Correspondence Management System

Congressional Search Results

Search Date: May 15, 2018

BARRASSO, JOHN-United States Senate-/DC

Total: 1

Control No.	Status	Letter Date	Received	Subject	Last Action
AL-18-000-4679	Pending	Feb 14, 2018	Feb 22, 2018	QUESTIONS FROM HEARING HELD ON JANUARY 30, 2018 ENTITLED "OVER-SIGHT HEARING TO RECEIVE TESTIMONY FROM ENVIRONMENTAL PROTEC-TION AGENCY ADMINISTRATOR SCOTT PRUITT"	Kathy Mims Assign Christian Palich as lead

SHIMKUS, JOHN M-U.S. House of Representatives-R/IL/DC

Total: 1

Control No.	Status	Letter Date	Received	Subject	Last Action
AL-18-000-4677	Closed	Feb 15, 2018	Feb 21, 2018	QUESTIONS: FROM HEARING HELD ON January 18, 2018, HEARING ENTITLED "MODERNIZING THE SUPERFUND CLEANUP PROGRAM"	Cassaundra Eades Control Closed

JOHN BARRASSO, WYOMING, *CHAIRMAN*

JAMES M. INHOFE, OKLAHOMA
SHELLEY MOORE CAPITO, WEST VIRGINIA
JOHN BOOZMAN, ARKANSAS
ROGER WICKER, MISSISSIPPI
DEB FISCHER, NEBRASKA
JERRY MORAN, KANSAS
MIKE ROUNDS, SOUTH DAKOTA
JONI ERNST, IOWA
DAN SULLIVAN, ALASKA
RICHARD SHELBY, ALABAMA

THOMAS R CARPER, DELAWARE
BENJAMIN L CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
JEFF MERKLEY, OREGON
KIRSTEN GILLIBRAND, NEW YORK
CORY A BOOKER, NEW JERSEY
EDWARD J MARKEY, MASSACHUSETTS
TAMMY DUCKWORTH, ILLINOIS
CHRIS VAN HOLLEN, MARYLAND

RICHARD M. RUSSELL, *MAJORITY STAFF DIRECTOR*
GABRIELLE BATKIN, *MINORITY STAFF DIRECTOR*

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510–6175

February 14, 2018

The Honorable E. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1220 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator Pruitt:

On behalf of the Senate Committee on Environment and Public Works, we would like to thank you for testifying before the Committee on Tuesday, January 30, 2018, at the hearing entitled, *"Oversight Hearing to Receive Testimony from Environmental Protection Agency Administrator Scott Pruitt."* The Committee greatly appreciates your attendance and participation in this hearing.

In order to maximize the opportunity for communication between you and the Committee, follow-up questions have been submitted by the members. To comply with Committee rules, please e-mail a copy of your responses to Elizabeth_Olsen@epw.senate.gov or deliver one hard copy by COB Thursday, March 1, 2018. Responses should be delivered to the EPW Committee at 410 Dirksen Senate Office Building, Washington, DC 20510.

If you have any questions about the requests or the hearing, please feel free to contact Staff Director, Richard Russell in the Majority Office at (202) 224-6176 or Staff Director, Gabrielle Batkin in the Minority Office at (202) 224-8832.

Sincerely,

John Barrasso, M.D.
Chairman

Thomas R. Carper
Ranking Member

PRINTED ON RECYCLED PAPER

Senate Committee on Environment and Public Works
"Oversight Hearing to Receive Testimony from Environmental Protection Agency Administrator Scott Pruitt"
Questions for the Record for Administrator Scott Pruitt
January 30, 2018

Chairman Barrasso:

1. At the beginning of this Administration, prior to your confirmation, EPA alleged that Wyoming contributed to ozone problems in Douglas County, Colorado under the 2008 ozone National Ambient Air Quality Standards (NAAQS). To reach this conclusion, EPA applied a methodology designed for Eastern states.

   Western states have different topographies, higher altitudes, and different weather patterns than Eastern states. In addition, Western states have higher frequencies of wildfires than the East. Under EPA's "one-size-fits-all" model, EPA projected that a tiny amount of emissions would move from Wyoming to Colorado. EPA then imposed additional regulatory burdens on Wyoming. I raised my serious concerns and objections to EPA's action in a recent letter to you on January 19, 2018 (attached).

   In your oral testimony, you stated that EPA is evaluating challenges with international air transport. In a February 1, 2018 response to my letter from Bill Wehrum, Assistant Administrator for the Office of Air and Radiation (attached), he stated EPA plans to work with states "early this year to provide more information and flexibility as [states] look to address interstate transport issues under the 2015 ozone NAAQS." Will EPA also address any remaining interstate transport issues concerning other NAAQS, including the 2008 ozone NAAQS issue identified in my letter? If so, do you have an anticipated timeline for addressing these issues?

2. During the hearing, I asked you about 46 outstanding exceptional events filings from the State of Wyoming that EPA has yet to act on. As I mentioned during the hearing, I expressed my concern with EPA's decision not to act on these filings in 2016. Do you have a date by which EPA anticipates it will act on Wyoming's 46 petitions that I highlighted?

3. As you know, the U.S. Army Corps of Engineers is the agency that makes the vast majority of jurisdictional determinations to identify waters that are regulated under the Clean Water Act. However, according to testimony before this Committee on April 26, 2017, the Corps was not included fully in the process of developing the 2015 Waters of the U.S. (WOTUS) rule.

   In fact, the Corps did not believe that the rule and preamble, as ultimately finalized, "were viable from a factual, scientific, analytical, or legal basis" and "it would be incredibly difficult for Corps leaders, regulatory and legal staff to advance and defend this rule...."

How will you ensure adequate coordination occurs between the EPA and Corps of Engineers in developing future regulations to delineate the jurisdiction of the Clean Water Act?

4. Last year, this Committee heard testimony about barriers under the Clean Air Act to the adoption of technologies that would reduce emissions and/or improve efficiency at power plants and other industrial facilities. Witnesses repeatedly stated that the New Source Review (NSR) program discouraged such projects. I am encouraged that both you and Bill Wehrum, Assistant Administrator for the Office of Air and Radiation, have identified NSR reform as a top priority for the Agency.

   What can this Committee – and Congress as a whole – do to assist you in these efforts and develop bipartisan support for reforms moving forward?

5. Last year, Congress passed the bipartisan Water Infrastructure for Improvements to the Nation (WIIN) Act. On September 14, 2017, EPA granted petitions to reconsider a final rule that regulates coal combustion residuals (CCR) as nonhazardous waste under the Resource Conservation and Recovery Act (RCRA). You stated the purpose of reconsideration is as follows: "In light of EPA's new statutory authority [under the WIIN Act], it is important that we give the existing rule a hard look and consider improvements that may help states tailor their permit programs to the needs of their states, in a way that provides greater regulatory certainty, while also ensuring that human health and the environment remain protected."

   I support EPA's commitment to assure that the CCR rule provides adequate flexibility and authority to states. Does EPA have an anticipated timeline for completing this reconsideration so that states and regulated entities have maximum flexibility and regulatory certainty as soon as possible?

6. Over the last several years, increased efficiency of gas fueled vehicles and relatively low gas prices have led to fewer than projected consumer purchases of electric vehicles relative to gas fueled vehicles. Current data show how gas prices have been lower than projected in 2012 when vehicle standards were established by EPA and the Department of Transportation's (DOT) National Highway Traffic Safety Administration (NHTSA).

   In 2012, EPA issued standards for light-duty vehicles for MY 2017-2025, and committed to conduct a Midterm Evaluation (MTE) by April 1, 2018. I applaud the EPA's decision last year to reconsider the evaluation issued at the end of the last administration, which was issued under a rushed timeline and without adequate coordination with NHTSA. As you complete the MTE, will you commit to use the best available, current data and collaborate with NHTSA?

7. In 2016, the U.S. imported roughly 700 million gallons of biodiesel. Last year, EPA considered reducing the renewable fuel volume obligations (RVOs) for biomass-based diesel (BBD) for 2018 and 2019. EPA explained that it "could consider the availability of imports as one factor among others in determining whether to exercise its discretion to

use the waiver authority." About the same time, the U.S. International Trade Commission imposed tariffs on imported biodiesel from Argentina and Indonesia. Imports of biodiesel from these two nations declined in 2017 and may decline further this year.

a. How did EPA account for this foreseeable decrease in the supply of imported biodiesel when it set the 2019 RVOs for BBD?
b. If U.S. BBD production does not materially increase in 2018, is EPA prepared to reduce the 2020 RVOs for BBD below 2019 levels? If not, why not?
c. How does relying on imported biodiesel advance the Renewable Fuel Standard's purported objective of improving U.S. energy security?

8. On December 23, 2016, GE submitted a completion report showing that it had completed implementation of EPA's plan for the cleanup of PCBs from the Hudson River. At that time, GE asked EPA to certify that the project is complete,[1] in accordance with a 2005 Consent Decree signed by GE and the EPA.[2] In that Consent Decree, EPA agreed to grant a certification of completion within 1 year of GE's submission of the completion report.[3] That has since passed, but to date the agency has yet to make a decision on the certificate of completion. When do you expect the agency to make a decision on the certificate of completion?

9. In December 2017, EPA announced "a cross-agency effort to address per and polyfluoroalkyl substances (PFAS)."
   a. Is EPA collaborating with other federal agencies, state agencies, or other stakeholders on this initiative? If so, how are these entities contributing to EPA's cross-agency effort?
   b. Will EPA provide the public with updates on EPA's progress and an opportunity to comment on EPA's work? If so, when do you anticipate this taking place?
   c. How will EPA's cross-agency effort help inform ongoing and future state and local efforts to address PFAS?

---

[1] "EPA is currently reviewing GE's Remedial Action Completion Report, which the company submitted to EPA, the federal natural resource trustees and New York State in December 2016." Proposed Second Five Year Review Report (2017) at pg. 20 (https://www.epa.gov/sites/production/files/2017-06/documents/hudson_second_five-year_review_report.pdf)

[2] See Consent Decree (https://www3.epa.gov/hudson/consent_decree/consent_decree.pdf)

[3] Consent Decree (Pgs. 40-41): paragraph 57.b (GE GE "shall submit to EPA, for review and approval, a Remedial Action Report . . . request[ing] EPA's Certification of Completion of the Remedial Action"); 57.d ("If EPA concludes . . . that the Remedial Action has been performed in accordance with this Consent Decree, EPA will so certify in writing"); 57.e ("EPA will respond to such request [for Certification] no later than 365 days after EPA's receipt of the request")

Ranking Member Carper:

10. EPA's February 1, 2018 Report to Congress on the Integrated Risk Information System (IRIS) states that EPA has already contracted with the National Academy of Sciences for peer review of the formaldehyde human health assessment.
    a. I have been informed that the human health assessment for formaldehyde was completed by IRIS staff months ago. Is that accurate?
    b. If so, why has the health assessment not yet been released i) for intra-agency review, ii) inter-agency peer review, iii) for public comment and iv) to the NAS for peer review, and when will each such step occur?
    c. If not, please describe precisely what work remains to be completed before each step described above can occur, along with time estimates for each step.
    d. Please provide me with an un-redacted copy of the current draft of the IRIS human health assessment for formaldehyde.

11. From January 20, 2017 until the present, please provide information regarding all meetings (including conference calls) related to the formaldehyde human health assessment, including the date, attendee names (and for non-EPA employees, their affiliations) and copies of any materials prepared for or obtained from each such meeting. Please also provide the same information for meetings EPA staff may have attended related to formaldehyde more generally.

12. The Report to Congress states that the IRIS staff have operationalized the "systematic review" process used to determine which and how scientific studies can be relied upon to inform IRIS assessments.
    a. Please provide me with a copy of the document that captures these revisions.
    b. Please additionally provide a copy of the document that describes the EPA Office of Chemical Safety and Pollution Prevention "fit for purpose" systematic review process that is referenced on page 19 of the December 12, 2017 EPA document entitled "Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential[4]."

13. Please describe the timeline and full scope of the NAS review of the IRIS program described in the Report to Congress. Will the IRIS program's new "systematic review" process be included in the scope, and if not, why not?

14. When Congress was negotiating the final text of the Toxic Substances Control Act (TSCA), EPA came to Congress and asked for specific provisions that would allow the agency to move forward with bans for some uses of three highly toxic chemicals. Congress agreed, and that language was included in the final law. One of those chemicals, a paint stripper called methylene chloride, is so dangerous that it has killed dozens of people, even when they were wearing protective gear. EPA proposed rules banning these chemicals more than a year ago. But more recent reports indicate that EPA may delay action on the uses of these chemicals for several more years, which almost certainly will mean that more people will get sick and probably some of them will die.

[4] https://www.epa.gov/sites/production/files/2017-12/documents/revised_glyphosate_issue_paper_evaluation_of_carcinogenic_potential.pdf

When I asked you during the hearing whether you would commit to finalizing these bans within thirty days, you stated that "It's my understanding that is actually on the priority list as far as the chemicals that are we reviewing. TCE and others. So that is something that I will clarify and confirm with the agency. But that was my understanding." I believe you may have been referring to the *remaining* uses of these chemicals (i.e.the uses of the chemicals that are not covered by the proposed bans), which are on EPA's priority list for the first ten chemicals slated for review under TSCA. I was referring to the uses of these chemicals that EPA has *already* proposed to ban. Please provide the specific dates by which each of these proposed bans will be finalized.

15. According to the Paperwork Reduction Act, 44 USC § 3506(d)(3), all agencies must provide "adequate notice" when "substantially modifying, or terminating significant information dissemination products." On April 28, 2017, EPA removed the vast majority – thousands of pages – of its climate change websites, and it appears that EPA did not provide the public an opportunity to comment or express its concerns.
    a. Please describe the "adequate notice" that you issued to the public prior to making any changes to the website, as required by the Paperwork Reduction Act. Please provide supporting documents, including documents memorializing the notice.
    b. Please provide a list of webpages (and a description of the information that was contained on each one) that were eliminated from the EPA website in 2017.

16. On March 24, 2017, you issued an agency-wide memorandum[5] on implementation of Executive Order 13777[6], which announced members of EPA's Regulatory Reform Task Force, appointed Samantha Dravis to serve as EPA's Regulatory Reform Officer, directed certain program offices to recommend rules for repeal, replacement, or modification, and directed all program offices to seek public input on existing regulations and report findings to the Task Force by May 15, 2017. On April 13, 2017, EPA issued a Federal Register notice: Evaluation of Existing Regulations[7]. The comment period closed on May 15, 2017 and EPA received over 460,000 comments, which were published online. The Task Force also led implementation of the Section 2 review in Executive Order 13783, Promoting Energy Independence and Economic Growth. EPA subsequently published a report pursuant to EO 13783 in October 2017. It is unclear whether the Task Force has been active since then or was involved in projects outside of what is discussed above. Accordingly, with regard to the Task Force, please provide us with:
    a. A complete list of who has or is currently serving on the Task Force, including their professional title and office at EPA, and their dates of membership on the Task Force.
    b. Please state whether the Task Force has consulted with non-EPA employees during the course of its work and, if so, please provide a list of their names and employers, and on what rules they have been consulted.
    c. A list of meeting dates and topics for Task Force meetings held thus far and scheduled to be held this year. Please provide copies of any agendas that were circulated prior to each meeting.

[5] https://www.epa.gov/laws-regulations/memorandum-executive-order-13777-enforcing-regulatory-reform-agenda
[6] https://www.federalregister.gov/documents/2017/03/01/2017-04107/enforcing-the-regulatory-reform-agenda
[7] https://www.federalregister.gov/documents/2017/04/13/2017-07500/evaluation-of-existing-regulations

d. All documents created by or for the Task Force, (including emails, memos, white papers, meeting minutes, correspondence, and comments that cannot be found on the regulations.gov website).

17. The Freedom of Information Act (FOIA) requires agencies to respond to a FOIA request within 20 days of receipt of the request. Although agencies are given some latitude to extend the response timeline in light of "unusual circumstances," EPA's failure to meet the deadlines specified in the Act has resulted in many FOIA requests left unanswered. That, in turn, has led to lawsuits against EPA for failure to meet the FOIA timeline.
    a. EPA currently submits open FOIA request logs to the Committee on a monthly basis, pursuant to an oversight letter sent to EPA on March 17, 2017. Beginning on the date of your next log submission, please also provide the number of currently open FOIA requests, the number of lawsuits that have been filed due to EPA's failure to comply with FOIA's deadlines, the number of FOIA lawsuits that have been completed, the number of lawsuits resulting in EPA providing the requested documents, and the cost of each lawsuit to the taxpayer.
    b. Does EPA follow the "rule of three,[8]" which calls on agencies to post frequently requested records to its public website? If so, please identify where those records are posted. If not, please explain why not.
    c. Please provide any internal EPA guidance that exists on the use of FOIA redactions. Please provide documents confirming that staff responsible for redacting documents have received the appropriate training.

18. During the hearing Senator Duckworth asked for "a detailed schedule of your meetings and receipts for international travel you have taken since being confirmed." You agreed to provide those documents. Since then, a report[9] detailed tax-payer funded travel you took internationally and domestically that included first-class tickets on commercial flights as well as travel on military jets. For each flight, international or domestic, that you have taken since you were confirmed, please provide the following information:
    a. Date of the flight, the departure city and airport, and destination city.
    b. Class (e.g. coach, business class, first class, or some other class of travel) and cost of the ticket.
    c. Source of funding for the ticket (e.g. federal taxpayers, the State of North Dakota, Heritage Foundation).
    d. For each non-commercial flight, please explain why a non-commercial flight was selected.
    e. Names of staffers who accompanied you on each trip, the cost of their flights, classes of their tickets, and the sources of funding for their tickets.
    f. Copies of all receipts of air travel for you and your accompanying staff.
    g. For any ticket issued to you or your accompanying staff that was not a coach-class ticket (or its equivalent), please explain why it was necessary to purchase that class of ticket.

[8] https://www.justice.gov/oip/oip-guidance/proactive_disclosure_of_non-exempt_information
[9] https://www.washingtonpost.com/national/health-science/first-class-travel-distinguishes-scott-pruitts-epa-tenure/2018/02/11/5bb89afc-0b7d-11e8-8b0d-891602206fb7_story.html?utm_term=.4c0713143235

19. During the House Energy & Commerce subcommittee hearing on December 7, 2017, you testified that particulate matter is a "very important criteria pollutant" that should be regulated under the National Ambient Air Quality Standards (NAAQS) program. One study[10] found that PM2.5 "was the fifth-ranking mortality risk factor in 2015," and contributes to nearly 90,000 deaths in the US every year.[11]

    a. Do you agree with the general conclusion from this analysis that PM2.5 presents a serious public health concern? If not, please provide supporting evidence, including any research or analysis EPA has conducted, that supports your position.
    b. Please provide documentation supporting any analysis you have done to calculate the amount of PM2.5 pollution that will be created as a result of your actions to reverse, delay, or modify the Clean Power Plan, methane, and the Glider Kit rules. Please state whether you attempted to calculate the adverse human health effects that will be caused by your changes to the rules mentioned above.
    c. Do you think there is a tolerable level of PM2.5 that is appropriate for human exposure? If so, please specify it, and explain what evidence you have to support this.
    d. Are you aware that a study conducted by Tom Brewer at Tennessee Tech University determining that trucks outfitted with glider kits are as clean as new diesel truck engines is now under investigation for "misconduct in research" by Tennessee Tech University?[12] This is the same study that was included in the glider industry's petition asking the EPA to repeal emission requirement for glider kits and cited in the EPA's November 16, 2017 proposal to repeal the Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits. Please describe how you plan to re-assess EPA's November 16, 2017 proposal in light of the potential misconduct associated with this study. If no such plans exist, why not?

20. In response to questions from Chairman Barrasso regarding the implementation of the 2015 National Ambient Air Quality Standard (NAAQS) for ground-level ozone, you commented that the EPA was "in the process of designating attainment and non-attainment [areas] with respect to ozone." You went on to state, "when you think about ozone, there has been a lot of focus on whether the parts per billion, 75 parts per billion, reducing it to 70 parts per billion, was a wise decision. That has not been our focus. Our focus has been on more the issues and implementation that you have raised."
    a. Do you agree with EPA's conclusion in 2015 that the primary NAAQS standard for ground-level ozone should be set at a level of 0.070 parts per million (ppm) to protect health with an adequate margin of safety? If not, why not?
    b. Do you agree with the underlying science data for the 2015 NAAQS for ground-level ozone that finds ambient ground-level ozone pollution above 0.070 ppm can trigger asthma attacks in children that have asthma? If not, why not?

---

[10] https://www.ncbi.nlm.nih.gov/pubmed/28408086

[11] "Estimates and 25-year trends of the global burden of disease attributable to ambient air pollution: an analysis of data from the Global Burden of Diseases Study 2015." See Table 2.

[12] http://herald-citizen.com/stories/ttu-investigating-fitzgerald-study,25943

c. Do you agree with EPA's assessment that once implemented, the public health benefits from the 2015 NAAQS for ground-level ozone will outweigh the costs? If not, why not?
d. Will you confirm that under your leadership, the EPA will not weaken the 2015 primary NAAQS standard for ground-level ozone set at 0.070 parts ppm?

21. Under Clean Air Act section 111, can EPA base emissions guidelines on a "best system of emission reduction," if application of the measures comprising that best system of emission reduction would result in a source increasing total emissions of the regulated pollutant? Why or why not?

22. In determining the "best system of emission reduction" under Clean Air Act section 111, do you believe that EPA must consider the degree of air pollution reductions achieved? Why or why not?

23. The 2009 Cause or Contribute Finding concluded that the combined emissions from new motor vehicles and new motor vehicle engines of six key well-mixed greenhouse gases—carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride (collectively, "GHGs")—contribute to greenhouse gas pollution that threatens public health and welfare. At the time, EPA cited data showing that in 2007, source categories regulated under CAA section 202(a) accounted for 23.3% of domestic GHG emissions, and the electricity sector accounted for 34.2% of domestic GHG emissions.[13] Do GHG emissions from the electricity sector cause or contribute significantly to greenhouse gas emissions that can reasonably be anticipated to endanger public health or welfare? If not, why not?

24. Do any parts of the Clean Air Act authorize EPA to decline to set 111 standards (or emission guidelines) for GHGs from stationary sources if there is an Endangerment Finding for GHGs entirely? If so, please specify them.

25. According to the most recent National Climate Assessment (NCA) released by the Trump Administration, climate change caused by emissions of heat-trapping gases "outweigh[s] other factors in determining burned area in the western U.S. from 1916 to 2003, a finding confirmed by 3000-year long reconstructions of southwestern fire history."[14] According to the NCA, "Numerous fire models project more wildfires as climate change continues," including "up to a 74% increase in burden area in California, with northern California potentially experiencing a doubling under a high emissions scenario toward the end of the century."[15] The NCA calls conifer forests in southern California "notably threatened" by the climate change caused by heat-trapping gases. According to the Trump Administration's NCA, California is also at extraordinary risk from seal-level rise and coastal damage. Without adaptive action, the Trump Administration expects that critical

[13] *See* 74 Fed. Reg. 66496, 66540 tbl.2 (Dec. 15, 2009).
[14] NCA at p. 468, *available at* http://s3.amazonaws.com/nca2014/high/NCA3_Climate_Change_Impacts_in_the_United%20States_HighRes.pdf.
[15] NCA at p. 468, *available at* http://s3.amazonaws.com/nca2014/high/NCA3_Climate_Change_Impacts_in_the_United%20States_HighRes.pdf.

California infrastructure such as the San Francisco and Oakland airports "are at increased risk of flooding with a 16-inch rise in sea level in the next 50 years . . . ." Increasingly high numbers of Californians will be put at risk of flood, including highly vulnerable populations less able to prepare, respond, or recover from natural disaster. On an even more fundamental level, emissions of these heat-trapping gases pose an exceptionally high risk to the highly urbanized population of California due to increasing urban heat. According to the Trump Administration, heat stress has been the leading weather-related cause of death in the United States since 1986 (when record-keeping began).[16] Severe heat waves such as the 10-day California heat wave of 2006 trigger "escalating effects" that kill people, particularly the elderly and those in low-income communities. Heat waves can also cause respiratory stress by expediting chemical reactions that cause the formation of ground-level ozone.

a. Do you agree that emissions of heat-trapping greenhouse gases cause compelling and extraordinary harm to the people and environment of California? If not, please explain why not, including whether you either i) do not accept the findings of the Trump Administration's NCA or ii) do not believe the impacts to California described in the NCA are compelling or extraordinary.
b. Do you agree that emissions of greenhouse gases from motor vehicles cause compelling and extraordinary harm to the people and environment of California? If not, please explain why not.

26. Please list each of the meetings that Administrator Pruitt, Assistant Administrator Wehrum, David Harlow or other EPA political staff (including EPA transition team officials) have held with outside entities, since January 20, 2017, on the topic of changes or "reforms" to the New Source Review or Prevention of Significant Deterioration requirements under the Clean Air Act. Please provide all documents received from outside entities, as well as any email correspondence between EPA employees and outside entities, on this topic, since January 20, 2017.

27. Please explain in detail how the policy options in the December 18, 2017 Advance Notice of Proposed Rulemaking regarding future rulemaking to reduce existing power plant greenhouse gas emissions would achieve the full range of public health, economic, and environmental benefits that would have resulted from Clean Power Plan.

28. In President Trump's June 1, 2017 statement announcing the United States would be withdrawing from the Paris Climate Accord, President Trump highlighted two studies - economic analysis from the National Economic Research Associates and a climate science study from MIT. These same studies were included in White House materials.
    a. Did you, or any other EPA political staff, provide White House staff or the President information on these two studies?
    b. Please provide a copy of all documents, (including but not limited to hand-written notes, paper files, emails, memos, white papers, telephone logs, presentations or meeting minutes) between and among any combination of you, other agency officials, other federal government officials, any state officials, and any non-

[16] NCA at 471.

governmental entities that inform, contribute to, direct, or are otherwise related to related to the Paris Climate Accord.

29. How many facilities subjected to MACT standards are also subjected to Reasonably Available Control Technology (RACT) standards that are more stringent or the same requirements for volatile organic compounds? Are there some parts of the country that are not subject to RACT controls for volatile organic compounds? If so, please list those areas.

30. Studies have found that regulations may play some small part in reductions in the coal workforce; but automation, shifts in mining practices, and prices of natural gas are all major contributing factors to the decline of coal.
    a. How many coal mines have closed or gone bankrupt since you became EPA Administrator?
    b. Please provide a list of every coal mine and coal-fired plant that will remain open, be built, or be expanded as a result of the rescission of the Clean Power Plan, along with the expected number of jobs that will be retained or added as a result. On what basis was each EPA projection made?

31. I remain concerned about the volatility in the Renewable Fuel Standard (RFS) compliance trading system used by EPA, known as the Renewable Identification Number (RIN) market and the impacts that RIN market manipulation is having on the economic stability of East Coast refineries.
    a. Currently, the EPA has a Memorandum of Understanding with the Commodity Futures Trading Commission (CFTC) on RIN market manipulation. In the past year, how often has EPA staff communicated with the CFTC on RIN market manipulation and what have you and your staff done with the CFTC to assess potential RIN market manipulation?
    b. In my conversations with CFTC officials, they indicate that you have not asked them to do much in assessing RIN market manipulation and suggested EPA is not collecting the right type of information to be able to assess potential manipulation. Why haven't you asked the CFTC to do more to help EPA prevent potential RIN market manipulation?
    c. I have asked the Federal Trade Commission (FTC) staff to offer their expertise to your staff. Has anyone at the EPA talked to FTC staff about ways the FTC can be helpful? Have you considered establishing a Memorandum of Understanding with the FTC to assist with RIN market manipulation?
    d. Will you commit to working with my staff to do more to address market manipulation in the RIN market?
    e. Will you commit to implementing the RFS fairly in a way that ensures an even playing field among obligated parties?

32. Under the Renewable Fuel Standard (RFS), biogas-generated electricity used to charge electric vehicles (EVs) is already an approved pathway and is eligible for the generation of cellulosic Renewable Identification Numbers (RINs). Applications for this pathway were submitted over a year and a half ago. Will you commit to approving an application for this pathway in the next 60 days?

33. Aside from the type of water identified in *SWANCC v. Army Corps of Engineers*, which have no significant connection at all to navigable-in-fact waters, are there any categories of water bodies that you believe have such an insignificant relationship to navigable-in-fact waters that discharges into them should be exempt from the Clean Water Act? In those cases, would the federal Clean Water Act allow discharges of unlimited quantities of toxic poisons into those waterbodies, even if a portion of those poisons eventually flowed downstream to navigable-in-fact waters?

34. The Obama Administration implemented its definition of "Waters of the United States" for several weeks in 2015. Has the EPA conducted any analysis of how easy or difficult it was to administer the Rule during that time? If not, why have you not conducted that analysis?

35. In an interview with the National Cattlemen's Beef Association, you said that, "The Obama Administration reimagined their authority under the Clean Water Act and defined a 'water of the United States' as being a puddle ..."[17] The Obama Administration rule expressly exempts "puddles" from the definition of "waters of the United States?" *See* 33 C.F.R. §328.3(b)(4)(vii).
    a. If you were previously aware of this exemption, why have you repeatedly mischaracterized the rule?
    b. If you were not previously aware of this exemption, do you retract your statement? If you will not retract your statement, please explain why.

36. You also stated that the Obama Administration reimagined their authority under the Clean Water Act and defined a 'water of the United States' as being . . . ephemeral drainage ditches."[18] The Obama Administration rule expressly exempts "[d]itches with ephemeral flow that are not a relocated tributary or excavated in a tributary" "puddles" from the definition of "waters of the United States?" *See* 33 C.F.R. §328.3(b)(3)(i).
    a. If you were previously aware of this exemption, why have you repeatedly mischaracterized the rule?
    b. If you were not previously aware of this exemption, do you retract your statement? If you will not retract your statement, please explain why.

37. What specific provision of the Clean Water Act or Administrative Procedure Act gives EPA the authority to alter compliance dates, not merely effective dates, for standards lawfully promulgated under 33 USC 1311(b)(2)?

38. The Clean Water Act prohibits compliance dates that extend more than three years from the issuance of new effluent guidelines (EGs). In what specific statutory provision did Congress allow EPA to flout that requirement by postponing until 2020 the compliance

[17] "EPA Administrator Scott Pruitt Urges Ranchers to File WOTUS Comments," https://www.youtube.com/watch?v=vTVd54WyhDQ.
[18] "EPA Administrator Scott Pruitt Urges Ranchers to File WOTUS Comments," https://www.youtube.com/watch?v=vTVd54WyhDQ.

deadline of an EG issued in 2015?

39. EPA explained that it is delaying the compliance deadlines of the steam electric power generating EGs because of costs to regulated industry. However, EPA estimated only 28% of coal-burning plants—and only approximately 12% of power plants overall—would incur any costs from the rule at all. Even among that small subset, almost all of those plants would incur costs less than 1% of the company's revenue.
    a. Do you disagree with those figures? If so, explain your disagreement.
    b. To what extent did you consider the EG's extensive public health benefits when deciding to delay the compliance deadlines?
    c. Do you believe that the incremental costs to industry outweighed the public health and environmental benefits of the EGs? If so, explain why.

40. The Safe Drinking Water Act permits EPA to "fill not more than thirty scientific, engineering, professional, legal, and administrative positions within the Environmental Protection Agency without regard to the civil service laws." 42 U.S. Code § 300j–10. These appointments may be made where the Administrator deems such action necessary to the discharge of his functions as they relate to Title XII of the Public Health Service Act (42 U.S.C. 300f et seq.) (relating to safety of public water systems). These individuals are exempted from certain other Executive Branch requirements, including the Trump Ethics Pledge. In an August 18, 2017 letter to GAO, Senator Whitehouse and I wrote: "EPA has utilized its SDWA authority to hire a number of non-Senate-confirmed political appointees, some of whom are serving in supervisory positions and in roles that raise ethical questions." Based on documents provided by EPA, it appears that some individuals may still be serving as administratively determined appointees. These appointees have been permitted to work on projects with essentially no check on their ethical or financial conflicts. Also, many of these appointees appear to have had EPA e-mail accounts that were created and used by them for weeks and even months before their stated appointment date -- in some cases nearly 4 months before.
    a. What is EPA's policy on the length of time an employee is allowed to serve under the SDWA authority without having to complete a financial disclosure form, or complete a recusal statement (if necessary)?
    b. What safeguards are in place to ensure that employees hired under the SDWA authority do not work on matters that may trigger a conflict before they submit their financial disclosure form and complete any necessary recusal statement?
    c. For each appointee hired under the SDWA authority, please provide the date of their appointment; the date the appointment ended (if any); and the specific projects they worked on while serving as an administratively determined appointee.
    d. For each employee hired by the EPA under the SDWA authority, Schedule C authority, or as Non-Career SES, provide the date on which their EPA e-mail address was created, and the date of their appointment, whether they worked at EPA in any capacity prior to their appointment date and if so, what capacity.

41. In response to questions from Senator Merkley, you testified that a "Red Team / Blue Team" exercise to re-examine the underpinnings of climate science is still "under

consideration" at EPA. According to Jim Lakely, the communications director of the Heartland Institute, EPA has "reached out to the Heartland Institute to help identify scientists who could constitute a red team," and the Heartland Institute had been "happy to oblige."[19]

a. Is Mr. Lakely telling the truth that EPA representatives reached out to the Heartland Institute for help identifying scientists who could participate in a Red Team/Blue Team exercise? If yes, why did EPA choose to contact the Heartland Institute?
b. Have representatives of the Heartland Institute provided representatives of EPA with a list of "scientists who could constitute a red team"? If yes, who are the Heartland Institute's proposed participants?
c. Have any EPA representatives consulted with any other organizations, corporations, or individuals about potential individuals who could participate in a Red Team/Blue Team exercise? If yes, provide the names of those organizations, corporations, or individuals consulted, and the names of any proposed participants.
d. Do you know the names of any individuals or organizations who have contributed to the Heartland Institute? If yes, please provide the names of any such individuals or organizations with whom you have met in your capacity as EPA Administrator.
e. Please provide a copy of all documents (including emails, white papers, meeting agendas, powerpoint presentations, memoranda and other materials) received or obtained by EPA related to the "Red Team/Blue Team" climate science effort.

42. A press report indicates that EPA's Office of the Chief Financial Officer established a target for Region 9 to reduce their FTEs by 10% by the end of FY18. Has the CFO or anyone in the Administrator's office provided other EPA regional offices or program offices with targets for reducing personnel by a specified percentage? If so, please provide each of the targets. Please also provide any document from the CFO or the Administrator's office communicating an FTE or staff reduction target to any EPA region or program office for FY18 or future fiscal years.

43. A recent report[20] indicates that, at a proposed superfund site in Chattanooga, EPA is only taking the most protective clean-up measures at properties where children currently live. EPA cannot possibly know whether families with children will one day move into homes that EPA isn't cleaning up because children don't *currently* live there. And EPA cannot possibly know which homes children visit frequently.
    a. Is the policy described in the report accurate? If not, please fully describe any inaccuracies.
    b. If the policy described in the report is accurate, please provide all documents (including emails, memos, white papers, analysis, meeting minutes and correspondence) related to any policy decision that limits the most aggressive cleanup measures to sites that currently have children residing on the premises.

[19] http://www.washingtonexaminer.com/trump-administration-lining-up-climate-change-red-team/article/2629124
[20] http://amp.timesfreepress.com/news/local/story/2018/jan/15/dozens-chattanooghomes-sitting-toxic-site/461286/?__twitter_impression=true

44. The President issued an Executive Order saying that for every rule an agency writes, two rules have to be repealed such that the net costs to industry are zero. However, the White House issued guidance on implementing this executive order that says that rules that address critical health matters could be exempted from the two-for-one repeal requirement. Does EPA plan to exempt its rule revising the Lead and Copper Rule from the two-for-one Executive Order? If not, why not, since the Rule does relate to a critical health matter?

45. Coal ash is laden with toxic pollutants and heavy metals, and is second only to mine waste as the largest industrial waste stream in country. On April 17, 2015, the EPA published a final rule regulating the disposal of coal ash, also known as "coal combustion residuals" (CCR), from power plants.[21] Among other things, the CCR rule established vital rules to protect groundwater resources, to protect local communities from toxic windblown dust,[22] to reduce the risk of catastrophic failure (*i.e.*, collapse) of surface impoundments, and to maintain records of compliance with those rules. You became EPA Administrator on February 17, 2017. On April 17 and May 31, 2017, lawyers for power plants asked to you reconsider a laundry list of provisions in the CCR rule. On September 13, 2017, you replied that, "After reviewing your petitions, I have decided that it is appropriate and in the public interest to reconsider the provisions of the final rule addressed in your petitions, in light of the issues raised in your petitions, as well as the new authorities provided in the recently enacted Water Infrastructure Improvements for the Nation Act, Pub. L. No. 114-322, 130 Stat. 1628 (2016)."[23]

    You appear to have granted reconsideration of every provision requested by the electric power sector in their two petitions for reconsideration. Is that a correct reading of your letter? If not, which provisions are you reconsidering?

46. Please provide a copy of all documents (including emails, white papers, meeting agendas, powerpoint presentations, memoranda and other materials) received or obtained by EPA related to the April 17, 2017 petition for reconsideration from the Utility Solid Waste Group, and the May 31, 2017 petition for reconsideration from AES Puerto Rico.

47. Section 2301 of the WIIN Act[24] allows EPA to approve state-administered CCR regulations to operate in lieu of certain federal CCR regulations. Will you ensure that any state programs you approve are at least as protective of human health and the environment as the EPA's 2015 CCR rule?

48. As a former state attorney general, you know that laws are only effective insofar as regulated entities believe they will actually be enforced. Could the unavailability of

---

[21] 80 Fed. Reg. 21,302 (Apr. 17, 2015).

[22] *See, e.g.*, Sabrina Shankman, *Is Coal Ash Killing This Oklahoma Town?*, INSIDE CLIMATE NEWS, June 13, 2016, *available at* https://insideclimatenews.org/news/10062016/coal-ash-killing-bokoshe-oklahoma-making-money-having-fun-cancer-asthma.

[23] https://insideepa.com/sites/insideepa.com/files/documents/sep2017/epa2017_1860.pdf

[24] Codified at RCRA section 4005(d), 42 U.S.C. 6945(d).

citizen enforcement make a state program less protective of human health and the environment, or is it irrelevant? Please fully explain your response.

49. For each inactive surface impoundment currently subject to the 2015 CCR rule, please provide:
    a. The site's name;
    b. The site's location;
    c. The amount of coal ash disposed of in the site;
    d. The number of people living within 3 miles; and
    e. Any waterbodies or public water supplies located within 3 miles of the site.

50. One of the companies that requested you reconsider the 2015 CCR rule, AES-Puerto Rico, appears to maintain a five-story pile of coal ash in Guayama, Puerto Rico. Has EPA received complaints about fugitive emissions from this waste pile? Has EPA investigated whether Hurricane Maria affected this and other waste piles in Puerto Rico? Please provide a copy of all documents (including emails, white papers, meeting agendas, powerpoint presentations, memoranda and other materials) received or obtained by EPA regarding off-site migration of coal-ash caused by Hurricane Maria. What precautions is EPA taking to ensure that weather events do not cause the release of coal ash?

Senator Booker:

51. The EPA has conceded that dangerous toxic and carcinogenic substances at dozens of Superfund sites are not adequately under control. The agency has also acknowledged that recent hurricanes have washed unknown amounts of chemicals from multiple Superfund sites into waterways. A recent analysis showed that 327 Superfund sites, 35 of which are in New Jersey, are at a risk of flooding due to climate change. In response to these findings, the Government Accountability Office (GAO) has agreed to investigate the risks to human health and the environment posed by natural disasters' impacts on Superfund sites.
    a. Do you agree that EPA must design Superfund remedies that account for climate change?
    b. Have you directed EPA staff to determine which Superfund sites may require additional remedies or precautions to be taken due to climate change?
    c. Can you please specify any additional resources that EPA may need to help remediate these sites?

52. On May 22, 2017, the Superfund Task Force was established to "provide recommendations...on how the Environmental Protection Agency (EPA) can streamline and improve the Superfund program." The report's recommendations were released in July 25, 2017. The EPA has stated that the Superfund Task Force kept no records of the analysis used to form recommendations for the Superfund program.
    a. Is this correct? Did the Agency keep no records of the analysis used to form recommendations?

b. If it is correct, please provide justification or reasoning for the lack of record keeping when compiling a report that would shape the management of the Superfund program.

53. In response to the Superfund Task Force recommendations issued on July 25, 2017, you developed multiple priority lists of Superfund sites, including a list for sites targeted for "immediate, intense action" and the "Redevelopment Focus" list that highlights sites that can create potential commercial and development opportunities.
    a. How did you pick the sites to include on these lists? What specific criteria did you use?
    b. What process do you intend to use in removing and adding sites to these lists?
    c. In what ways does the listing of these sites affect cleanup, construction, and revitalization efforts?
    d. Do you plan to release a report or follow up on the progress made at the sites on these lists?

54. The Diamond Alkali site in Newark, New Jersey is on your list of Superfund sites targeted for "immediate, intense action" – will you be working as quickly as possible to implement the Record of Decision for the lower 8 miles of the Passaic River?

55. When you commissioned the Superfund Task Force on May 22, 2017, you nominated Albert Kelly, who previously was CEO and President of Oklahoma-based SpiritBank, as its Chairman. Thirteen days prior to his appointment, he was ordered by the Federal Deposit Insurance Corporation ("FDIC") to pay a civil penalty of $125,000 after he "enter[ed] into an agreement pertaining to a loan ... without FDIC approval." Two months later, the FDIC issued a lifetime ban prohibiting Mr. Kelly from managing financial institutions after determining that his violations "demonstrated ... unfitness to serve as a director, officer, [and] person participating in the conduct of the affairs or as an institution affiliated party of the bank, [or] any other insured depository institution."
    a. The FDIC has banned Albert Kelly from banking for life because he "demonstrated ... unfitness to serve as a ... person participating in the conduct of the affairs ... [of] any ... insured depository institution."
        i. Will he be managing or providing advice on Superfund program funding or any other program funding in his role as Senior Advisor?
        ii. If so, what is the nature of these responsibilities?
        iii. Will you ask him to recuse himself from any specific agency activities or issue areas as a result of the banking ban?
    b. Were you aware of the FDIC investigations when you named him as Chair of the Superfund Task Force?
    c. Were you aware of the FDIC investigations when you named him as Senior Adviser?

56. Proper financial management of the Superfund program is critical to its success. Since 1999, federal funding for the Superfund program has declined from about $2 billion to about $1.1 billion annually, and the rate of contamination threat reduction at Superfund sites has declined. During your hearing, you repeatedly stated that you had visited states

throughout the country and discussed the Superfund and that the cleanup of sites would require "direction and leadership." The Chairman of the Superfund Task Force is charged with developing and implementing recommendations to improve the work of the Superfund program.

a. Mr. Kelly had no previous experience in environmental policy or management when you named him to Chair the Superfund Task Force.
    i. What experience did he have that you believe qualified him to serve as Chair?
    ii. What experience does he have that you believe qualify him to serve as your Senior Advisor?
b. What responsibilities was Albert Kelly given as Chairman of the EPA Superfund Task Force during the production of the Superfund Task Force Recommendations? What is his role and responsibility as Chair now that the Task Force has released its recommendations?
c. What responsibilities was Albert Kelly given as Senior Advisor at the EPA? What specific policy areas and programs will he be responsible for in this role?

57. When you decided to move forward with the process to potentially weaken the Agricultural Worker Protection Standard requirements, what steps did you take to comply with Executive Order 12898, which requires EPA to identify and address the disproportionately high and adverse human health effects of its activities on minority and low income communities?

58. Despite proposing drastic cuts to EPA's budget, you are spending taxpayer dollars on questionable expenses such as paying $25,000 to install a custom-made, soundproof phone booth in your office.
    a. Have you used this $25,000 phone booth for any calls with representatives of oil and gas companies?
    b. Will you provide to this committee within 10 days a log of all of the calls you have made from this phone booth?

59. Despite a tradition of EPA reimbursing the Justice Department for their work in holding polluters accountable for Superfund clean ups, it was recently reported that you may break with this precedent, directing your agency to not reimburse the DOJ for that work. Do you plan on withdrawing EPA funding for the Justice Department's Environment and Natural Resources Division?

Senator Boozman:

60. Administrator Pruitt, I understand that EPA is currently reviewing procurement guidance for the federal government's purchasing of lumber and wood products. During the Obama Administration, EPA issued procurement guidelines for lumber and wood products that called for the use of wood and lumber certified by the Forest Stewardship Council, leaving out wood grown on forests certified by the two major forest certification systems in the U.S.: the American Tree Farm System and the Sustainable Forestry Initiative. This guidance would have excluded of 4 million acres of Arkansas timber

eligible for federal procurement. Additionally, the Obama Administration's guidance runs directly counter to the regulations issued under USDA's BioPreferred program, a program created in the 2008 Farm Bill that sets federal purchasing requirements for all biobased products and specifically recognizes eligibility from all three systems. What are you doing to ensure the EPA does not arbitrarily pick winners and losers and prevent the federal government from purchasing American timber?

Senator Ernst:

61. In two separate interviews shortly after the time of this hearing, you stated the need for both RFS reform and RIN reform. During the confirmation process, you went to great length to explain your intention to uphold the RFS. Can you please explain what you think RFS reform entails? In Iowa, this is a flashpoint and the continued rhetoric used appears to contradict your promise to this Committee on the RFS.

62. Much has been said about finding a "win-win" on the RFS and RINs, albeit not by you, but by some Members of Congress. Would you agree that fixing the Reid vapor pressure issue on E15 is a "win-win"? Doing so would reduce RIN prices, which some refineries say they need, while also expanding the marketplace for biofuels.

63. How aggressively will EPA pursue the RIN obligation from refineries that declare bankruptcy?

64. The Pesticide Registration Improvement Act (PRIA) was first enacted in 2003 and established a fee schedule for pesticide registrations. It lists specific time periods for EPA to make a regulatory decision on pesticide registration and tolerance actions submitted to the Agency. The goal of PRIA was to create a more predictable and effective evaluation system for affected pesticide decisions and couple the collection of individual fees with specific decision review periods. It also promoted shorter review periods for reduced-risk applications.

    PRIA has been tremendously successful, providing hundreds of millions of dollars in funding to EPA and providing product developers with clarity on timelines for Agency actions, and facilitating investment in research and development of new products. Importantly, through these industry fees, it has also provided $1 million annually in worker protection and pesticide safety training.

    PRIA has been reauthorized twice since it was first enacted – in 2007 and 2012 – each time by unanimous consent. It has been supported by large and small manufacturers of agricultural and non-agricultural products, antimicrobial products, biotech companies, and biopesticides, as well as labor and environmental advocates. The current law was set to expire on September 30, 2017; however, an extension was included in the CR that extends the authorization through February 8, 2018. H.R. 1029, the Pesticide Registration Enhancement Act, which would reauthorize these authorities, passed the House by voice vote on March 20, 2017, and was reported by the Senate Agriculture Committee on June 29, 2017.

a. Can you explain the likely impacts to worker protection programs and your ability to regulate pesticides if PRIA is not reauthorized?
b. What would be the impact to farmers across my state and the country?

Senator Fischer:

65. In two recent television interviews, you discussed the need for RFS and RIN reform. Given your commitments made to this committee during the confirmation process that you would uphold the RFS, can you please elaborate on what you think RFS reform means?

66. How do you plan to approach the bankruptcy court case involving Philadelphia Energy Solutions? Do you intend to ask the refinery to honor their legal obligation?

67. If PES is allowed to use bankruptcy to avoid their RFS obligation, do you expect other refineries to follow this path?

68. I understand that several commercial-ready companies seeking approval of new cellulosic biofuel (D3) registrations have been told by U.S. Environmental Protection Agency (EPA) staff that the processing of such applications is currently on hold until EPA staff completes an internal review.

    Because of the investment and long-term planning required to undertake these projects, it is imperative that new production of qualified cellulosic biofuels is approved as efficiently as possible. This will allow these commercial-ready businesses to gain the value associated with the D3 RIN production during this time of tight margins in the agriculture economy and signal to the marketplace that these gallons are valued, as the Renewable Fuel Standard (RFS) intends.

    If EPA is currently delaying registration of new D3 production, the falsely low D3 production volume would affect not only today's market, but also the market for the coming year and beyond, through EPA's annual volumetric rulemaking for the RFS. This practice would systematically underestimate D3 production, and thereby undermine Congress's intent under the RFS to grow the cellulosic biofuel market.

    Does EPA currently have new cellulosic registrations on hold until EPA staff completes an internal review?

69. When does EPA anticipate completing this review, and what does it hope to accomplish through this review?

70. What steps is EPA taking to ensure these actions do not negatively impact cellulosic biofuel volumes in the 2019 RVO rulemaking?

Senator Markey:

WEBSITE

71. In all, more than 5,000 pages of scientific, policy, and educational material on climate change have been moved off the main website for the Environmental Protection Agency (EPA). This information has been largely relegated to a maze of archives and portals that is virtually inaccessible to the public. The EPA's mission states that the agency should ensure "all parts of society – communities, individuals, businesses, and state, local and tribal governments – have access to accurate information sufficient to effectively participate in managing human health and environmental risks."[25] Additionally, the Paperwork Reduction Act directs agencies to "provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products."[26] However, there was no notice of the changes made to the EPA website, leaving the public with no opportunity to weigh in on the Administrator's decision to move, hide, and archive information on the Clean Power Plan or on climate change.
    a. How does the decision to remove hundreds of webpages and post the notice on the same day comply with the EPA's mission?
    b. How does the decision to remove hundreds of webpages and post the notice on the same day comply with the Paperwork Reduction Act?
    c. Were you personally involved in directing the removal of any information from the EPA website? If so, please provide any correspondence or documentation relating to your personal involvement in the overhaul and censorship of the EPA website.

72. The error page on the EPA website that the public reaches when trying to access former resources on climate change reads, "This page is being updated [...] We are currently updating our website to reflect EPA's priorities under the leadership of President Trump and Administrator Pruitt."
    a. Please provide a timeline for when this update will be complete, as well as a detailed list of all the pages that have been permanently removed from www.epa.gov and the changes made on those that remain in an altered form.
    b. Please explain how the priorities of President Trump and Administrator Pruitt necessitate the removal of pages like "What Climate Change Means for Massachusetts" from www.epa.gov.
    c. Please provide an accounting of the costs and employee hours associated with developing the resources that were removed, as well as with the process of moving and updating the website to "reflect EPA's priorities."

ENFORCEMENT

73. Oklahoma recently suffered what may be the deadliest accident in the history of the shale industry, when five workers were killed by an explosion at a fracking site. The company

[25] "Our Mission and What We Do." United States Environmental Protection Agency. Accessed February 1, 2018. https://www.epa.gov/aboutepa/our-mission-and-what-we-do
[26] 44 USC § 3506(d)(3)

that owns this site (Patterson-UTI) has reportedly experienced several other deadly safety incidents from 2010-2013. Oklahoma's regulators use an enforcement system that shuns fines in favor of working with violators, a strategy which you appear to have emulated during your tenure. For example, Devon Energy had admitted to illegally emitting hazardous chemicals, and was in discussions to pay a settlement of more than $100,000 and install mitigation technology. After your swearing it, Devon Energy informed the EPA that it was "re-evaluating its settlement posture" and now offered a settlement of around $25,000 with no commitment to install additional technology.[27]

According to a New York Times analysis, compared to the first nine months of the Obama administration, you have: filed roughly 1,000 fewer new enforcement cases; sought 60 percent less in civil penalties; requested almost 90 percent fewer injunctive relief fixes, which prompt companies to cut pollution; and made it harder for EPA offices to request pollution tests.[28]

a. Please provide a list of companies and plants that received notices of violations from 2008-2017 under the Clean Water Act, the Clean Air Act, or the Resource Conservation and Recovery Act, but that have not yet had any EPA penalties levied upon them.
b. Please provide a detailed list of cases where, under your leadership, the EPA withdrew or accepted lower civil monetary penalties than were recommended under the previous administration from 2008-2017 and the rationale for these decisions.

74. The EPA recently released data that detailed the fines, penalties, and other commitments that the agency collected during fiscal year 2017.[29] According to the EPA's report, the number of new cases, defendants charged, and federal inspections and evaluations began by the agency in FY2017 were all at the lowest level in at least a decade. Despite this, the EPA still touted an increase in the total amount of criminal fines, including restitution and mitigation activities.
    a. Of the cases included in the FY17 reporting, what percentage of fines and restitutions, court ordered environmental projects, Superfund site commitments from liable parties, judicial penalties, injunctive relief, and other penalties were made before January 20, 2017?
    b. Of the cases included in the FY17 reporting, what percentage of civil and criminal cases, inspections/evaluations, complaints, and orders were initiated, opened, or filed after January 20, 2017?

---

[27] Brook-Davison, Carrick. "RE: Revised Devon settlement proposal for the Beaver Creek Gas Plant." Guida, Slavich & Flores. February 22, 2017. Accessed February 1, 2018. https://www.documentcloud.org/documents/3727057-Devon-Fights-and-Now-Is-Winning-Battle-Against.html#document/p1/a356485

[28] Lipton, Eric and Danielle Ivory. "Under Trump, E.P.A. Has Slowed Actions Against Polluters, and Put Limits on Enforcement Officers." The New York Times. December 10, 2017. Accessed February 1, 2018. https://www.nytimes.com/2017/12/10/us/politics/pollution-epa-regulations.html

[29] "Enforcement Annual Results for Fiscal Year 2017." Environmental Protection Agency. Accessed February 9, 2018. https://www.epa.gov/enforcement/enforcement-annual-results-fiscal-year-2017

75. The EPA FY19 budget request included an 18 percent cut to civil enforcement and a 12 percent cut to criminal enforcement from the FY18 annualized Continuing Resolution (CR).
    a. As the number of new enforcement cases are already falling under your tenure, how does limiting the enforcement budget further facilitate your stated objective to "timely enforce environmental laws to increase compliance rates [...] especially enforcement actions to address environmental violations?[30]
    b. How many full-time EPA employees working on civil, criminal, Superfund, and federal facilities enforcement do you expect to be supported by the FY19 budget request?

CLIMATE IN DRAFT STRATEGIC PLAN

76. You have said that "scientists continue to disagree about the degree and extent of global warming and its connection to the actions of mankind."[31] With regard to human-produced carbon dioxide, in an interview with CNBC, you said that, "I would not agree that it's a primary contributor to the global warming that we see."[32] But the statutorily required National Climate Assessment's Climate Science Special Report that was released by the Trump Administration in November concluded that "human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th century."[33] Last year was the second-hottest year in recorded history, according to the National Aeronautics and Space Administration, and saw record-breaking costs incurred by extreme weather and climate disasters.
    a. Do you disagree with the conclusion made in the Climate Science Special Report by our country's top scientists at 13 federal agencies, including your own, that human activities are the dominant cause of global warming, with "no convincing alternative explanation"?

77. Despite these findings, and the conclusion that "[c]hanges in the characteristics of extreme events are particularly important for human safety,"[34] climate change did not appear in the EPA's Strategic Plan for 2018-2022, as published on February 12, 2018.
    a. Why does climate change not appear in the draft plan?
    b. Do you intend to address climate in other strategic planning documents, commensurate with the findings of the Climate Science Special Report? If not, why not?

PERSONNEL

---

[30] "FY 2019 EPA Budget in Brief." United States Environmental Protection Agency. February 2018. Accessed February 13, 2019. https://www.epa.gov/sites/production/files/2018-02/documents/fy-2019-epa-bib.pdf
[31] Pruitt, Scott and Luther Strange. "The Climate-Change Gang." The National Review. May 17, 2016. Accessed January 31, 2018. http://www.nationalreview.com/article/435470/climate-change-attorneys-general
[32] DiChristopher, Tom. "EPA chief Scott Pruitt says carbon dioxide is not a primary contributor to global warming." CNBC. March 9, 2017. Accessed February 1, 2018. https://www.cnbc.com/2017/03/09/epa-chief-scott-pruitt.html
[33] Wuebbles, D.J., and D.W. Fahey, K.A. Hibbard, D.J. Dokken, B.C. Stewart, and T.K. Maycock (eds.) "Climate Science Special Report." U.S. Global Change and Research Program. November 2017. Accessed January 31, 2018. https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf
[34] Ibid.

78. In the FY19 budget request, Science and Technology funding was cut from $708,975,000 in the FY 2018 annualized CR to $448,965,000—a decrease of 37 percent. The Regional Science and Technology funding was zeroed out entirely. This attack on science comes as more than 200 scientists have left the agency over the past year.
    a. How many full-time scientists will be supported at the EPA by the FY19 budget request?
    b. Can you describe how the Regional Science and Technology capabilities will be fully replaced by the "ad hoc" efforts described in the Budget in Brief?

TOXIC CHEMICALS

79. During the hearing, you committed to updating my office on the status of the formaldehyde health assessment, which I understand has been completed by EPA staff but not yet released.
    a. What date was the draft assessment completed by EPA staff?
    b. What is the exact timeline for public release?
    c. What are the exact steps that EPA must take internally before the report is shared for interagency review?

80. The Integrated Risk Information System (IRIS) provides the scientific research needed to effectively implement the Clean Air Act, Clean Water Act, Safe Drinking Water Act, Food Quality Protection Act, and the Toxic Substances Control Act (TSCA), among other laws that protect our nation's public health and environment. However, there have been repeated attacks made on IRIS's objectivity and independence, despite recent changes made to strengthen its scientific approach. There are reportedly around 30 people left working at IRIS, after a period of serious attrition similar to that seen within other EPA offices.
    a. Does the EPA plan on moving the IRIS program from the Office of Research and Development to the Office of Chemical Safety Pollution and Prevention (OCSPP) as reported, thereby placing it within the regulatory arm of the EPA and out of the science and research office?
    b. If yes, please detail how the EPA would ensure that the scientific research remains independent, transparent, and non-politicized.
    c. Please provide a list of dates and attendees of meetings you or senior political appointees have taken in which IRIS was discussed, as well as any communication or documents relating to these meetings.

Senator Merkley:

81. Under your new policy, you exclude scientists who currently receive EPA grants from serving on EPA scientific advisory committees (link: https://www.epa.gov/sites/production/files/2017-10/documents/final_draft_fac_directive-10.31.2017.pdf).
    a. What is the legal basis for this new directive?
    b. What is your reasoning in exempting tribal, state, and local EPA grant recipients from the directive?

c. How do you define conflicts of interest within the EPA advisory committees?
d. Have you consulted with scientific societies, the National Academies, or other independent science organizations about the definition of conflicts of interest?
e. How will your directive work to ensure that the agency's advisory committees are able to make objective recommendations based on the best available science?
f. Can you provide an example of a time when a EPA grant recipient on a federal advisory committee provided "conflicted" advice to the administrator?
g. Now that your directive has tripled the number of industry scientists on the SAB, how will you ensure that the EPA's science advice remains independent?

82. The policy excluding scientists does not affect individuals who have industry ties. For example, Dr. Tony Cox received money from American Chemistry Council, American Petroleum Institute, Engine Manufacturers Association, National Mining Association, and many others, yet you selected him to chair the Clean Air Scientific Advisory Committee (CASAC). Why are industry-funded individuals with apparent conflicts of interest more qualified to serve in these science committees than independent scientists?

83. You took an unprecedented action and dismissed Dr. Donna Kenski from EPA CASC before her term expired, alleging that Kenski would not qualify under EPA's problematic new policy. Even so, Dr. Kenski's employer, the Lake Michigan Air Directors Consortium's EPA grant is routed through the state government, a category is exempted in the new policy. At the same time, Dr. Michael Honeycutt is allowed to chair the Scientific Advisory Board, even though he has received over $58 million in grants while leading the Texas Commission on Environmental Quality. Why does the same policy disqualifies Dr. Kenski while allowing Dr. Honeycutt to serve?

84. You pledged repeatedly in front of this committee that since you are a lawyer and a prosecutor, you would defer to your career staff for science advice. Yet you replaced Dr. Kenski with Dr. Larry Wolk, whom according to your staff's memo, had "no direct experience in health effects of air pollution, epidemiology, toxicology." On Dr. Tony Cox, your staff raised conflict of interest and appearance of a lack of impartiality issues. Will you commit to follow the recommendations of EPA's career staff so no one appointed to the EPA's advisory committees are either unqualified or have conflicts of interests so that the committees can provide you with the best and sound science that you and the agency so desperately need?

85. In your hearing in front of the House Energy & Commerce Committee, you said that EPA has issued $77 million in grant money to twenty members of the EPA scientific advisory committees. Please provide detailed information behind this statement, including the names of the 20 members, their affiliations, their EPA-funded projects and grant amount.

86. During your nomination hearing, you said that you "have no first-hand knowledge" of the EPA's scientific integrity policy at the time. However, you did commit to "thoroughly reviewing" the policy and following "federal guidance regarding scientific integrity." The policy states that EPA scientists are free to "exercise their right to express their personal views provided they specify they are not speaking on behalf of…" the EPA (Link:

https://www.epa.gov/sites/production/files/2014-02/documents/scientific_integrity_policy_2012.pdf). Have you reviewed and implemented this part of the policy? Can you affirm that EPA scientists and managers are free to exercise their right to express their personal views free from political interference, as guaranteed by this policy?

87. The EPA's scientific integrity policy encourages EPA scientists to engage with their peers in the industry, academia, government, and non-governmental organizations as long as it is consistent with their job duties. The policy explicitly states that this can include presenting their work at scientific meetings and actively participating in professional societies, and more. However, 3 EPA scientists that were scheduled to speak at a conference on climate change at Narragansett Estuary Bay were restricted [link:https://www.ucsusa.org/center-science-and-democracy/attacks-on-science/accumulating-evidence-federal-scientists-are-being#.WnDaRq6nFhF] from attending, in direct conflict with the agency's scientific integrity policy.
    a. Did you realize that this decision was in violation of the policy?
    b. Will you commit to ensuring that this type of flagrant violation will not happen again under your watch?
    c. In the spirit of upholding scientific integrity in EPA decision making, will you commit to not politically interfere in science-based policy decisions at the agency, yes or no?

88. You decided to postpone steam electric power plant effluent guidelines rule in September. Who are the stakeholders that you met with prior to making this decision? Additionally, please provide the analyses that helped you make this decision.

89. Please explain why the EPA removed methylene chloride, NMP, and TCE from the Unified Agenda of Regulatory and Deregulatory Actions.

90. During the hearing I asked if you were inclined to grant an exemption to asbestos used by the chloralkali industry, which imports 95% of asbestos into the United States. You said that you would have to look into the issue. Now that you have had more time to study the issue, are you going to exempt asbestos used by the chloralkali industry from regulation?

91. EPA has reduced climate change website access to at least 5,000 pages, possibly many more, of scientific, policy, and educational material paid for by taxpayer dollars over the past year. In the one example of content being partially returned to the website, all of the more than 200 climate-related webpages were omitted from what was previously a 380-page website titled "Climate and Energy Resources for State, Local, and Tribal Governments," which has now been renamed simply "Energy Resources for State, Local, and Tribal Governments." How do you justify such overt censorship of taxpayer-funded information that was created to help state, local, and tribal decision-makers protect the well-being of their constituents? Will you return this content to the EPA website so that the public can benefit from it again?

92. According to the Paperwork Reduction Act, 44 USC § 3506(d)(3), all agencies must "provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products." The news release announcing that the EPA was overhauling its website was published the same day that the EPA removed the vast majority of its climate change website, thousands of webpages -- the public did not have an opportunity to provide comment or express its concerns. How do you justify overtly disregarding this process and failing to notify the public?

93. While Dr. Michael Dourson was under consideration to be Assistant Administrator of the Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention (OCSPP), he was employed as a senior adviser at the EPA.
    a. What was Dr. Dourson's job title and type of appointment?
    b. Whom did he supervise?
    c. Did you delegate any duties of the OCSPP to him? If so, what were they?
    d. What projects did Dr. Dourson work on while at EPA and what was his role related to these projects?
    e. What monetary and non-monetary compensation did Dr. Douson receive while he was employed at EPA?
    f. Please provide Dr. Dourson's daily schedule while he was at EPA.

94. You claim that special interest groups have been circumventing the regulatory process through litigation, resulting in creation of regulation via consent decrees and settlement agreements. However, EPA has been making "policy decisions" of late that do just that--circumvent the rulemaking process. EPA's January 25 guidance allowing the downgrade of source status from "major" to "area" has a major impact on reporting and compliance requirements, yet this new benefit to industry did not undergo the required regulatory process under the Administrative Procedures Act.
    a. Please describe how EPA is increasing transparency and improving public engagement with respect to making the decision to downgrade source status for industries without a rulemaking, and how this is an improvement to public health and the environment.

95. Facilities will now have the ability to downgrade to an area source without needing to comply with maximum achievable control technology (MACT) standards, which require control efficiencies of 95% and higher. Please explain how the emissions reductions from MACT standards will be achieved when you are allowing sources to be recategorized as area sources.

96. Historically, environmental organizations have sued EPA due to lack of agency action on implementation of critical environmental laws, resulting in court decisions that force EPA to take action...or as you refer to it, sue and settle. What other courses of action can special interest groups pursue when EPA does not meet statutory deadlines?

97. In your Sue and Settle directive, you issued a memo to EPA managers (https://www.epa.gov/sites/production/files/2017-10/documents/signed_memorandum_in_support_of_consent_decree_and_settlement_agr

eement_oct162017.pdf) discussing how past practices of EPA have harmed the American public. In this memo, you say that EPA has met with outside groups behind closed door and excluded other interested stakeholders, essentially accusing EPA's Office of General Counsel of collusion. Is it your position that EPA lawyers are liable for collusion? If you believe that collusion has occurred, are you aware that many state bar associations consider collusion grounds for attorney discipline or even debarment? Was it your intention to endanger the status of all EPA attorneys?

98. It has been reported that the grant review process at EPA has been captured by political appointees.
    a. Can you please describe how the EPA is currently reviewing grants?
    b. Why is the EPA specifically targeting grants that are dealing with climate change and climate impacts?

Senator Sanders:

Climate Change

99. During a recent interview with KSNV TV, you stated:

> "Is (global climate change) an existential threat? Is it something that is unsustainable, or what kind of effect or harm is this going to have? I mean, we know that humans have most flourished during times of what? Warming trends. I think there's an assumption made that because the climate is warming, that (warming) is necessarily a bad thing. Do we really know what the ideal surface temperature should be in the year 2100? In the year 2018? I mean it's fairly arrogant for us to think that we know exactly what it should be in 2100."

The Trump Administration's *Climate Science Special Report*, the United Nation's Intergovernmental Panel on Climate Change's *Fifth Assessment Report*, and the Department of Defense's *National Security Implications of Climate-Related Risks and a Changing Climate* report all found with high confidence that global climate change and rising global temperatures are likely to cause rising sea levels and increase crop failures, hunger, illness, and extreme weather. The Department of Defense's report identified these factors as clear risks to the United States' national security.

In January, the National Oceanic and Atmospheric Administration published a technical report that predicted that rising global temperatures could cause global mean sea levels to rise over ten feet by 2100. This sea level rise would displace more than 30 million Americans and mostly or completely cover Cape Canaveral, the U.S. Naval Academy, the Massachusetts Institute of Technology, the John F. Kennedy International and San Francisco International airports, and the Mar-a-Lago resort, among other prominent localities. Given the level of destruction anticipated, would you consider these outcomes to "necessarily be a bad thing"?

In January, the peer-reviewed journal, *Nature Climate Change*, published a report predicting that 260,000 people around the world will die annually by 2100 due to

decreasing air quality and rising global temperatures. If global climate change and decreasing air quality were to cause this level of increase in annual deaths, would you consider that outcome to "necessarily be a bad thing"?

In 2012, the independent humanitarian group DARA estimated that between 2012 and 2030, 150,000 people around the world will die annually due to infections and 360,000 people will die annually due to hunger and malnutrition related to rising global temperatures. If a warming climate were to cause this type of increase in illness, would you consider that outcome to "necessarily be a bad thing"?

The Union of Concerned Scientists estimates that if global warming emissions continue to grow unabated, the annual economic impact of more severe hurricanes, residential real-estate losses to sea-level rise, and growing water and energy costs could reach 1.9% of the U.S. GDP by 2100. They also estimate that a sea-level rise of 13-20 inches by 2100 would threaten insured properties in U.S. Northeast coastal communities valued at $4.7 trillion. If a warming climate were to cause these types of economic impacts, would you consider that outcome to "necessarily be a bad thing"?

Lead

100. You have stated that "[l]ead poisoning is an insidious menace that robs our children of their intellect and their future." This is especially true for children living in communities of color, who are most likely to suffer from lead exposure and poisoning. According to the Center for Disease Control, African American children are over three times as likely to have highly elevated blood-lead levels. African American and Latino communities are often more likely to live near active battery recyclers, industrial sites, or highways, and to live in older housing that are sources of high levels of lead. In addition, a 2012 study found that lead exposure resulted in greater cognitive detriment for children with a lower socioeconomic status. Scientists agree that there is absolutely no acceptable level of lead exposure for children.

Based on your own statement, will you commit to eradicating lead exposure for America's children? How will you work with other leaders in the Administration to ensure the safety of our children, including those in more vulnerable communities?

101. In 2015, the Natural Resource Defense Council found that more than 18 million Americans were served by community water systems that had violated the EPA's Lead and Copper Rule, which limits the concentration of lead and copper in public drinking water. You estimated it would cost "as much as $30 billion or maybe upward of $50 billion" to replace all the lead service lines across the country, implying that this price tag is too high. However, Fitch Ratings, an independent credit rating agency, has estimated that the capital costs to replace these lines could be over $275 billion. Based on the discrepancy in these figures, please detail how you arrived at your estimate, and explain why it is so much lower than that of Fitch Ratings.

EPA Website

102. On April 28, 2017, the EPA removed its climate change website. To this day, the removed pages redirect to a notice stating, "we are currently updating our website to reflect EPA's priorities under the leadership of President Trump and Administrator Pruitt." The EPA did not announce the overhaul prior to its start date and has not yet provided a justification for the removals.

According to the Paperwork Reduction Act, all agencies must "provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products." The EPA's announcement regarding its website overhaul was published on the same day that the EPA removed the vast majority of its climate change website, and therefore the public did not have an opportunity to provide comment or express concerns.

Does the EPA generally take public comments into account when making these types of decisions?

Can you please explain how announcing an overhaul of the climate website on the same day changes were made constitutes "adequate notice" under the Paperwork Reduction Act?

103. On February 2, 2018, the Associated Press reported that internal EPA emails, released following a Freedom of Information Act request by the Environmental Defense Fund, show that you personally monitored efforts to overhaul the EPA's climate change website. One email from Lincoln Ferguson, an EPA senior advisor for public affairs, states:

> "How close are we to launching this on the website? The Administrator would like it to go up ASAP. He also has several other changes that need to take place."

Did the EPA, under your leadership, remove the content of the EPA's climate change website and replace the removed pages with a notice stating "this page is being updated to reflect the agency's new direction under President Donald Trump and Administrator Scott Pruitt"?

Was this overhaul announced prior to its start date? If not, why not?
Please provide a specific time for the EPA's climate change website to come back online.

104. Did the EPA, under your leadership, remove web resources providing information about the benefits of the Clean Power Plan months before the proposed rulemaking to withdraw the rule?

If so, did the EPA remove website information regarding what was, at the time, current EPA policy before initiating the appropriate rulemaking process?

Renewable Energy

105. In October 2017, you said that if it were up to you, you would do away with the Renewable Electricity Production Tax Credit and the Investment Tax Credit for wind and solar. You stated:

> "I'd let (solar and wind) stand on their own and compete against coal and natural gas and other sources, and let utilities make real-time market decisions on those types of things as opposed to being propped up by tax incentives and other credits that occur, both in the federal and state level."

As you may know, the United States currently wastes billions of dollars each year subsidizing the fossil fuel industry. Since you believe energy tax credits should be eliminated to let technologies "stand on their own," do you also believe we should eliminate fossil fuel subsidies to let coal, oil and gas "stand on their own" as well? If so, what actions are you taking to eliminate the unfair subsidization of certain energy resources?

Senator Van Hollen:

106. You have noted repeatedly – more than a dozen times in your appearances before Congress and in your testimony for today– that EPA's only authority is the "rule of law" or "the authority given to it by Congress".

The updates to the Toxic Substances Control Act Congress enacted in 2016 directed EPA to assess the safety of new chemicals before they go onto the market. The law says that EPA, quote, "shall issue an order" regulating the chemical in order to protect against the danger the new chemical may pose.

On January 17th of this year, you told CBS News that EPA should not regulate new chemicals using orders even though the law clearly says otherwise. Your views appear to be in direct conflict with the law Congress wrote.

Mr. Pruitt, will you direct EPA staff to issue orders to regulate the safety of new chemicals under all circumstances in which the law says that orders are required?

107. I appreciated your recent announcement that that you have decided not to abandon proposed EPA oversight of the massive Pebble Mine, leaving restrictions in place while the Agency receives more information on the potential mine's impact on the region's world-class fisheries and natural resources. Given EPA's role in this process, would you say that EPA can contribute valuable feedback to the development of projects, be they energy, mining, or transportation? Given EPA's valuable feedback, would you object to efforts to roll back EPA's responsibilities to provide input on infrastructure projects?

Senator Wicker:

108. Do you support providing hardship exemptions from Renewable Fuel Volume Obligations (RVOs) for small refineries experiencing disproportionate economic impacts from high RIN prices?

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

February 1, 2018

OFFICE OF
AIR AND RADIATION

The Honorable John Barrasso, M.D.
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Chairman Barrasso:

I am writing in response to your January 19, 2018, letter requesting attention to various National Ambient Air Quality Standards (NAAQS) implementation issues, including exceptional events determinations and interstate transport of ozone.

The U.S. Environmental Protection Agency's October 2017 *Final Report on Review of Agency Actions that Potentially Burden the Safe, Efficient Development of Domestic Energy Resources Under Executive Order 13783* outlined a variety of concerns identified by commenters regarding NAAQS implementation issues.[1] In order to address issues related to the ozone NAAQS, I formed the Ozone Cooperative Compliance Task Force. The Task Force is reviewing administrative options to enable states to enter into cooperative agreements with the EPA to provide regulatory relief and meaningfully improve ozone air quality. The Task Force is focused on: fully understanding the role of background ozone levels; appropriately accounting for international transport; and timely consideration of exceptional events demonstrations. Moreover, the EPA plans to work to streamline state implementation plan (SIP) approvals through a nationally consistent process. On January 8, the EPA provided a status report to the U.S. Court of Appeals for the D.C. Circuit indicating that the agency is continuing to review the 2015 ozone NAAQS to determine whether the standards should be maintained, modified, or otherwise reconsidered.

The EPA is committed to working with states like Wyoming to address challenges with exceptional event demonstrations under section 319(b) of the Clean Air Act (CAA). In September 2016, the EPA finalized revisions to the Exceptional Events Rule in an attempt to improve administrative efficiency and reduce burdens for the demonstration process. Under the new rule, the EPA has concurred on several ozone-related demonstrations in 2017 and looks forward to working closely with the Committee and the state of Wyoming to facilitate implementation in a manner consistent with cooperative federalism. The updated rule includes an initial notification process to enable early engagement as well as intended response timelines for an initial review of submitted demonstrations within 120 days and a complete review of final demonstrations within 12 months. The EPA has recently posted submitted materials and EPA reviews for successful

[1] *https://www.epa.gov/sites/production/files/2017-10/documents/eo-13783-final-report-10-25-2017.pdf.*

demonstrations under the revised rule,[2] as well as several tools which should improve the process (including a June 2017 Mitigation Plan checklist and an April 2017 *Best Practices for Preparation of Multi-Agency Exceptional Events Demonstrations*).[3] The EPA also intends to transition to a national electronic tracking system for exceptional events as well as develop additional implementation materials related to alternate paths for data exclusion (including for air quality data that may influence regulatory determinations or actions typically outside the scope of the exceptional events rule), stratospheric ozone intrusions, high wind events, and prescribed fires.

We look forward to working with the Committee and the state of Wyoming to ensure that the "Good Neighbor" provisions of the CAA's section 110 reflect regional differences. I intend to engage in a transparent process that will allow states to have a meaningful opportunity to understand their obligations with regard to reducing emissions that cause or contribute to nonattainment or interference with maintenance in other states through the SIP process. In October 2017, a memorandum from EPA's Office of Air Quality Planning and Standards provided supplemental information to states for development of Good Neighbor SIPs under the 2008 ozone NAAQS.[4] This updated modeling "indicates that there are no monitoring sites, outside of California, that are projected to have nonattainment or maintenance problems with respect to the 2008 ozone NAAQS of 75 ppb in 2023." The EPA also intends to work closely with states early this year to provide more information and flexibility as they look to address interstate transport issues under the 2015 ozone NAAQS.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Matthew Davis in the EPA's Office of Congressional and Intergovernmental Relations at davis.matthew@epa.gov or at (202) 564-1267.

Sincerely,

William L. Wehrum
Assistant Administrator

---

[2] *https://www.epa.gov/air-quality-analysis/exceptional-events-submissions-table-2016-rule.*
[3] *https://www.epa.gov/air-quality-analysis/exceptional-events-implementation-tools-templates-and-links.*
[4] *https://www.epa.gov/sites/production/files/2017-10/documents/final_2008_o3_naaqs_transport_memo_10-27-17b.pdf.*

JOHN BARRASSO, WYOMING, *CHAIRMAN*

JAMES M. INHOFE, OKLAHOMA
SHELLEY MOORE CAPITO, WEST VIRGINIA
JOHN BOOZMAN, ARKANSAS
ROGER WICKER, MISSISSIPPI
DEB FISCHER, NEBRASKA
JERRY MORAN, KANSAS
MIKE ROUNDS, SOUTH DAKOTA
JONI ERNST, IOWA
DAN SULLIVAN, ALASKA
RICHARD SHELBY, ALABAMA

THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
JEFF MERKLEY, OREGON
KIRSTEN GILLIBRAND, NEW YORK
CORY A. BOOKER, NEW JERSEY
EDWARD J. MARKEY, MASSACHUSETTS
TAMMY DUCKWORTH, ILLINOIS
CHRIS VAN HOLLEN, MARYLAND

RICHARD M. RUSSELL, *MAJORITY STAFF DIRECTOR*
GABRIELLE BATKIN, *MINORITY STAFF DIRECTOR*

United States Senate

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

January 19, 2018

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator Pruitt:

I write to request your attention to two challenges associated with National Ambient Air Quality Standards (NAAQS) implementation across the country, including in my home State of Wyoming: exceptional events determinations and interstate transport of ozone.

First, EPA has not worked in full partnership with States in addressing "exceptional events" in the past. In 2016, EPA refused to act on a number of Wyoming's pending requests related to unique air quality events, as explained in the enclosed correspondence between Wyoming and EPA. Under Section 319 of the Clean Air Act (CAA), Congress created a process for addressing how "exceptional events" such as wildfires should be evaluated in air quality monitoring data. Wyoming's experience with the program illustrates the need for a shift in EPA's implementation approach. As a rural state with areas of high elevation and low population density, Wyoming faces issues different from many other parts of the country.

Second, EPA needs to revisit the methodology it has used to address interstate ozone transport, that is, whether and how emissions in one part of the country affect air quality elsewhere. On February 10, 2017, I raised concerns with EPA's treatment of ozone transport in the enclosed letter addressed to Reince Priebus. Despite a clear directive at the beginning of this Administration to freeze issuance of new regulations, EPA found that Wyoming had not adequately addressed ozone transport issues. In reaching that conclusion, EPA applied a methodology designed for eastern States to allege that emissions in Wyoming posed air quality problems in Colorado.

By January 30, 2018, please provide a status update on both of the issues above. First, what are the Agency's plans to act on pending exceptional events requests filed by Wyoming? Second, what are EPA's plans to address the February 2017 ozone transport finding?

I also request that you outline current or planned activities of the Ozone Cooperative Compliance Task Force, which was mentioned in an October 25, 2017 EPA report.[1] According to the report, the Task Force will address NAAQS implementation issues of national importance in the future.

[1] U.S. EPA, "Final Report on Review of Agency Actions that Potentially Burden the Safe, Efficient Development of Domestic Energy Resources Under Executive Order 13783" (Oct. 25, 2017), https://www.epa.gov/sites/production/files/2017-10/documents/eo-13783-final-report-10-25-2017.pdf.

PRINTED ON RECYCLED PAPER

Your consideration of these requests is greatly appreciated. If you or your staff require additional information, please contact Elizabeth Horner of the Committee on Environment and Public Works (Majority) staff at 202-224-6176.

Sincerely,

John Barrasso

John Barrasso, M.D.
Chairman

Enclosures

Enclosure

U.S. Environmental Protection Agency
Responses to Questions for the Record
House Committee on Energy and Commerce
Subcommittee on Environment
Hearing on
"Modernizing the Superfund Program"
January 18, 2018

The Honorable John Shimkus

1. **EPA retains money received through settlements with Potentially Responsible Parties (PRPs) in site-specific accounts to conduct planned future cleanup work at the site based on the terms of the settlement agreement. Is EPA constrained or prevented from using special account funds to get these sites cleaned up?**

   Response: While EPA has the authority to collect funds from parties to support Superfund investigations and cleanups, site specific account are set up separately and distinctly and may only be used for the sites and uses outlined in the settlement(s) with the party. Section 122(b)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authorizes EPA to retain and use funds received pursuant to a settlement agreement with a party to carry out the purpose of that agreement. Funds are deposited in Superfund site specific special accounts for cleanup at the sites designated in individually negotiated settlement agreements. Special accounts are generally used before the agency's annually appropriated funds for response actions identified in the terms of the settlement agreements. Special accounts are crucial to EPA's ability to continue to fund investigations and construction projects at sites across the country and save taxpayer dollars for those sites where no viable or cooperating responsible party has been identified.

   a. **If not, why is the balance in the account so high and why is the money not being spent?**

   Response: EPA carefully manages the available resources in special accounts for site response work. EPA has plans to spend approximately $1.3 billion of currently available special account funds over the next 5 years, but use of the funds are also planned for much further into the future to continue activities such as conducting five-year reviews or remedy optimization where waste has been left in place. In addition, the agency continues to receive site-specific settlement funds that are placed in special accounts each year, so progress on actual obligation and disbursement of funds may not be apparent upon review solely of the cumulative available balance. In FY 2017, EPA deposited more than $289 million into special accounts and disbursed and obligated over $357 million from special accounts.

b. **Does CERCLA need to be updated to clarify what special account funds may be used for?**

Response: The Administration's "Legislative Outline for Rebuilding Infrastructure in America" includes legislative proposals that could improve EPA's ability to facilitate cleanup and redevelopment of Superfund sites through the use of special accounts. The proposals include options for building in flexibilities in the use of special account funding and the ability to enter into administrative agreements with additional classes of entities such as bona fide prospective purchasers.

2. **The recommendations of the Superfund Task Force included a recommendation that EPA "maximize the use of special accounts to facilitate site cleanup and/or redevelopment." Other than developing guidance, what is the plan for implementing this recommendation?**

Response: The EPA's Special Accounts Senior Management Committee, comprised of agency senior managers, is responsible for the management and use of special accounts. The Committee monitors the use of special account funds on an ongoing basis to ensure that EPA is conducting cleanups and using the funds as quickly and efficiently as possible to address Superfund sites.

The Superfund Task Force identified a gap in current special account guidance, which will be addressed by providing clarifying guidance to EPA regions on the use of special account funds. The guidance will clarify that in appropriate circumstances, special account funds may be used as an incentive for potentially responsible parties or bona fide prospective purchasers (BFPPs) who agree to conduct CERCLA response actions at a site to address contamination and facilitate redevelopment of the site. Providing available special account funds to a BFPP that agrees to conduct CERCLA response actions will help address risks posed by Superfund sites and facilitate redevelopment.

In addition, the Administration's "Legislative Outline for Rebuilding Infrastructure in America" includes legislative proposals that could improve EPA's ability to facilitate cleanup and redevelopment of Superfund sites through the use of special accounts.

3. **EPA drafted guidance that is expected to allow for or encourage the provision of Superfund's "special account" funds to bonafide prospective purchasers (BFPPs) as an incentive to conduct work on Superfund sites. Does EPA have the legal authority to reallocate special account funds in this way?**

Response: The legal authority for using special accounts is found in Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), which authorizes EPA to "retain and use [funds] for purposes of carrying out the agreement." This authority enables EPA to use special account funds for EPA-lead cleanup at a site, or to provide those funds to other parties who agree to perform an EPA selected response action at that site under a CERCLA agreement. Consistent with this authority, CERCLA agreements generally establish that special account funds can be "retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund." Therefore, BFPPs may be eligible, at EPA's discretion, to receive special account funds when they conduct CERCLA

response actions at a site pursuant to an agreement under CERCLA that is consistent with the response actions agreed to in the settlement agreement that created the account.

4. **One of the recommendations of the Superfund Task Force was the use of adaptive management. Does EPA intend to incorporate adaptive management into the Superfund cleanup program and if so, how?**

   Response: The agency formed an Adaptive Management Workgroup following issuance of the Task Force recommendations. This workgroup is exploring options for incorporating adaptive management into the Superfund cleanup program. At this time, formal decisions have not yet been made regarding implementation.

5. **How can EPA use incentives to encourage responsible parties to cooperate and come to the table early to avoid the increased transaction costs associated with protracted negotiations?**

   a. **What incentives can EPA utilize to clean up a Superfund site faster and more efficiently?**
   b. **How can EPA use enforcement authorities as leverage to get a cleanup started or to help reach settlement?**

   Response: One of the principal goals of the Superfund Task Force is to speed up cleanup; these questions go to the core of Recommendation 16: *Provide Reduced-Oversight Incentives to Cooperative, High-performing PRPs, and Make Full Use of Enforcement Tools as Disincentives for Protracted Negotiations, or Slow Performance Under Existing Cleanup Agreements*. The agency is examining these issues, as well as others, to identify and evaluate its existing best practices, as well as propose future methods to encourage timely cleanup and decrease transaction costs. EPA expects to issue guidance pursuant to this recommendation later this fiscal year and can provide an updated response to these questions at that time.

6. **Please identify any statutory changes EPA believes need to be made to improve the Superfund cleanup program or to implement the recommendations of the Superfund Task Force.**

   Response: The Administration's "Legislative Outline for Rebuilding Infrastructure in America" includes several legislative proposals that could improve EPA's ability to facilitate cleanup and redevelopment of Superfund sites. The proposals include additional funding opportunities such as through the Water Infrastructure Finance and Innovation Act (WIFIA) program and the creation of a low-interest revolving loan fund, as well as options for building in flexibilities in the use of Superfund funds and the ability to enter into administrative agreements with additional classes of entities such as bona fide prospective purchasers.

7. **Would EPA support delegating certain aspects of the Superfund cleanup program to States that seek such authorization?**

Response: It is not necessary at this time to add additional delegation of authority to the states. The partnership between EPA and the states is an existing cornerstone principle under CERCLA and the National Contingency Plan. CERCLA includes key roles for states in the federal Superfund remedial program, and where appropriate, enables states to be designated as the lead agency for remedial action. In addition, EPA's policy calls for state concurrence in listing sites on the National Priorities List (NPL) and consults with the states on cleanup decisions. Through cooperative agreements, EPA provides states with funding to conduct work under the Superfund program including, but not limited to, site assessment, site characterization, review of remedy decision documents, remedy implementation and enforcement actions. In FY 2017, EPA provided approximately $58 million to states to conduct activities at NPL sites, and to support state Superfund programs. Cost recovery authority is available to states under CERCLA.

Separately, state cleanup programs already address a wide variety and large number of contaminated sites that do not make it on the NPL. EPA will continue to seek and expand opportunities afforded by the existing statute to work closely with states to efficiently leverage our respective cleanup resources.

The Honorable David McKinley

1. **Mr. Breen- It is our understanding, upon completion of assessment in the Pre-Remedial Program, sites are reviewed and considered for listing on the NPL. If a site is contaminated but not determined to be appropriate for the NPL, recommendations are made for remediation outside of the CERCLA Program. However, these recommendations are not enforced by EPA, and property owners without financial interest often do not act on the recommendations. These sites are generally encouraged to enter a state Voluntary Remediation Program, but the property owners cannot be forced to participate in a voluntary program. This issue, combined with a pressure to not list new sites on the NPL, has created a "black hole" where contaminated sites without proper remediation lay dormant and potentially dangerous for years. What reforms can be done to address this issue? Is any legislation needed to remedy the problem?**

Response: The Superfund program's site assessment/listing multi-phase evaluation process is used to determine and implement the appropriate responses to releases of hazardous substances, pollutants or contaminants to the environment. In close coordination with states and tribes, this process informs whether Superfund is the most appropriate program for cleanup or if a different authority would be a better fit (e.g., state RCRA corrective action program, state Superfund program, state voluntary cleanup program, or some other federal authority).

In the case of a referral of an NPL-eligible site to a state cleanup program, including a state voluntary remediation program, EPA uses the "Other Cleanup Activities" designation. EPA is not directly involved in the enforcement or oversight but does retain these sites in the agency's Superfund active site inventory and monitors the site until a state completes cleanup or determines that cleanup is warranted. In addition, should site conditions or cleanup plans change or if cleanup progress stalls, the state can refer the site back to EPA for reassessment under Superfund. The statute currently provides for a state to establish and submit, for EPA's consideration, state priorities for remedial action among known releases and potential releases.

The Honorable Richard Hudson

1. **Mr. Breen, thank you for coming before the committee today. In your testimony you mention that cleaning up Superfund sites is not only a top priority for Administrator Pruitt, but also an important aspect of the EPA's core mission. In my home state of North Carolina there are 48 Superfund sites, six of which are in my district. These sites vary dramatically in how long they've been on the list ranging from 1984 to 2008. With that in mind how do you strike the balance between removing sites from the list and taking immediate actions to mitigate risk at new sites?**

   Response: Addressing new sites and removing sites from the National Priorities List (NPL) is a balance. The Superfund program places the highest priority on addressing sites that warrant an emergency response or immediate removal action to address imminent risk to human health or the environment. The program also lists sites to the NPL that pose a threat to human health and the environment and require a longer term cleanup approach. Sites or parts of sites that are deleted from the NPL, are in the last stages of the Superfund process and no longer pose an unacceptable risk to human health and the environment. Long-term remedial action is typically necessary before a site is ready for deletion from the NPL. Deletion is an administrative process to document that all response actions have been fully implemented and remedial objectives have been achieved. EPA's appropriated resources for remedial actions, which are part a longer-term cleanup process that may eventually lead to a site deletion, are separate from the agency's appropriated resources for investigation and/or removal at newer sites that may pose immediate risks.

2. **As part of the Superfund program it requires coordination with the EPA, Regional bodies, and individual states. Can you describe the level of coordination of these efforts? Is the EPA in a position to effectively lead these efforts or should it take the role more generally as a facilitator? Should more power be delegated down to the states?**

   Response: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) includes key roles for states and tribes in the federal Superfund remedial program. EPA's regional offices closely coordinate with their state and tribal counterparts on each site. CERCLA also enables states and tribes to be designated as the lead agency for remedial action in lieu of EPA.

   Through cooperative agreements, EPA provides states and tribes with funding to conduct work under the Superfund program including site assessment, remedial action, review of remedy decision documents and enforcement actions. In FY2017, EPA provided approximately $58 million to states to conduct activities at NPL sites and to support state and tribal Superfund programs.

   EPA's policy calls for state and tribal concurrence in placing sites on the NPL. States and tribes can ask that EPA defer placing a site on the NPL if the state or tribe, or another party under a state or tribal agreement, is conducting a response action under the state or tribe's response program to protect human health or the environment, or if the state or tribe is actively pursuing an agreement with a responsible party to perform a response action. State and tribal cleanup

programs are used to address a wide variety and large number of contaminated sites that are not listed on the NPL.

The agency continues to seek and expand opportunities afforded by the existing statute to work closely with states to efficiently leverage our respective cleanup resources and responsibilities.

The Honorable Tim Walberg

1. **On December 8, 2017 the Administrator released a list of 21 sites that EPA targeted for "immediate and intense attention." The list is comprised of sites with "critical, near-term milestones" that EPA determined would benefit from Administrator Pruitt's direct engagement.**

    a. **Who completed the analysis?**
    b. **Other than impending milestones, what factors were considered in adding sites to the list?**
    c. **What milestones rose to the level of being "critical" and resulted in the site being added to the list?**
    d. **If no money is attached to being on the top 21 list – what does it mean to be on the list?**

Response: In formulating the list, senior career Superfund staff at EPA headquarters and in each region were consulted and they identified potential sites that may be worthy of special attention now or in the future to advance those sites through the cleanup process. The recommended sites represent the EPA regions' best professional judgment where the Administrator's involvement would facilitate site progress. The Administrator reviewed the recommendations and personally selected the sites for inclusion. The list includes sites that require timely resolution of specific issues to expedite cleanup and redevelopment efforts. The specific issue or milestone that may benefit from the Administrator's attention is noted for each site on the list, which can be found on the EPA website at https://www.epa.gov/superfund/superfund-sites-targeted-immediate-intense-action.

The list is designed to spur action at sites where opportunities exist to act quickly and decisively. The Administrator will receive regular updates on each of these sites. Further, the list is intended to be dynamic and sites will move on and off the list as appropriate. At times, there may be more or fewer sites based on where the Administrator's attention and focus is most needed.

2. **On January 17, 2018 EPA released another list of sites, these with the greatest expected redevelopment and commercial potential – the Redevelopment Focus List.**

    a. **Were all superfund sites analyzed and just the 31 on the list made the cut?**
    b. **Who made the decision and what factors were considered?**
    c. **The list directs interested developers and potential owners to Superfund sites with redevelopment potential, but notes that it does not necessarily include all possible sites with similar potential. What distriguished these 31 sites from the others?**

d. What does it mean to be on this list?

Response: In formulating the Redevelopment Focus List, EPA headquarters staff reached out to the EPA regional Superfund Redevelopment Initiative (SRI) coordinators to inquire about sites where there has been a strong interest in reuse or at sites appearing to have the strongest near-term reuse potential. This inquiry formed an initial list. Consistent with the Task Force Recommendation #33: *Focus Redevelopment Efforts on 20 NPL Sites with Redevelopment Potential and Identify 20 Sites with Greatest Potential Reuse*, EPA headquarters staff then narrowed the list based on the following criteria:

- Previous outside interest;
- Transportation access;
- Land values;
- Other critical development drivers.

This refined list of sites was shared with the agency's regional Superfund offices, which vetted the sites with SRI experts, remedial project managers, attorneys and regional management. The regional offices also contacted property owners, as appropriate, to let them know that EPA was considering their sites for the list, and reached out to EPA's state counterparts to ask if they had additional sites with redevelopment potential that the Agency should consider. Once EPA headquarters and the regions reached agreement, the list was made public.

The Redevelopment Focus List is intended to easily direct interested developers and potential owners to Superfund sites with redevelopment potential. EPA plans to focus redevelopment training, tools and resources towards the sites on this list. The agency also plans to work with developers interested in reusing these and other Superfund sites; identify potentially interested businesses and industries to keep them apprised of redevelopment opportunities; and continue to engage with community groups in cleanup and redevelopment activities to promote the successful redevelopment and revitalization of their communities. This list is intended to be dynamic with sites moving on and off the list as appropriate.

The current list of sites may be found at: https://www.epa.gov/superfund-redevelopment-initiative/superfund-redevelopment-focus-list
For additional information about the Superfund Redevelopment Initiative, please go to: https://www.epa.gov/superfund-redevelopment-initiative

3. **Similarly, the EPA also relies on responsible parties to cooperate in remediation efforts. How can EPA use incentives to encourage responsible parties to cooperate and come to the table early in order to avoid the increased transaction costs associated with protracted negotiations? What incentives can EPA utilize in order to clean up a Superfund site faster and more efficiently?**

Response: One of the principal goals of the Superfund Task Force is to speed up cleanup, and EPA is working to address these issues under the Task Force Report Recommendation 16: *Provide Reduced-Oversight Incentives to Cooperative, High-performing PRPs, and Make Full Use of Enforcement Tools as Disincentives for Protracted Negotiations, or Slow Performance*

Under Existing Cleanup Agreements. The agency is planning to identify and evaluate its existing best practices in this area, as well as propose future methods to encourage timely cleanup and decrease transaction costs. EPA expects to issue guidance pursuant to this recommendation later this fiscal year and can provide an updated response to these questions at that time.

The Honorable Paul Tonko

1. **Migratory Pollutants at Sites**

   a. **How does EPA consider the impact of migratory pollutants on natural resources outside a defined cleanup unit when determining 5-Year Review findings and issuing Certificates of Completion?**

Response: Site-specific monitoring plans are developed for projects where waste is left in place above levels that allow for unrestricted land and resource use. As part of a five-year review, the results of the monitoring and other available information are assessed to determine whether the remedy is or will be protective of human health and the environment. As part of this assessment, an examination of contaminant characteristics and toxicity, such as the nature and extent of contaminant migration and the effects on receptors, including ecological receptors, is considered. If monitoring indicates a change in site conditions or receptors, EPA will determine whether additional actions are necessary. Certification of Remedial Action Completion is issued when EPA determines that the remedial action has been performed in accordance with the consent decree and generally when the remedy-specific performance standards have been achieved. The consideration of monitoring data when making this determination is based on the language in the specific consent decree as well as the requirements outlined in the accompanying remedial design/remedial action statement of work.

   b. **What experience does EPA have relying upon natural attenuation as the principle strategy for a site when there is a possibility that it could result in contamination of downstream resources?**

Response: EPA typically employs monitored natural recovery (MNR) at sediment sites as a component of remedies that use dredging and/or capping technologies. Where remedies employ MNR, EPA applies its extensive experience in monitoring and assessing the impacts both on the site and the downstream to ensure the anticipated recovery is actually occurring. As part of the agency's five-year review process, EPA will evaluate monitoring information to assess the remedy's protectiveness and, if additional action is deemed appropriate to protect human health and the environment, the agency will initiate actions to do so.

2. **Certificate of Completion**

   a. **What are the conditions upon which a Certificate of Completion is issued to the liable party for a Superfund cleanup?**

Response: The exact conditions upon which a Certificate of Completion is issued to the liable party for a Superfund Site depends upon what the particular CERCLA consent decree states. CERCLA Section 122(f)(3), 42 U.S.C. § 9622(f)(3), states "a covenant not to sue for future liability to the United States shall not take effect until the President certifies that remedial action has been completed in accordance with the requirements of this chapter at the facility that is the subject of such covenant." EPA's guidance states:

> EPA interprets completion of the remedial action as that date at which remedial construction has been completed. Where a remedy requires operational activities, remedial construction would be judged complete when it can be demonstrated that the operation of the remedy is successfully attaining the requirements set forth in the [Record of Decision] and [Remedial Design].
>
> The exact point when EPA can certify completion of a particular remedial action depends upon the specific requirements of that remedial action. Each consent decree should include a detailed list of those activities which much be completed before certification can occur.
>
> Certification of completion under section 122(f)(3) does not in any way affect a settling party's remaining obligations under the consent decree. All remedial activities, including maintenance and monitoring, must be continued as required by the terms of the consent decree.

Covenants Not to Sue Under SARA, 52 Fed. Reg. 28036, at 28041.

b. What is the role of the Record of Decision and Consent Decree in this context?

Response: Performance standards for cleanups are often established in Records of Decision and, as described above, EPA's Model Remedial Design/Remedial Action Consent Decree generally ties the issuance of the Certification of Remedial Action Completion to the achievement of those standards.

3. Hudson River Site

a. Does the agency intend to wait until the Remediation Goals have been achieved and the remedy is protective of human health and the environment before issuing the Certificate of Completion?

Response: The Consent Decree for the Hudson River PCBs site does not require EPA to wait until the Remediation Goals have been achieved before issuing the Certification of Completion of the Remedial Action. With regard to this certification, the Consent Decree states:

> If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion of the Remedial Action and after a reasonable opportunity for review and comment by the State and by the Federal Trustees for Natural Resources, that the Remedial Action has been performed in accordance with this Consent Decree, EPA will so certify in writing to [General Electric]. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this consent decree including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiff). Certification of Completion of

> the Remedial Action shall not affect [General Electric's] remaining obligations under this Consent Decree. [Consent Decree, parag. 57.d]

The Consent Decree defines Remedial Action as "those activities, except for Remedial Design and Operation, Maintenance and Monitoring, to be undertaken to implement the [2002 Record of Decision], in accordance with the [Statement of Work], the final Remedial Design plans and reports, the Remedial Action Work Plans, and other plans approved by EPA." (Consent Decree, parag. 4) General Electric has informed EPA that it believes that it completed the Remedial Action portion of the cleanup as required by the Consent Decree and has requested EPA's Certification of Completion of the Remedial Action. EPA is reviewing input from the New York State Department of Environmental Conservation, the National Oceanic and Atmospheric Administration, the U.S. Fish & Wildlife Service, and the New York State Attorney General's office as it considers GE's request.

The Certification of Completion of the Remedial Action does not in any way suggest that the cleanup is finished. In the Record of Decision, EPA projected that construction of the remedy (including dredging, backfilling, and habitat reconstruction) would be performed over six years, to be followed by decades of "monitored natural attenuation" or "MNA," during which PCBs remaining in the river after dredging would gradually decrease until the remedial goals are achieved. MNA is also part of the cleanup, and during the entire period of MNA, GE is required to perform "Operation, Maintenance and Monitoring" of the remedy, which includes an extensive program that includes monitoring of sediments, water quality and fish, as well as monitoring of the caps that were installed on portions of the river bottom, and repairing those caps should any damage occur. Once all the work required by the consent decree is complete, the consent decree authorizes EPA to issue a further certification, known as a Certification of Completion of the Work. We do not anticipate issuing this certification any time before the remedial goals are achieved.

EPA is currently working with our state partner, the New York State Department of Environmental Conservation (NYSDEC) to review some 1,800 sediment samples collected by NYSDEC. EPA is working in cooperation with NYSDEC to review the data and work towards developing joint findings on the results of the sampling. As such, EPA is refraining from any decision making regarding the issuance of the Certificate of Completion of Remedial Action until the data from these samples have been fully analyzed.

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

MAR 13 2018

OFFICE OF
CONGRESSIONAL AND
INTERGOVERNMENTAL
RELATIONS

The Honorable John Shimkus
Chairman
Subcommittee on Environment
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Shimkus:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Subcommittee's Questions for the Record following the January 18, 2018, hearing titled "Modernizing the Superfund Cleanup Program,"

I hope this information is helpful to you and the members of the Subcommittee. If you have further questions, please contact me or your staff may contact Carolyn Levine in my office at levine.carolyn@epa.gov or (202) 564-1859.

Sincerely,

Troy M. Lyons
Associate Administrator

Enclosure

Enclosure

U.S. Environmental Protection Agency
Responses to Questions for the Record
House Committee on Energy and Commerce
Subcommittee on Environment
Hearing on
"Modernizing the Superfund Program"
January 18, 2018

The Honorable John Shimkus

1. **EPA retains money received through settlements with Potentially Responsible Parties (PRPs) in site-specific accounts to conduct planned future cleanup work at the site based on the terms of the settlement agreement. Is EPA constrained or prevented from using special account funds to get these sites cleaned up?**

   Response: While EPA has the authority to collect funds from parties to support Superfund investigations and cleanups, site specific account are set up separately and distinctly and may only be used for the sites and uses outlined in the settlement(s) with the party. Section 122(b)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authorizes EPA to retain and use funds received pursuant to a settlement agreement with a party to carry out the purpose of that agreement. Funds are deposited in Superfund site specific special accounts for cleanup at the sites designated in individually negotiated settlement agreements. Special accounts are generally used before the agency's annually appropriated funds for response actions identified in the terms of the settlement agreements. Special accounts are crucial to EPA's ability to continue to fund investigations and construction projects at sites across the country and save taxpayer dollars for those sites where no viable or cooperating responsible party has been identified.

   a. **If not, why is the balance in the account so high and why is the money not being spent?**

   Response: EPA carefully manages the available resources in special accounts for site response work. EPA has plans to spend approximately $1.3 billion of currently available special account funds over the next 5 years, but use of the funds are also planned for much further into the future to continue activities such as conducting five-year reviews or remedy optimization where waste has been left in place. In addition, the agency continues to receive site-specific settlement funds that are placed in special accounts each year, so progress on actual obligation and disbursement of funds may not be apparent upon review solely of the cumulative available balance. In FY 2017, EPA deposited more than $289 million into special accounts and disbursed and obligated over $357 million from special accounts.

b. **Does CERCLA need to be updated to clarify what special account funds may be used for?**

Response: The Administration's "Legislative Outline for Rebuilding Infrastructure in America" includes legislative proposals that could improve EPA's ability to facilitate cleanup and redevelopment of Superfund sites through the use of special accounts. The proposals include options for building in flexibilities in the use of special account funding and the ability to enter into administrative agreements with additional classes of entities such as bona fide prospective purchasers.

2. **The recommendations of the Superfund Task Force included a recommendation that EPA "maximize the use of special accounts to facilitate site cleanup and/or redevelopment." Other than developing guidance, what is the plan for implementing this recommendation?**

Response: The EPA's Special Accounts Senior Management Committee, comprised of agency senior managers, is responsible for the management and use of special accounts. The Committee monitors the use of special account funds on an ongoing basis to ensure that EPA is conducting cleanups and using the funds as quickly and efficiently as possible to address Superfund sites.

The Superfund Task Force identified a gap in current special account guidance, which will be addressed by providing clarifying guidance to EPA regions on the use of special account funds. The guidance will clarify that in appropriate circumstances, special account funds may be used as an incentive for potentially responsible parties or bona fide prospective purchasers (BFPPs) who agree to conduct CERCLA response actions at a site to address contamination and facilitate redevelopment of the site. Providing available special account funds to a BFPP that agrees to conduct CERCLA response actions will help address risks posed by Superfund sites and facilitate redevelopment.

In addition, the Administration's "Legislative Outline for Rebuilding Infrastructure in America" includes legislative proposals that could improve EPA's ability to facilitate cleanup and redevelopment of Superfund sites through the use of special accounts.

3. **EPA drafted guidance that is expected to allow for or encourage the provision of Superfund's "special account" funds to bonafide prospective purchasers (BFPPs) as an incentive to conduct work on Superfund sites. Does EPA have the legal authority to reallocate special account funds in this way?**

Response: The legal authority for using special accounts is found in Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), which authorizes EPA to "retain and use [funds] for purposes of carrying out the agreement." This authority enables EPA to use special account funds for EPA-lead cleanup at a site, or to provide those funds to other parties who agree to perform an EPA selected response action at that site under a CERCLA agreement. Consistent with this authority, CERCLA agreements generally establish that special account funds can be "retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund." Therefore, BFPPs may be eligible, at EPA's discretion, to receive special account funds when they conduct CERCLA

response actions at a site pursuant to an agreement under CERCLA that is consistent with the response actions agreed to in the settlement agreement that created the account.

4. **One of the recommendations of the Superfund Task Force was the use of adaptive management. Does EPA intend to incorporate adaptive management into the Superfund cleanup program and if so, how?**

   Response: The agency formed an Adaptive Management Workgroup following issuance of the Task Force recommendations. This workgroup is exploring options for incorporating adaptive management into the Superfund cleanup program. At this time, formal decisions have not yet been made regarding implementation.

5. **How can EPA use incentives to encourage responsible parties to cooperate and come to the table early to avoid the increased transaction costs associated with protracted negotiations?**

   a. **What incentives can EPA utilize to clean up a Superfund site faster and more efficiently?**
   b. **How can EPA use enforcement authorities as leverage to get a cleanup started or to help reach settlement?**

   Response: One of the principal goals of the Superfund Task Force is to speed up cleanup; these questions go to the core of Recommendation 16: *Provide Reduced-Oversight Incentives to Cooperative, High-performing PRPs, and Make Full Use of Enforcement Tools as Disincentives for Protracted Negotiations, or Slow Performance Under Existing Cleanup Agreements*. The agency is examining these issues, as well as others, to identify and evaluate its existing best practices, as well as propose future methods to encourage timely cleanup and decrease transaction costs. EPA expects to issue guidance pursuant to this recommendation later this fiscal year and can provide an updated response to these questions at that time.

6. **Please identify any statutory changes EPA believes need to be made to improve the Superfund cleanup program or to implement the recommendations of the Superfund Task Force.**

   Response: The Administration's "Legislative Outline for Rebuilding Infrastructure in America" includes several legislative proposals that could improve EPA's ability to facilitate cleanup and redevelopment of Superfund sites. The proposals include additional funding opportunities such as through the Water Infrastructure Finance and Innovation Act (WIFIA) program and the creation of a low-interest revolving loan fund, as well as options for building in flexibilities in the use of Superfund funds and the ability to enter into administrative agreements with additional classes of entities such as bona fide prospective purchasers.

7. **Would EPA support delegating certain aspects of the Superfund cleanup program to States that seek such authorization?**

Response: It is not necessary at this time to add additional delegation of authority to the states. The partnership between EPA and the states is an existing cornerstone principle under CERCLA and the National Contingency Plan. CERCLA includes key roles for states in the federal Superfund remedial program, and where appropriate, enables states to be designated as the lead agency for remedial action. In addition, EPA's policy calls for state concurrence in listing sites on the National Priorities List (NPL) and consults with the states on cleanup decisions. Through cooperative agreements, EPA provides states with funding to conduct work under the Superfund program including, but not limited to, site assessment, site characterization, review of remedy decision documents, remedy implementation and enforcement actions. In FY 2017, EPA provided approximately $58 million to states to conduct activities at NPL sites, and to support state Superfund programs. Cost recovery authority is available to states under CERCLA.

Separately, state cleanup programs already address a wide variety and large number of contaminated sites that do not make it on the NPL. EPA will continue to seek and expand opportunities afforded by the existing statute to work closely with states to efficiently leverage our respective cleanup resources.

The Honorable David McKinley

1. **Mr. Breen- It is our understanding, upon completion of assessment in the Pre-Remedial Program, sites are reviewed and considered for listing on the NPL. If a site is contaminated but not determined to be appropriate for the NPL, recommendations are made for remediation outside of the CERCLA Program. However, these recommendations are not enforced by EPA, and property owners without financial interest often do not act on the recommendations. These sites are generally encouraged to enter a state Voluntary Remediation Program, but the property owners cannot be forced to participate in a voluntary program. This issue, combined with a pressure to not list new sites on the NPL, has created a "black hole" where contaminated sites without proper remediation lay dormant and potentially dangerous for years. What reforms can be done to address this issue? Is any legislation needed to remedy the problem?**

Response: The Superfund program's site assessment/listing multi-phase evaluation process is used to determine and implement the appropriate responses to releases of hazardous substances, pollutants or contaminants to the environment. In close coordination with states and tribes, this process informs whether Superfund is the most appropriate program for cleanup or if a different authority would be a better fit (e.g., state RCRA corrective action program, state Superfund program, state voluntary cleanup program, or some other federal authority).

In the case of a referral of an NPL-eligible site to a state cleanup program, including a state voluntary remediation program, EPA uses the "Other Cleanup Activities" designation. EPA is not directly involved in the enforcement or oversight but does retain these sites in the agency's Superfund active site inventory and monitors the site until a state completes cleanup or determines that cleanup is warranted. In addition, should site conditions or cleanup plans change or if cleanup progress stalls, the state can refer the site back to EPA for reassessment under Superfund. The statute currently provides for a state to establish and submit, for EPA's consideration, state priorities for remedial action among known releases and potential releases.

The Honorable Richard Hudson

1. **Mr. Breen, thank you for coming before the committee today. In your testimony you mention that cleaning up Superfund sites is not only a top priority for Administrator Pruitt, but also an important aspect of the EPA's core mission. In my home state of North Carolina there are 48 Superfund sites, six of which are in my district. These sites vary dramatically in how long they've been on the list ranging from 1984 to 2008. With that in mind how do you strike the balance between removing sites from the list and taking immediate actions to mitigate risk at new sites?**

   Response: Addressing new sites and removing sites from the National Priorities List (NPL) is a balance. The Superfund program places the highest priority on addressing sites that warrant an emergency response or immediate removal action to address imminent risk to human health or the environment. The program also lists sites to the NPL that pose a threat to human health and the environment and require a longer term cleanup approach. Sites or parts of sites that are deleted from the NPL, are in the last stages of the Superfund process and no longer pose an unacceptable risk to human health and the environment. Long-term remedial action is typically necessary before a site is ready for deletion from the NPL. Deletion is an administrative process to document that all response actions have been fully implemented and remedial objectives have been achieved. EPA's appropriated resources for remedial actions, which are part a longer-term cleanup process that may eventually lead to a site deletion, are separate from the agency's appropriated resources for investigation and/or removal at newer sites that may pose immediate risks.

2. **As part of the Superfund program it requires coordination with the EPA, Regional bodies, and individual states. Can you describe the level of coordination of these efforts? Is the EPA in a position to effectively lead these efforts or should it take the role more generally as a facilitator? Should more power be delegated down to the states?**

   Response: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) includes key roles for states and tribes in the federal Superfund remedial program. EPA's regional offices closely coordinate with their state and tribal counterparts on each site. CERCLA also enables states and tribes to be designated as the lead agency for remedial action in lieu of EPA.

   Through cooperative agreements, EPA provides states and tribes with funding to conduct work under the Superfund program including site assessment, remedial action, review of remedy decision documents and enforcement actions. In FY2017, EPA provided approximately $58 million to states to conduct activities at NPL sites and to support state and tribal Superfund programs.

   EPA's policy calls for state and tribal concurrence in placing sites on the NPL. States and tribes can ask that EPA defer placing a site on the NPL if the state or tribe, or another party under a state or tribal agreement, is conducting a response action under the state or tribe's response program to protect human health or the environment, or if the state or tribe is actively pursuing an agreement with a responsible party to perform a response action. State and tribal cleanup

programs are used to address a wide variety and large number of contaminated sites that are not listed on the NPL.

The agency continues to seek and expand opportunities afforded by the existing statute to work closely with states to efficiently leverage our respective cleanup resources and responsibilities.

The Honorable Tim Walberg

1. **On December 8, 2017 the Administrator released a list of 21 sites that EPA targeted for "immediate and intense attention." The list is comprised of sites with "critical, near-term milestones" that EPA determined would benefit from Administrator Pruitt's direct engagement.**

    a. **Who completed the analysis?**
    b. **Other than impending milestones, what factors were considered in adding sites to the list?**
    c. **What milestones rose to the level of being "critical" and resulted in the site being added to the list?**
    d. **If no money is attached to being on the top 21 list – what does it mean to be on the list?**

Response: In formulating the list, senior career Superfund staff at EPA headquarters and in each region were consulted and they identified potential sites that may be worthy of special attention now or in the future to advance those sites through the cleanup process. The recommended sites represent the EPA regions' best professional judgment where the Administrator's involvement would facilitate site progress. The Administrator reviewed the recommendations and personally selected the sites for inclusion. The list includes sites that require timely resolution of specific issues to expedite cleanup and redevelopment efforts. The specific issue or milestone that may benefit from the Administrator's attention is noted for each site on the list, which can be found on the EPA website at https://www.epa.gov/superfund/superfund-sites-targeted-immediate-intense-action.

The list is designed to spur action at sites where opportunities exist to act quickly and decisively. The Administrator will receive regular updates on each of these sites. Further, the list is intended to be dynamic and sites will move on and off the list as appropriate. At times, there may be more or fewer sites based on where the Administrator's attention and focus is most needed.

2. **On January 17, 2018 EPA released another list of sites, these with the greatest expected redevelopment and commercial potential – the Redevelopment Focus List.**

    a. **Were all superfund sites analyzed and just the 31 on the list made the cut?**
    b. **Who made the decision and what factors were considered?**
    c. **The list directs interested developers and potential owners to Superfund sites with redevelopment potential, but notes that it does not necessarily include all possible sites with similar potential. What distriguished these 31 sites from the others?**

d. What does it mean to be on this list?

Response: In formulating the Redevelopment Focus List, EPA headquarters staff reached out to the EPA regional Superfund Redevelopment Initiative (SRI) coordinators to inquire about sites where there has been a strong interest in reuse or at sites appearing to have the strongest near-term reuse potential. This inquiry formed an initial list. Consistent with the Task Force Recommendation #33: *Focus Redevelopment Efforts on 20 NPL Sites with Redevelopment Potential and Identify 20 Sites with Greatest Potential Reuse*, EPA headquarters staff then narrowed the list based on the following criteria:

- Previous outside interest;
- Transportation access;
- Land values;
- Other critical development drivers.

This refined list of sites was shared with the agency's regional Superfund offices, which vetted the sites with SRI experts, remedial project managers, attorneys and regional management. The regional offices also contacted property owners, as appropriate, to let them know that EPA was considering their sites for the list, and reached out to EPA's state counterparts to ask if they had additional sites with redevelopment potential that the Agency should consider. Once EPA headquarters and the regions reached agreement, the list was made public.

The Redevelopment Focus List is intended to easily direct interested developers and potential owners to Superfund sites with redevelopment potential. EPA plans to focus redevelopment training, tools and resources towards the sites on this list. The agency also plans to work with developers interested in reusing these and other Superfund sites; identify potentially interested businesses and industries to keep them apprised of redevelopment opportunities; and continue to engage with community groups in cleanup and redevelopment activities to promote the successful redevelopment and revitalization of their communities. This list is intended to be dynamic with sites moving on and off the list as appropriate.

The current list of sites may be found at: https://www.epa.gov/superfund-redevelopment-initiative/superfund-redevelopment-focus-list
For additional information about the Superfund Redevelopment Initiative, please go to: https://www.epa.gov/superfund-redevelopment-initiative

3. **Similarly, the EPA also relies on responsible parties to cooperate in remediation efforts. How can EPA use incentives to encourage responsible parties to cooperate and come to the table early in order to avoid the increased transaction costs associated with protracted negotiations? What incentives can EPA utilize in order to clean up a Superfund site faster and more efficiently?**

Response: One of the principal goals of the Superfund Task Force is to speed up cleanup, and EPA is working to address these issues under the Task Force Report Recommendation 16: *Provide Reduced-Oversight Incentives to Cooperative, High-performing PRPs, and Make Full Use of Enforcement Tools as Disincentives for Protracted Negotiations, or Slow Performance*

Under Existing Cleanup Agreements. The agency is planning to identify and evaluate its existing best practices in this area, as well as propose future methods to encourage timely cleanup and decrease transaction costs. EPA expects to issue guidance pursuant to this recommendation later this fiscal year and can provide an updated response to these questions at that time.

The Honorable Paul Tonko

1. **Migratory Pollutants at Sites**

   a. **How does EPA consider the impact of migratory pollutants on natural resources outside a defined cleanup unit when determining 5-Year Review findings and issuing Certificates of Completion?**

Response: Site-specific monitoring plans are developed for projects where waste is left in place above levels that allow for unrestricted land and resource use. As part of a five-year review, the results of the monitoring and other available information are assessed to determine whether the remedy is or will be protective of human health and the environment. As part of this assessment, an examination of contaminant characteristics and toxicity, such as the nature and extent of contaminant migration and the effects on receptors, including ecological receptors, is considered. If monitoring indicates a change in site conditions or receptors, EPA will determine whether additional actions are necessary. Certification of Remedial Action Completion is issued when EPA determines that the remedial action has been performed in accordance with the consent decree and generally when the remedy-specific performance standards have been achieved. The consideration of monitoring data when making this determination is based on the language in the specific consent decree as well as the requirements outlined in the accompanying remedial design/remedial action statement of work.

   b. **What experience does EPA have relying upon natural attenuation as the principle strategy for a site when there is a possibility that it could result in contamination of downstream resources?**

Response: EPA typically employs monitored natural recovery (MNR) at sediment sites as a component of remedies that use dredging and/or capping technologies. Where remedies employ MNR, EPA applies its extensive experience in monitoring and assessing the impacts both on the site and the downstream to ensure the anticipated recovery is actually occurring. As part of the agency's five-year review process, EPA will evaluate monitoring information to assess the remedy's protectiveness and, if additional action is deemed appropriate to protect human health and the environment, the agency will initiate actions to do so.

2. **Certificate of Completion**

   a. **What are the conditions upon which a Certificate of Completion is issued to the liable party for a Superfund cleanup?**

Response: The exact conditions upon which a Certificate of Completion is issued to the liable party for a Superfund Site depends upon what the particular CERCLA consent decree states. CERCLA Section 122(f)(3), 42 U.S.C. § 9622(f)(3), states "a covenant not to sue for future liability to the United States shall not take effect until the President certifies that remedial action has been completed in accordance with the requirements of this chapter at the facility that is the subject of such covenant." EPA's guidance states:

> EPA interprets completion of the remedial action as that date at which remedial construction has been completed. Where a remedy requires operational activities, remedial construction would be judged complete when it can be demonstrated that the operation of the remedy is successfully attaining the requirements set forth in the [Record of Decision] and [Remedial Design].
>
> The exact point when EPA can certify completion of a particular remedial action depends upon the specific requirements of that remedial action. Each consent decree should include a detailed list of those activities which much be completed before certification can occur.
>
> Certification of completion under section 122(f)(3) does not in any way affect a settling party's remaining obligations under the consent decree. All remedial activities, including maintenance and monitoring, must be continued as required by the terms of the consent decree.

Covenants Not to Sue Under SARA, 52 Fed. Reg. 28036, at 28041.

b. What is the role of the Record of Decision and Consent Decree in this context?

Response: Performance standards for cleanups are often established in Records of Decision and, as described above, EPA's Model Remedial Design/Remedial Action Consent Decree generally ties the issuance of the Certification of Remedial Action Completion to the achievement of those standards.

3. Hudson River Site

a. Does the agency intend to wait until the Remediation Goals have been achieved and the remedy is protective of human health and the environment before issuing the Certificate of Completion?

Response: The Consent Decree for the Hudson River PCBs site does not require EPA to wait until the Remediation Goals have been achieved before issuing the Certification of Completion of the Remedial Action. With regard to this certification, the Consent Decree states:

> If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion of the Remedial Action and after a reasonable opportunity for review and comment by the State and by the Federal Trustees for Natural Resources, that the Remedial Action has been performed in accordance with this Consent Decree, EPA will so certify in writing to [General Electric]. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this consent decree including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiff). Certification of Completion of

> the Remedial Action shall not affect [General Electric's] remaining obligations under this Consent Decree. [Consent Decree, parag. 57.d]

The Consent Decree defines Remedial Action as "those activities, except for Remedial Design and Operation, Maintenance and Monitoring, to be undertaken to implement the [2002 Record of Decision], in accordance with the [Statement of Work], the final Remedial Design plans and reports, the Remedial Action Work Plans, and other plans approved by EPA." (Consent Decree, parag. 4) General Electric has informed EPA that it believes that it completed the Remedial Action portion of the cleanup as required by the Consent Decree and has requested EPA's Certification of Completion of the Remedial Action. EPA is reviewing input from the New York State Department of Environmental Conservation, the National Oceanic and Atmospheric Administration, the U.S. Fish & Wildlife Service, and the New York State Attorney General's office as it considers GE's request.

The Certification of Completion of the Remedial Action does not in any way suggest that the cleanup is finished. In the Record of Decision, EPA projected that construction of the remedy (including dredging, backfilling, and habitat reconstruction) would be performed over six years, to be followed by decades of "monitored natural attenuation" or "MNA," during which PCBs remaining in the river after dredging would gradually decrease until the remedial goals are achieved. MNA is also part of the cleanup, and during the entire period of MNA, GE is required to perform "Operation, Maintenance and Monitoring" of the remedy, which includes an extensive program that includes monitoring of sediments, water quality and fish, as well as monitoring of the caps that were installed on portions of the river bottom, and repairing those caps should any damage occur. Once all the work required by the consent decree is complete, the consent decree authorizes EPA to issue a further certification, known as a Certification of Completion of the Work. We do not anticipate issuing this certification any time before the remedial goals are achieved.

EPA is currently working with our state partner, the New York State Department of Environmental Conservation (NYSDEC) to review some 1,800 sediment samples collected by NYSDEC. EPA is working in cooperation with NYSDEC to review the data and work towards developing joint findings on the results of the sampling. As such, EPA is refraining from any decision making regarding the issuance of the Certificate of Completion of Remedial Action until the data from these samples have been fully analyzed.

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225–2927
Minority (202) 225–3641

February 15, 2018

Mr. Barry Breen
Principal Deputy Assistant Administrator
Office of Land and Emergency Management
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Mr. Breen:

Thank you for appearing before the Subcommittee on Environment on January 18, 2018, to testify at the hearing entitled "Modernizing the Superfund Cleanup Program."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Friday, March 2, 2018. Your responses should be mailed to Kelly Collins, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Kelly.Collins@mail.house.gov.

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

Sincerely,

John Shimkus
Chairman
Subcommittee on Environment

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

Attachment

Attachment—Additional Questions for the Record

The Honorable John Shimkus

1. EPA retains money received through settlements with Potentially Responsible Parties (PRPs) in site-specific accounts to conduct planned future cleanup work at the site based on the terms of the settlement agreement. Is EPA constrained or prevented from using special account funds to get these sites cleaned up?

    a. If not, why is the balance in the account so high and why is the money not being spent?

    b. Does CERCLA need to be updated to clarify what special account funds may be used for?

2. The recommendations of the Superfund Task Force included a recommendation that EPA "maximize the use of special accounts to facilitate site cleanup and/or redevelopment." Other than developing guidance, what is the plan for implementing this recommendation?

3. EPA drafted guidance that is expected to allow for or encourage the provision of Superfund's "special account" funds to bonafide prospective purchasers (BFPPs) as an incentive to conduct work on Superfund sites. Does EPA have the legal authority to reallocate special account funds in this way?

4. One of the recommendations of the Superfund Task Force was the use of adaptive management. Does EPA intend to incorporate adaptive management into the Superfund cleanup program and if so, how?

5. How can EPA use incentives to encourage responsible parties to cooperate and come to the table early to avoid the increased transaction costs associated with protracted negotiations?

    a. What incentives can EPA utilize to clean up a Superfund site faster and more efficiently?

    b. How can EPA use enforcement authorities as leverage to get a cleanup started or to help reach settlement?

6. Please identify any statutory changes EPA believes need to be made to improve the Superfund cleanup program or to implement the recommendations of the Superfund Task Force.

7. Would EPA support delegating certain aspects of the Superfund cleanup program to States that seek such authorization?

The Honorable David McKinley

1. Mr. Breen- It is our understanding, upon completion of assessment in the Pre-Remedial Program, sites are reviewed and considered for listing on the NPL. If a site is contaminated but not determined to be appropriate for the NPL, recommendations are made for remediation outside of the CERCLA Program. However, these recommendations are not enforced by EPA, and property owners without financial interest often do not act on the recommendations. These sites are generally encouraged to enter a state Voluntary Remediation Program, but the property owners cannot be forced to participate in a voluntary program. This issue, combined with a pressure to not list new sites on the NPL, has created a "black hole" where contaminated sites without proper remediation lay dormant and potentially dangerous for years. What reforms can be done to address this issue? Is any legislation needed to remedy the problem?

The Honorable Richard Hudson

1. Mr. Breen, thank you for coming before the committee today. In your testimony you mention that cleaning up Superfund sites is not only a top priority for Administrator Pruitt, but also an important aspect of the EPA's core mission. In my home state of North Carolina there are 48 Superfund sites, six of which are in my district. These sites vary dramatically in how long they've been on the list ranging from 1984 to 2008. With that in mind how do you strike the balance between removing sites from the list and taking immediate actions to mitigate risk at new sites?

2. As part of the Superfund program it requires coordination with the EPA, Regional bodies, and individual states. Can you describe the level of coordination of these efforts? Is the EPA in a position to effectively lead these efforts or should it take the role more generally as a facilitator? Should more power be delegated down to the states?

3. Similarly, the EPA also relies on responsible parties to cooperate in remediation efforts. How can EPA use incentives to encourage responsible parties to cooperate and come to the table early in order to avoid the increased transaction costs associated with protracted negotiations? What incentives can EPA utilize in order to clean up a Superfund site faster and more efficiently?

The Honorable Tim Walberg

1. On December 8, 2017 the Administrator released a list of 21 sites that EPA targeted for "immediate and intense attention." The list is comprised of sites with "critical, near-term milestones" that EPA determined would benefit from Administrator Pruitt's direct engagement.

    a. Who completed the analysis?

b. Other than impending milestones, what factors were considered in adding sites to the list?

c. What milestones rose to the level of being "critical" and resulted in the site being added to the list?

d. If no money is attached to being on the top 21 list – what does it mean to be on the list?

2. On January 17, 2018 EPA released another list of sites, these with the greatest expected redevelopment and commercial potential – the Redevelopment Focus List.

   a. Were all superfund sites analyzed and just the 31on the list made the cut?

   b. Who made the decision and what factors were considered?

   c. The list directs interested developers and potential owners to Superfund sites with redevelopment potential, but notes that it does not necessarily include all possible sites with similar potential. What distriguished these 31 sites from the others?

   d. What does it mean to be on this list?

<u>The Honorable Paul Tonko</u>

1. **Migratory Pollutants at Sites**

   a. How does EPA consider the impact of migratory pollutants on natural resources outside a defined cleanup unit when determining 5-Year Review findings and issuing Certificates of Completion?
   b. What experience does EPA have relying upon natural attenuation as the principle strategy for a site when there is a possibility that it could result in contamination of downstream resources?

2. **Certificate of Completion**

   a. What are the conditions upon which a Certificate of Completion is issued to the liable party for a Superfund cleanup?
   b. What is the role of the Record of Decision and the Consent Decree in this context?

3. **Hudson River Site**

   a. Does the agency intend to wait until the Remediation Goals have been achieved and the remedy is protective of human health and the environment before issuing the Certificate of Completion?