@epa.gov]; Gaines, Cynthia [Gaines.Cynthia@epa.gov]
Subject: FW: For your signature--CAA Petition Denials
Attachments: 20210118d GHG Endangerment Denial w cover letter.docx; 20210118 GHG NAAQS Denial w cover letter.docx

---

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Tuesday, January 19, 2021 8:42 AM
To: adm15.arwheeler.email <adm15.arwheeler.email@epa.gov>
Cc: Gunasekara, Mandy <gunasekara.Mandy@epa.gov>; Moor, Karl <Moor.Karl@epa.gov>; Gustafson, Adam <Gustafson.Adam@epa.gov>; Molina, Michael <molina.michael@epa.gov>; Scott, Corey <scott.corey@epa.gov>
Subject: For your signature--CAA Petition Denials

Sir:

The following two documents are attached to this email in Word format for your signature:

- Denial of Petitions to Reconsider the EPA's Greenhouse Gas Endangerment Finding
- Denial of Petitions to Establish National Ambient Air Quality Standards for Greenhouse Gases, to Regulate Greenhouse Gases under Clean Air Act Section 115, and to Regulate Greenhouse Gases as Hazardous Air Pollutants

Please let me know if you have any questions. If you need the documents sent to you in PDF format, let me know and I would be happy to do so. Once you have signed the documents, OGC will work with OAR to post the denials to the EPA OAR webpage and send them to the petitioners. **Ex. 5 Attorney Client (AC)**

Best,

David

David Fotouhi

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

Message

From: Jordan, Scott [Jordan.Scott@epa.gov]
Sent: 4/8/2019 11:29:47 AM
To: Zenick, Elliott [Zenick.Elliott@epa.gov]; Lewis, Josh [Lewis.Josh@epa.gov]
CC: Koerber, Mike [Koerber.Mike@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Subject: Re: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Ex. 5 AC/DP

Gautam and Elliott - Ex. 5 AC/DP

Ex. 5 AC/DP

Scott Jordan
Air and Radiation Law Office
Office of General Counsel
202-564-7508

From: Zenick, Elliott
Sent: Friday, April 5, 2019 4:36 PM
To: Lewis, Josh
Cc: Koerber, Mike; Jordan, Scott; Srinivasan, Gautam
Subject: Re: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Adding Scott to see if he recalls how we covered the petitions he worked on.

Sent from my iPhone

On Apr 5, 2019, at 4:26 PM, Lewis, Josh <Lewis.Josh@epa.gov> wrote:

This came in to our office today. Elliott: can you remind me if OGC has a preference on how this is logged/in and tracked? Mike, appreciate any thoughts from OAQPS too. Thanks.

From: Adam Carlesco <acarlesco@fwwatch.org>
Sent: Wednesday, April 3, 2019 4:01 PM
To: Rakosnik, Delaney <rakosnik.delaney@epa.gov>
Subject: CAA Rulemaking Petition for EPA's Office of Air and Radiation

Ms. Raksonik,

Thank you for the guidance on how to formally submit this proposed rulemaking petition. I have attached our petition and look forward to the Office of Air and Radiation's review of this proposal. Would the Assistant Administrator like a hardcopy mailed to the EPA offices?

Sincerely,
Adam Carlesco

Adam Carlesco
Staff Attorney, Climate & Energy
Food & Water Watch
Office: 202.683.4925
acarlesco@fwwatch.org
1616 P Street NW, Suite 300
Washington, DC 20036

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<FWW - CAA 112 GHG Petition.pdf>

Message

From: Conrad, Daniel [conrad.daniel@epa.gov]
Sent: 3/5/2021 9:22:36 PM
To: Jones, Enesta [Jones.Enesta@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; DeLuca, Isabel [DeLuca.Isabel@epa.gov]; Millett, John [Millett.John@epa.gov]
Subject: RE: Media Inquiry: Politico re CBD petition

OGC defers to the program here, thanks.
-Dan

From: Jones, Enesta <Jones.Enesta@epa.gov>
Sent: Friday, March 05, 2021 3:58 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Millett, John <Millett.John@epa.gov>
Subject: Media Inquiry: Politico re CBD petition

Hi all,
Please advise on a response here,
Enesta
DDL is today.

FYI the Jan. 19 denial he is referring to: https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-01-19-GHG-NAAQS-Petition-Denial-2021-01-19.pdf

Yesterday's withdraw of the denial: https://www.biologicaldiversity.org/programs/climate_law_institute/pdfs/21-03-05-Decision-Withdrawing-Denial.pdf

The Center for Biological Diversity says EPA has undone the Jan. 19 denial of its petition to regulate greenhouse gases under the NAAQS program. They shared a Jan. 19 letter that also denied petitions from the Institute for Policy Integrity to regulate GHGs under Section 115 of the Clean Air Act and another from Food & Water Watch seeking Section 112 regulation of GHGs.

Ex. 5 AC/DP