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# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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September 6, 2017

The Honorable Scott Pruitt  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington, DC 20004

Dear Administrator Pruitt:

I write to request information regarding the manner in which the Environmental Protection Agency (EPA) developed its proposal to repeal and replace the 2015 Clean Water Rule. I am particularly disturbed by reports<sup>1</sup> that political appointees at EPA provided verbal direction to career scientists to delete the \$500 million economic benefits of the rule from the regulatory package the agency submitted to the White House Office of Management and Budget (OMB) for review.

The 2015 Clean Water Rule was developed following years in which businesses, farmers, developers, state officials and Members of Congress urged the EPA to provide clarity on which streams and wetlands may be regulated by the Clean Water Act. The final rule took into account 1,200 peer-reviewed scientific publications, 400 stakeholder meetings across the country, and more than one million public comments. The final rule protected the drinking water sources that 117 million Americans rely upon from pollution. The analysis<sup>2</sup> included with the 2015 rule also projected that the rule would cost between \$236.7 - \$465 million each year, but would provide at least \$554.9 - \$572.3 million in annual benefits, including \$501.2 million in benefits to wetlands.

On February 28, 2017, President Trump directed the rule's review and rescission or repeal in Executive Order 13776, and EPA is currently accepting public comment on a two-step proposal to repeal the rule and replace it with a rule that will protect far fewer sources of drinking water.

I have grave concerns regarding the manner in which EPA developed its proposed repeal of the rule that have been informed by discussions with individuals with first-hand knowledge of the process. For example, these individuals have informed my staff that:

<sup>1</sup> [https://www.nytimes.com/2017/08/11/us/politics/scott-pruitt-epa.html?mcubz=0&\\_r=0](https://www.nytimes.com/2017/08/11/us/politics/scott-pruitt-epa.html?mcubz=0&_r=0)

<sup>2</sup> [https://www.epa.gov/sites/production/files/2015-06/documents/508-final\\_clean\\_water\\_rule\\_economic\\_analysis\\_5-20-15.pdf](https://www.epa.gov/sites/production/files/2015-06/documents/508-final_clean_water_rule_economic_analysis_5-20-15.pdf) See Figure ES-2. Not all benefits were included in the analysis, which is why this estimate is likely conservative.

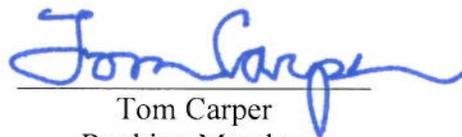
- When EPA first submitted the first step of its proposed repeal and replace rule to OMB, the draft stated that a new cost-benefit analysis would be undertaken subsequently as part of the second step of its process.
- OMB interpreted EPA's first proposal to mean that it would not avoid any costs to industry or have any economic impact at all. EPA's political staff then directed the career staff to undertake a new economic analysis. In response to this direction, EPA career staff reportedly changed the table included in the 2015 rule to a) reflect 2016 dollars instead of 2014 dollars, and b) alter the terms from "annual costs incurred" to "annual costs avoided" and from "annual benefits gained" to "annual benefits forgone". This new table was sent to OMB on June 8, 2017.
- OMB correctly concluded from EPA's June 8 submittal that repealing the rule would cost more in lost benefits than it would save industry in compliance costs. On June 13, 2017, presumably to avoid such an admission on the part of EPA, EPA career staff were verbally directed by political staff to solve this 'problem' by simply deleting the majority of the benefits of the rule from the table and re-submitting it to OMB, which they did<sup>3</sup>.

Erasing the scientific and economic benefits of a rule designed to protect the drinking water of 117 million Americans will not erase the environmental and public health risk that the drinking water sources may pose if the rule is repealed. So that I can more fully understand the manner in which EPA political staff reportedly, and perhaps improperly, directed EPA career staff to make inconvenient analysis disappear from the rulemaking record, I request that you provide me with responses to the following requests for information:

1. Please provide me with copies of all documents submitted by EPA to OMB in 2017 that describe the costs and benefits associated with the Waters of the United States Rule.
2. Please provide me with copies of all documents (including but not limited to emails, memos, meeting notes and correspondence) sent or received by EPA political appointees (including members of EPA's transition team) in 2017 that are related to the inter-agency and OMB review of costs and benefits of the Waters of the United States Rule.

Thank you very much for your attention to this important matter. Please provide your response no later than September 29, 2017. If you or members of your staff have further questions, please feel free to ask them to contact Ms. Michal Freedhoff at the Committee on Environment and Public Works at (202) 224-8832.

Sincerely,

  
Tom Carper  
Ranking Member

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<sup>3</sup> [https://www.epa.gov/sites/production/files/2017-06/documents/economic\\_analysis\\_proposed\\_step1\\_rule.pdf](https://www.epa.gov/sites/production/files/2017-06/documents/economic_analysis_proposed_step1_rule.pdf) See Table 1