

Congress of the United States

Washington, DC 20510

March 8, 2022

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Regan:

On February 11, a federal judge on the U.S. District Court for the Western District of Louisiana issued a preliminary injunction blocking federal agencies from using so-called interim Social Cost of Greenhouse Gases (SC-GHG) estimates in any regulatory reviews or proceedings pending final resolution of *Louisiana, et al v. Biden*.¹ The judge's forty-four-page ruling raises several issues that are pertinent to Congressional oversight. These include the Administration's process for developing the estimates and potential application of the estimates in agency proceedings, procurement, communications, and other activities.

Although this Administration's efforts concerning SC-GHG appear to be run out of the White House, your agency has been involved in critical aspects of the development of these estimates. For example, the Environmental Protection Agency (EPA) issued a Federal Register Notice this past January 19 soliciting nominations for "scientific experts" to perform a peer review of forthcoming, new SC-GHG estimates.²

Questions about the process and transparency of developing SC-GHG estimates first emerged during the Obama Administration. President Obama created an obscure and opaque ad hoc "Interagency Working Group" (IWG) to establish such estimates for use in regulatory impact analyses.³ The SC-GHG estimates, which presented a dollar value for estimated *global* damage of each ton of greenhouse gas emissions, measured over the extraordinary time-period of 300 years into the future, remained controversial throughout the Obama Administration. Aside from fundamental technical limits to the reliability of future global climate impacts and economic growth estimates identified by experts,⁴ the controversy involved serious questions

¹ See Memorandum Ruling and Order by Judge James D. Cain, United States District Judge of the Western District of Louisiana, in *Louisiana v. Biden*, Case No. 2:21-CV-01074

² See [Federal Register Notice](#), *Request for Nominations of Experts for the Review of the Technical Support Document for the Social Cost of Greenhouse Gases*, published January 25, 2022, at page 3801. An EPA contractor, it appears, will choose the reviewers and manage the review.

³ See for example, [September 30, 2013 letter](#) from then Energy and Commerce Committee Chairman Upton to EPA Administrator McCarthy and other agency heads seeking information about the development and application of the "Social Cost of Carbon."

⁴ See, for example, June 21, 2021 comments to the Director of the Office of Management and Budget by the Electric Power Research Institute (EPRI), at <https://esca.epri.com/pdf/EPRI-comments-with-appendices-on-Biden-Interim-SC-GHG-TSD-June21.pdf>

about applying highly uncertain and speculative estimates to inform near-term *domestic* regulatory judgements. Contrary to Office of Management and Budget (OMB) and EPA peer review guidance,⁵ the estimates were also not subject to peer review. The potential for abusing this information to skew important regulatory decisions or to mislead the public about the real costs of regulatory actions remains our central concern.

The Trump Administration limited the use of the SC-GHG to domestic impacts and to economic evaluation consistent with long established regulatory guidance. However, the Biden Administration resurrected the controversy on President Biden's first day in office, when he issued *Executive Order 13990* that, among actions such as the canceling the Keystone pipeline permit, resurrected the SC-GHG IWG to change the estimates.⁶ That order also provided for the reestablishment, without any public notice and comment, of a requirement that agencies use the Obama Administration estimates in environmental and regulatory assessments.

We write today for information to develop a better understanding of the nature and scope of EPA's work to develop SC-GHG estimates, its use of SC-GHG, and its related actions to comply with the recent District Court ruling. Accordingly, we respectfully request that you respond to the following by March 22, 2022:

1. Describe how EPA has complied with E.O. 13990, including the agency's use of the so-called Interim SC-GHG Estimates in any assessments, reviews, regulatory activity, briefing materials, and litigation.
2. Describe EPA's participation in and support for the IWG, including but not limited to EPA's technical support and economic assessments, and EPA's role in the peer review process. Please list all staff that participated in or supported the IWG, including relevant title and office.
3. Describe how EPA is complying with the District Court's Ruling Memorandum and Order concerning the use of the Interim SC-GHG Estimates in any agency regulation, procurement, or other decision, review, analysis, or action. If you have not taken any action, explain why not. Please provide a copy of any communications from EPA's Office of General Counsel to EPA staff regarding your agency's efforts to comply with the District Court ruling.
4. Please provide the following:
 - a. A list of all draft or proposed agency actions where the Interim SC-GHG Estimates have been cited in agency documents, including but not limited to all Clean Air Act Section 309 reviews of other agency actions.
 - b. A list of all EPA judicial statements or court filings where the Interim SC-GHG Estimates have been cited.

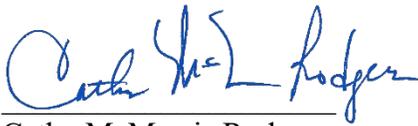
⁵[OMB Final Information Quality Bulletin for Peer Review](#), Federal Register Volume 70, Issue 10 (January 14, 2005) Section II of the Bulletin "requires each agency to subject 'influential' scientific information to peer review prior to dissemination" at page 11.

⁶ See [Executive Order 13990](#) of January 20, 2021, published in the Federal Register, January 25, 2021, at page 7037.

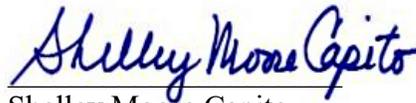
- c. A list of all EPA final agency actions where the Interim SC-GHG Estimates have been employed.
- d. The steps EPA is taking to withdraw, amend or suspend these listed actions either to comply with the District Court's Order or to address the issues raised in the District Court's Ruling Memorandum in general.

We appreciate your prompt attention to this request. Please have your staff work with our Minority Committee staff to address any questions about complying with this request.

Sincerely,



Cathy McMorris Rodgers
Member of Congress
Ranking Member
Committee on Energy and
Commerce



Shelley Moore Capito
United States Senator
Ranking Member
Committee on Environment
and Public Works

cc: Mr. Joseph Goffman, Principal Deputy Assistant Administrator, Office of Air and Radiation, US Environmental Protection Agency (EPA)