

OVERSIGHT OF THE ENVIRONMENTAL PROTECTION AGENCY

Wednesday, May 20, 2020

United States Senate

Committee on Environment and Public Works

Washington, D.C.

The committee, met, pursuant to notice, at 10:02 a.m. in room 406, Dirksen Senate Office Building, the Honorable John Barrasso [chairman of the committee] presiding.

Present: Senators Barrasso, Carper, Inhofe, Capito, Cramer, Braun, Rounds, Sullivan, Boozman, Wicker, Ernst, Cardin, Whitehouse, Merkley, Gillibrand, Markey, Duckworth, Van Hollen.

STATEMENT OF THE HONORABLE JOHN BARRASSO, A UNITED STATES
SENATOR FROM THE STATE OF WYOMING

Senator Barrasso. Good morning. I call this hearing to order.

I would like to welcome the Administrator of the Environmental Protection Agency, the Honorable Andrew Wheeler, to the committee today. Today's hearing is an opportunity to hear about the EPA's good work and a chance for committee members to ask questions.

The Environmental Protection Agency is tasked with protecting the air we breathe, the water we drink, and the communities where our families live. During the COVID-19 pandemic, the agency has worked hard to provide the public with updated information on which disinfectants and cleaning products can be safely used to kill the virus. In addition, the EPA has made grant funding available to the States and the tribes to help low-income and minority communities address the Coronavirus.

EPA has also provided thousands of pieces of personal protective equipment to aid emergency and health professionals during the pandemic, and EPA issued timely guidance to States and businesses about how it will enforce environmental laws when social distancing affects normal activities. I look forward to hearing more about the agency's work to combat the virus during

today's hearing.

In addition to its work on the virus, the agency has pursued policies to protect the environment while supporting the economy. EPA has replaced punishing regulations that harm the coal industry, farmers and ranchers, and many small businesses in my home State of Wyoming and across the Country.

In 2017, the Department of Commerce asked manufacturers, which Federal agency generated the greatest regulatory burdens. The answer was clear: it was the EPA. At the top of the list were the Waters of the U.S. Rule and the Clean Air Act Rules.

This year, the Trump Administration replaced the Obama Administration's illegal Waters of the U.S. Rule. Under the old rule, ponds, puddles, and prairie potholes would have fallen under Washington's control. The replacement of the Waters of the U.S. Rule, known as the Navigable Waters Protection Rule, is supported by States, as well as farmers, rancher, and small businesses.

Last year, the EPA finalized the Affordable Clean Energy Rule as a commonsense replacement to the overreaching Clean Power Plan. The new rule follows the law and will enable the U.S. to continue to lower emissions.

Under the current Administration, EPA has saved over \$5 billion in regulatory costs. Last year alone, the EPA saved Americans an estimated \$1.5 billion through the deregulatory

actions.

In the challenging economic times ahead, reducing excessive regulatory burdens to promote and reinvigorate our economy has never been more important. At the same time, the EPA has focused its mission and refocused its mission on the basics of environmental protection and lowering pollution levels. This important work protects our Nation's air, land, and water.

EPA financing has allowed billions of dollars of upgrades to our aging water infrastructure to move forward. These investments ensure Americans have clean water for drinking and for recreation. Over the past three years, the EPA has helped finance more than \$8 billion worth of infrastructure projects under the Water Infrastructure Finance and Innovation Act Program alone. In his written testimony today, Administrator Wheeler estimates these projects can create more than 16,000 jobs.

EPA has also made real progress in cleaning up some of our Nation's most contaminated sites. Last year, EPA completed its work on all or part of 27 Superfund sites on the National Priorities List. That is the most since 2007.

Under EPA's Brownfield and Land Revitalization Program, the agency has focused on cleaning up land in economically distressed communities, particularly those located in opportunity zones. The Tax Cuts and Jobs Act created

opportunity zones as a way to spur economic development in the communities that need it the most.

I am pleased the EPA is taking actions to carry out its core mission of protecting public health and the environment while supporting economic growth. We can and we must do both.

I would now like to turn to Ranking Member Carper for his opening statement.

[The prepared statement of Senator Barrasso follows:]

STATEMENT OF THE HONORABLE THOMAS R. CARPER, A UNITED STATES
SENATOR FROM DELAWARE

Senator Carper. Thank you very much, Mr. Chairman.

I would like to begin my remarks this morning by welcoming Administrator Wheeler, who is somewhere about a hundred yards away from us in this enormous hearing room. I think I can recognize him by that beard and a full head of hair. Andrew, welcome, and thank you for joining us today.

These are not just sobering times. For a lot of Americans and our neighbors around the world, they are scary times, really scary. For a lot of people, it is a time that is largely devoid of hope.

I was asked in an interview earlier this week what provides me with inspiration in times like these, and I responded without hesitation: it is the selfless service of extraordinary people. The selfless service of extraordinary people, people that we oftentimes think of as ordinary folks, but who, in times like these, become extraordinary.

I just want to start off, Mr. Chairman and colleagues, by talking a little bit about some of them. Thus far, at least 14 Capitol Police officers have tested positive for COVID-19. Some members of Congress, their families, and their staff have as well. These beautiful buildings here on Capitol Hill were opened this morning by people who serve our Country by keeping

us safe by keeping the lights on, cleaning the office spaces we occupy, making the food that sustains us, or working behind the scenes to make events like this hearing possible.

None of these unseen public servants are guaranteed to work in a stunning room like the one which allows all of us to remain at least 60 feet apart, it seems, with face masks on and hand sanitizers at the ready. But many of these unsung public heroes have young children; they have no option for school or daycare for the children when duty calls, and few if any of them have the option to telework.

The Senators are here, the staff that helps keep these buildings open, operating, and safe must be here as well. They serve our Country, each in their own way, just as we do. They deserve our gratitude and our protection in turn.

So on behalf of all 100 United States Senators from every corner of this Country, I just want to start off this morning with a sincere and heartfelt thank you from all of us. Thank you.

Now turning to today's hearing, let me again welcome Andrew Wheeler. Ironically, when we last welcomed him before the committee, we were in the midst of a government shutdown, as I am sure you will recall. Today, we are in the midst of a pandemic unlike anything we have seen in 100 years. During normal times, we would have been holding a budget hearing months

ago, shortly after the proposed budget was released. For those who may not recall, the proposed Federal budget for fiscal year 2021 cut EPA's budget by over 25 percent, a reduction of \$2.5 billion from last year's enacted appropriation.

Funding the EPA at that level would severely hamper programs that are important to protect water quality and drinking water, programs that are intended during the pandemic to ensure people have clean water to wash their hands with and to properly sanitize. In a time when this pandemic is costing literally tens of millions of people their jobs, that budget would leave the EPA with its smallest workforce in 30 years, while funding the agency at a level, in real dollars, not seen since the 1980s.

While the EPA is not on the front lines of responding to the COVID-19 pandemic, the agency does have a vital role to play, and it requires funding that is commensurate with that role. EPA is charged with evaluating disinfectants used to keep us safe. It is charged with undertaking environmental research that can help us better understand the way this disease and others like it are impacted by weather, by climate, and by pollution.

Perhaps most important of all, the agency is charged with protecting everyone in this Country from drinking unsafe water and breathing unsafe air. When it comes to that important

mission, regrettably, too often the agency has done the opposite of what it should have been doing during this pandemic.

Earlier today, I released a report entitled Pandemic of Pollution. Mr. Chairman, I ask unanimous consent to submit it for the record if I could.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Carper. Thank you, sir.

This report paints a grim picture. It describes the clear links that have been found between climate change and the likelihood of future pandemics. It also describes the clear evidence that other Coronaviruses like SARS are more likely to cause death in those who are also exposed to air pollution.

This report also documents some of the emerging scientific evidence that COVID-19 is more likely to kill people whose pre-existing conditions are worsened by breathing more heavily polluted air. We already know that low-income and minority communities who face more air and water pollution than others are also suffering the most from COVID-19.

Here in this city, this national capital, for example, African Americans account for almost 80 percent of COVID-19-related deaths, while making up less than half of the population. Yet despite this, the EPA has not spent these past months standing up an aggressive research program to better understand the nexus between the pandemic and pollution, or strengthening the environmental justice programs to examine the clear need to respond forcefully to front-line communities. Instead, the EPA has spent much of this year proposing and finalizing rules that a lot of us believe will cause even more air pollution in the future.

Let me provide a couple of examples of what I am talking

about. The EPA's own analysis shows that its rollback of the Clean Car Rule will actually kill more people prematurely because of air pollution than the number of people whose lives the rule reports to save. In fact, the Environmental Defense Fund estimates that there will be more than 18,000 premature deaths caused by this rollback alone. That is more than half the people who live in Dover, Delaware, the capital of my State.

Here is another example. The elimination of the legal underpinnings of the Mercury and Air Toxics Standard could ultimately result in thousands of additional premature deaths. Here is a third example. According to EPA's Scientific Advisory Committee that the agency has disbanded, the failure to strengthen the standards for particulate matter could kill as many as 12,500 people prematurely every year.

To add insult to injury, the EPA is actually using the COVID-19 pandemic now to justify its proposal to allow the continued sale of antiquated wood stoves. Why is that important? Well, residential wood stoves in this Country emit five times more soot pollution than the U.S. petroleum refineries in this Country, cement manufacturers in this Country, and pulp and paper plants combined. Five times more, think about that.

The new report I have just released earlier today and asked to be entered for the record found that the rollbacks the EPA

has taken just since March 1st of this year could kill literally tens of thousands of people prematurely each year. These rollbacks are, in fact, a pandemic of pollution rather than attacking, the Environmental Protection Agency is actually contributing to, all in the middle of an actual pandemic. Heaven help us.

Last night, colleagues, EPA issued a press release in response to the report that I have been talking about, calling it "misleading" and "political propaganda." Yet in that release, the EPA failed to provide a single mention of air pollution. It did not even attempt to address or rebut my report's fundamental conclusion, that the dangerous air pollution rollbacks that EPA has pursued in just the past two months will kill thousands of people, and that the potential link between air pollution and COVID-19 could make our ongoing battle against this pandemic all the more difficult and even more deadly. For thousands of people, it could even make this heartbreaking reality even more tragic.

This is not about politics; this is about people, and EPA owes the American people some answers. We hope we get those this morning. Thank you all very much.

[The prepared statement of Senator Carper follows:]

Senator Barrasso. Thank you very much, Senator Carper.

I would point out that the minority paper released today is based on a non-peer reviewed Harvard study connecting COVID-19 mortality to particulate matter pollution. The Wall Street Journal published an editorial observing that "the study is riddled with flaws," and as two epidemiologists quoted in the Wall Street Journal piece stated, "when we look closely at the research, we saw so many shortcomings that we were not convinced of the results."

So I ask unanimous consent to enter this editorial into the record, and without objection, it is done so.

[The referenced information follows:]

Senator Barrasso. We will now hear from our witness, the Honorable Andrew Wheeler, Administrator of the Environmental Protection Agency.

I want to remind you that your full, written testimony will be made part of the official hearing record, so please try to keep your comments to five minutes so that we will have plenty of time for questions. We look forward to the testimony.

Thank you, Mr. Administrator.

STATEMENT OF THE HONORABLE ANDREW WHEELER, ADMINISTRATOR, U.S.
ENVIRONMENTAL PROTECTION AGENCY

Mr. Wheeler. Thank you. Good morning Chairman Barrasso, Ranking Member Carper, and members of the committee. I appreciate the opportunity to submit the statement regarding the EPA's proposed fiscal year 2021 budget request, which supports the goals and objectives of EPA's five-year strategic plan.

The year 2020 marks the 50th anniversary of EPA. As a Country, we have made remarkable strides over that time ensuring a clean environment for all of our citizens. That said, 2020 has been a difficult year for all Americans as we deal with the COVID-19 pandemic. The agency has done a number of things in the past several months to help fight the outbreak.

The EPA approves the disinfectants that Americans use to safeguard their families, homes, and businesses. The agency started off on March 5th with 60 EPA-approved disinfectants against COVID-19. At this time, we have approved over 400 products due to the hard work of our career scientists.

EPA requested that State governors consider all water and wastewater workers as essential workers when enacting restrictions to curb COVID-19, and we have also started a number of research activities related to COVID-19. Through the amazing work of our IT office, we have more than doubled our capacity to telework within one week by increasing our VPN capacity from

7,500 to 17,500 lines.

Our list of accomplishments in the past several months will be considered impressive, even under normal circumstances. Since the middle of March, the EPA has published its final Safe Vehicles Rule. We have published our MATS Mercury Rule, proposed retaining the current Obama NAAQS standard for particulate matter, published a Waters of the U.S. Replacement Rule, sent a cost-benefit rule to OMB for review, awarded brownfields grants to over 150 deserving communities across the Country, ordered \$20 million in grants for the Great Lakes Restoration Initiative, and sent \$1 million in grants to help environmental justice communities address COVID-19 concerns from low-income and minority communities.

We have also not let this deter our efforts to hire, and we have added 335 new employees during this time. Another 200 will be added by the end of June. Our agency's mission to protect human health and the environment is critical and needs to move forward, regardless of the circumstances. EPA employees have risen to the test of carrying out their duties during this challenging time, and I applaud all of them.

Our budget request includes over \$1 billion for the Superfund Account to continue progress to revitalize lands. EPA in the last fiscal year deleted all or part of 27 Superfund sites from the National Priorities List, which is the largest

number of deletions in a single year since 2001.

Under President Trump, EPA has finalized 60 deregulatory actions, saving Americans nearly \$7 billion in regulatory costs. I want to be clear that we are not achieving this at the expense of environmental laws enacted by Congress. In fact, some of this important work is modernizing decades-old regulations and bringing them up to date.

It is worth remembering that in the 1970s, more than 40 percent of our Nation's drinking water systems failed to meet even the most basic health standards. Today, over 93 percent of the community water systems meet all health-based standards all the time, and our air today is over 74 percent cleaner than it was in 1970, with all six criteria air pollutants having decreased during this Administration.

But there is more to do. Our Nation's children are especially vulnerable to the health impacts of unsafe drinking water, especially lead exposure. The EPA is coordinating with our Federal partners to reduce children's exposure to lead through the new Lead Exposure Reduction Initiative included in this budget request, an additional \$45 million to build on current efforts that will help decrease lead exposure on multiple fronts.

The budget request also includes new resources for EPA to aggressively implement the PFAS Action Plan, the EPA's first

multi-program National Research and Risk Communication Plan to address an emerging class of chemicals of concern. Never been done in our 50-year history.

The budget continues WIFIA loan support, which is producing tremendous results for the American people. Loans in total over \$4.2 billion have helped finance over \$8 billion for water infrastructure projects, creating 16,000 jobs.

EPA continues to meet the major statutory deadlines of the new TSCA Law. EPA is working its way through the final risk evaluation for the first 10 chemicals, and last December we identified the next 20 high-priority chemicals.

As we approach EPA's 50th anniversary in December, we can proudly say that Americans now have significantly cleaner air, land, and water than in the past. The Trump Administration is proving that environmental protection and economic health can go hand in hand. This message of hope for our environment, both today and in the future, is as important as ever during this challenging time.

We can be proud of the example EPA career employees and managers have set in the past several months, and be comforted by the fact that great progress in human and environmental health is being shared with all Americans everywhere, regardless of where they live. Thank you.

[The prepared statement of Mr. Wheeler follows:]

Senator Barrasso. Well, thank you so very much for your testimony.

Since we have members who are here in the room, and we have members who are watching from their offices and participating that way, the Ranking Member and I have agreed that to allow members a better sense of when they will be able to ask a question, that we are going to dispense with the early bird rule and go strictly by seniority on the committee today, so just for members who are watching from their offices.

Let me start with the questions, Administrator Wheeler. I am going to applaud so much of work the EPA has done during your ten years, but you know I am still deeply troubled with the record of the EPA on the renewable fuel standard, especially in regard to small refineries.

The EPA's failure to challenge the standing claims of the biofuel producers in the Tenth Circuit to me is inexcusable. The EPA's failure to seek a rehearing on the recent Tenth Circuit ruling was inexplicable. Unless the EPA identifies ways to provide similar levels of relief to small refineries, the consequences of the decisions that have been made by the EPA are going to be devastating for communities in Wyoming and elsewhere.

Can I ask what steps, if any, are you taking to help small refineries obtain hardship relief in light of the Tenth

Circuit's ruling, and will you ensure that the EPA gives any petitions for hardship relief in prior years prompt consideration?

Mr. Wheeler. First, to the last part of your question on request for waivers from previous years. When and as we receive any request for prior year waivers, we will be sending those straight to the Department of Energy for their review, according to our policies and procedures that we have outlined, and for the Department of Energy, that they then supply to us the information as far as whether or not there is an economic hardship or waiver.

As soon as we receive any request from any small refinery for prior years, we will report those over to DOE as soon as we get them. We have, and I have talked personally, with a number of small refiners all over the Country, including I think every small refinery in Wyoming, and we are working with them to see what we can do to help them during this time.

This was a double hit to the program, not just with the Tenth Circuit decision, but also the decrease in vehicle miles traveled by Americans right now. We have extraordinary circumstances this year, and we are looking to see what relief we can provide everyone.

The ethanol industry is also hurting as well, the small refiners in particular, because of the Tenth Circuit decision

and because of the amount of gasoline that is currently being sold and used is a particular hardship to refiners.

Senator Barrasso. Will you ensure the EPA promptly reconsiders petitions which it wrongfully denied prior to the Sinclair decision?

Mr. Wheeler. Are you referring to the previous years?

Senator Barrasso. Yes.

Mr. Wheeler. Yes, as soon as we get that information back from the Department of Energy. The first step in that process is for the Department of Energy to take a look at the application and make determinations as far as whether or not there are economic hardships involved.

Senator Barrasso. I will turn to another topic. Like EPA, the State of Wyoming issued temporary guidance to address challenges posed by the Coronavirus pandemic. The EPA has provided important direction to States and to businesses during an unprecedented time of social distancing.

Can you talk a little bit about the objectives of the Enforcement and Compliance Program guidance?

Mr. Wheeler. Absolutely. Not only Wyoming, but every single State represented by members of this committee except for Delaware has issued enforcement discretion policies since March, every single State on this committee, except for Delaware. This is normal; in our enforcement discretion, the policy that we

issued is much more mild than any that we have done in the past.

For example, during the Obama Administration with Hurricane Sandy, they actually allowed facilities to increase their emissions without checking with the EPA first and the States impacted. COVID-19 impacts all 50 States. Nobody is allowed to increase their emissions. Zero. Nobody is allowed to increase their emissions under our enforcement discretion. It only refers to routine monitoring and routine bookkeeping reports that they have to file with the agency on a regular basis.

Senator Barrasso. I want to talk about carbon capture, and utilization and sequestration. It came up yesterday in our discussions with the President of the United States. You know I am a strong supporter of this. Earlier this year, the EPA started a rulemaking to give Wyoming the authority to issue permits on carbon dioxide when it is injected underground.

Wyoming has the expertise to issue these permits. The Wyoming Integrated Test Center for Carbon Utilization is located next to Basin Electric Dry Fork Station outside of Gillette. They tell us that the EPA's proposal would provide much-needed regulatory certainty to Wyoming for the carbon management projects, and there is bipartisan support on this committee for a carbon capture utilization and sequestration.

Will you commit to prioritizing this rulemaking and other actions that support the development of carbon capture projects?

Mr. Wheeler. Yes, and on April 1st, we proposed to grant Wyoming the permitting primacy for the Class 6 wells, which are used to sequester carbon dioxide. EPA supports Wyoming's leadership in protecting their natural resources and environment, and we encourage other States, actually, to follow their example to implement and enforce this important program under the Safe Drinking Water Act.

Senator Barrasso. Thank you.

Senator Carper?

Senator Carper. Mr. Chairman, colleagues, Delaware is right in the middle of a lot of busy corridors in the Northeast. A lot of people live in the Northeast. There is a lot of traffic in the Northeast, I-95, 495, 295, and a lot of it comes right through my State. Over 80 percent of the pollution in my State, the air pollution, particularly in Northern Delaware, comes from sources outside of our State, generated by sources outside of our State.

We have the misfortune of being downwind from a lot of the pollution that comes to Delaware. It keeps us out of compliance with some of the air pollution and clean air requirements that others are able to meet because they live in places like Wyoming and Oklahoma, where they don't have all those millions of cars and trucks and vans coming through their States every month.

There also happen to be a couple of coal-fired plants,

three in Pennsylvania, I think, one in West Virginia, that spew pollution into the air. Guess where it blows? It blows into my State, and it helps keep us out of compliance with the Clean Air requirements.

We have gone to court. We have asked the courts to say, basically, to these four polluting plants, you cannot turn off your pollution prevention, your pollution controls. The courts have basically ruled and said, D.C. Circuit Court of Appeals ruled this week and said they have got to keep their pollution control equipment operating, so that States like mine don't drown in pollution from other places.

Now, EPA can appeal that decision if they choose to, and Administrator Wheeler, I just want to ask you not to appeal that decision. The Circuit Court has appealed. If there is ever a true example of the golden rule, treating other people the way you want to be treated, I think this is it, and I would like to have your assurances that you are not going to appeal the decision of the D.C. Circuit Court of Appeals.

Mr. Wheeler. I have actually not been briefed on the decision yet this week. I am supposed to have a briefing, I believe, later this afternoon, so I want to reserve judgement until my attorney is at the office and the Office of General Counsel.

Senator Carper. Well, in that case, we look forward to

hearing from you further. Thank you.

Mr. Wheeler, early research has shown that people exposed to more air pollution may have greater COVID-19 risk, just like we saw with the SARS Coronavirus. It is also crystal clear that COVID-19 is having a far more serious impact on lower-income and minority communities, which also often experience more air and water pollution.

While EPA has used funding Congress provided in the CARES Act to study disinfectants and whether COVID-19 can be detected in wastewater, it is clear that there is much to be learned about this disease and its impact on Americans.

My first question, Mr. Wheeler, is would you commit to re-allocate unused EPA funds to study whether exposure to air pollution causes people with COVID-19 to have worse outcomes or more difficult recoveries, or to be more susceptible to other diseases once they have recovered? Could you commit to doing that please?

Mr. Wheeler. We are looking at those research areas. A lot of other people are researching that as of now.

You have the Harvard study that you mentioned, although the Harvard study has a number of issues and problems that Senator Barrasso mentioned. The other study in your staff report that you issued yesterday evening or early this morning --

Senator Carper. I don't have much time. I am sorry, we

have five minutes, we have votes coming up in 30 minutes, so I will ask you to answer my question for the record.

Mr. Chairman, I also want to ask unanimous consent to add all the studies, some of which, most of which actually have been peer-reviewed that my staff report referenced in for the record, if I could ask that unanimous consent, please.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Carper. Thank you.

Mr. Wheeler, my next question is probably my last question, given our time constraints.

We know COVID-19 is going to be with us for many months, probably for years. Even if rapid vaccine development efforts are successful, you will observe that some of the early studies linking air pollution and COVID-19 have not been peer-reviewed.

The Centers for Disease Control says that people with diabetes and heart disease may be at higher risk for serious illness from COVID-19. Since I don't have much time, I will just make these yes or no questions, if we could.

The first one, Administrator Wheeler, is do you agree that EPA's own work has demonstrated that there is a clear link between exposure to air pollution and higher incidence of diabetes and heart disease? Do you agree with that?

Mr. Wheeler. I believe that is true.

Senator Carper. Thank you. Another one, and then I am done. Yes or no, if the link between exposure to air pollution and COVID-19 risk is further established by EPA or other peer-reviewed research, will you commit to ensuring that these health effects and risks are factored into all of the agency's future air pollution rulemaking, as well as its environmental justice efforts?

Mr. Wheeler. We factor diseases such as that into all of

our rulemakings already, and we also factor that into our environmental justice programs. The 2005 study for the European study that your staff report references is a 2005 study, which is actually out of date, so we are not sure of the validity of that, as far as COVID is concerned.

Senator Carper. Let me just close with this. If the link is established, will you factor it into future air rules and EPA activities or not? Will you stop writing rules that make things actually worse, not better?

Mr. Wheeler. All of our rules make things better, sir.

Senator Carper. Mr. Chairman, I think I have made my other unanimous consent request. Thank you very much for the time.

Senator Barrasso. Thank you very much, Senator Carper.

I would point out that only a few weeks after releasing their research, the authors of the Harvard study have already had to revise their findings. Instead of focusing on unproven studies, I would recommend that we rely on what the CDC tells us, that proximity matters.

For example, I think we should evaluate how public transit has contributed to the spread. As the New York Times recently reported of Coronavirus, the Times says Coronavirus has drained the subway of more than 90 percent of its riders, killed nearly 100 workers, and sickened thousands more.

So I ask unanimous consent to enter this article into the

record without objection, and will do so.

[The referenced information follows:]

Senator Barrasso. Senator Inhofe?

Senator Inhofe. Thank you, Mr. Chairman. First of all, I think that was one of the best opening statements I have heard. I said to the Administrator that we really need to hear the truth. We need to get it into the record.

And I have to share something with my fellow Senators, here. When you were confirmed, Andrew, I remember that there was a very large meeting of all of the employees, I think all of the employees of the EPA who were invited.

Mr. Wheeler. Yes, sir.

Senator Inhofe. There were several out there that you didn't even know of, but I was there, because I wanted to watch. I wanted to see the reaction of these people. You see the ones who realize that, here is Andrew Wheeler. Sure, some of them may disagree with your philosophy in different areas, but no one would say that you are not the most knowledgeable person, there is no one who is more knowledgeable than you who has ever crossed into that Administrator's position.

I watched the expression on the faces, and what we could see there was, in their own way of saying it, there is room at the top. That you started your career with the EPA, and you have taken every position, and you have exceeded, and you have come to the top.

That was a very heartwarming thing, not just because you

worked for me for 14 years, but because they all knew that there is, in fact, room at the top.

Then in your statement, I thought you did a very good job of showing what we have done for the environment, for the quality of life. For people to try to say that that is not the case, they don't have the facts. We just look and we see what has happened since, and I could go in there and talk about some of the things. I think they were covered very well by the Chairman, and the fact that all pollutants have decreased. One of them, I have often talked about is in the year 2017, in this Administration, all of it in this Administration, the United States led the world in CO2 emissions reductions.

So what you have done is just an incredible feat, and I am very, very proud of you. You have had a lot of help. I think your first top person was R.J., and we don't need to talk about him anymore, because he's not there, but you do have someone else in Mandy.

I can tell you that you didn't do all this stuff alone. You had a lot of help, and she was a skilled attorney, she was very active in the previous Administration, and I am just real proud. I see that she is here, so I want to say to you, Mandy, you are doing a great job, and what a great team that we are looking at, and we are very proud of you.

Two things I was going to bring up. One has been brought

up very effectively by the Chairman, and that is the Tenth Circuit and what has happened on small refiners. This is the major concern that I have in my State of Oklahoma. It has been a real serious problem.

What hasn't been mentioned is just, the whole industry is undergoing problems that are unprecedented. We do know right now Saudi Arabia and Russia are trying to put us out of that business very clearly, and I have even suggested to go as far as tariffs, talking to the Secretary of Commerce. Something like that needs to be done.

But then when you talk about the refiners and the problems that they are having, I think you have answered the question very well that our Chairman asked about that, and I appreciate the fact that he did very effectively discredit the report that we have heard over and over again.

So what I would like to do in keeping with the time, nothing has been said so far about the disastrous Obama era fuel economy standards. We all knew what was happening at that time, and I would like to have you look at the Safe Vehicle Rule, and specifically addressing the rule in terms of choice, in terms of vehicle price tags, in terms of passenger safety, in the remaining time. Would you do that?

Mr. Wheeler. Absolutely, sir. First, there is a lot of misinformation out there. Our Safe Vehicle Rule will save more

lives than not, and that has been shown in our analysis, in our joint analysis with NHTSA.

It also will help produce automobiles that Americans want to purchase. One of the problems that we have seen over the last ten years are the average age of cars on the road is increasing. It used to be eight-year old cars on the roads, today it is twelve-year old cars on the roads. The older cars are inherently less safe and worse for the environment.

We have proposed increases each year, 1.5 percent better fuel efficiency. The Obama Administration did have a higher percentage, but the companies were not complying with that; they were unable. In 2016, only four companies were able to comply; in 2017, only three, without having to cash in credits or pay fees or penalties to the Treasury. Those fees and penalties were to reach over \$1 billion. That is \$1 billion that would have been passed on to the consumer in higher prices of cars.

Our regulation will save lives, it will reduce CO2 over the long term, and it will allow Detroit and the other automobile companies around the world to produce cars that Americans want to purchase.

Senator Inhofe. Thank you.

Senator Barrasso. Thank you, Senator Inhofe.

Senator Cardin.

Senator Cardin. Thank you, Mr. Wheeler, for your testimony

and thank you for your service. Sorry I can't be in the committee room personally, but this is how our hearings are now being conducted.

I want to first disagree with my friend, Senator Inhofe, in regard to CAFE standards. CAFE standards not only deal with clean air, but also act as a way to get American manufacturers doing what is necessary in order to stay ahead of the curve in regard to our environment. So I am disappointed by the Trump Administration's policies on CAFE standards, and I would hope that you take a new look at that and do things differently.

I want to use my time first to talk about the Chesapeake Bay. The Chesapeake Bay has received strong bipartisan support from the Congress of the United States with our committee, and the Senate has reauthorized the program at a higher level than the current authorization amount. Through the appropriation process, we have brought an extra \$12 million for the Federal share of the Chesapeake Bay Program. So there is strong bipartisan support.

As you and I have talked about, this is a program that is from the State and local government up. The Federal Government does not set the rules. The local governments have set the rules under the Chesapeake Bay plans, and the watershed improvement plan is aimed at making sure each State does what it says it is going to do using best science to work to achieve our

objectives. Our current objectives are based on 2025 goals.

My concern is, we have got messages from the EPA that you are not going to act as the impartial observer here, enforcing what the States say they can do and science says that they are able to do.

Can you just assure me that the EPA, in fact, will make sure that we comply with the Clean Water Act in achieving the goals of the Chesapeake Bay Agreements that the States have signed on to to reach the 2025 goals, and that requires you to enforce our watershed improvement plans based upon the TMDL standards? What is your position on this?

Mr. Wheeler. Senator, thank you for asking me this, because there is been a lot of misinformation out there over the last few months. We are working with all the States to make sure that they are implementing their 2025 targets under the TMDLs.

The TMDL, as the Obama Administration argued to the Supreme Court, is not legally enforceable. That doesn't mean that we do not work with the States to make sure that they are meeting their obligations. As of the Phase 3 WIPs that were filed last year and that EPA reviewed, five States are currently not shown to meet their obligations by 2025. Pennsylvania and New York are of course, two of them, but also Maryland is currently not set to meet their obligations by 2025, either.

But we are working with all of the States to make sure that they meet their obligations by 2025. We just announced, on the new funding we received from Congress, we just announced this week that \$6 million of the \$12 million is going to go to nitrogen reductions in the targeted States. A large percentage of that is going to Pennsylvania, because quite frankly, they have one of the largest problems on nitrogen loading into the Chesapeake Bay. So we are trying to use the funds in order to address the biggest problems where they are occurring.

I was very surprised to see that the Chesapeake Bay Foundation and the Attorneys General from Maryland and Virginia announced that they are going to sue the EPA over this. My EPA staff over the last year have put in 22,000 hours of technical assistance to the States in order to help them comply with the WIPs. If I am going to have to pull people off of technical assistance, to fight them off is going to hurt the Bay.

Senator Cardin. Can I just say, for one second, can I just interrupt for one moment? There is one thing about providing technical assistance, that is very important, and you need to do that, and we welcome that.

There is another thing about enforcement saying that you have got to hit what you say you are going to do, and science says is achievable. The concern is, will you, at the end of the day, enforce these agreements?

Mr. Wheeler. Again, sir, as the Obama Administration argued to the Supreme Court, the TMDL is not legally enforceable, but we can use our permit authorities, and we are, and we have, and we will continue to do so. That is under the NPDES Program, to make sure that the States are going to be able to achieve their targets by 2025. We are doing that across the board, we always have, and we will continue to do so.

The comment that spurred all this was back in a January meeting with one of my career managers at a public meeting, where his comments were taken out of context, which was directly on the TMDL issue. It does not mean we don't have other authorities. We continue to use those authorities through our permitting process to make sure that all the States meet their obligations.

But again, if we are going to, first of all, nobody has failed to meet their obligations, and they won't until 2025, so these lawsuits are premature at best. But to have to pull staff off of providing technical assistance to the Bay States in order to answer these, quite frankly, frivolous lawsuits, is going to detract from getting our work done on cleaning up the Bay.

Senator Cardin. My last point on this would be, I think the more that you can broadcast that you are holding the States accountable, whatever methods you can do, I think would go a long way to alleviating some of the concerns that you are going

to see some States doing their share and other States not doing their share. That seems to be the major concern, and I hope that you will work with us, those of us that are very interested in this program to make sure, in fact, we do have a workable program with EPA enforcing, as they can, the responsibilities of the local stakeholders.

Mr. Wheeler. Thank you, and we are working with the Maryland Department, the Environment Department. They are behind as well; they have five permits that they were supposed to issue in 2018. Those haven't been issued yet.

We are working with them. If anything, I would hope that the Maryland AG will decide to work with the Department of Environmental Quality instead of pursuing a frivolous lawsuit.

Senator Cardin. Thank you, Mr. Wheeler.

Senator Barrasso. Thank you, Senator Cardin.

Senator Capito.

Senator Capito. Thank you, Mr. Chairman. Thank you, Mr. Administrator, for your good, hard work, and thanks for being here today and your testimony.

I would like to say, I appreciated a year ago, we were down in Minden, West Virginia looking at a site, and I know that you have continued to do soil sampling there. But I understand it has been put on hold because of the COVID response.

Can you just give me a quick update on that, where you are?

Mr. Wheeler. Certainly. We are continuing to work on all of our Superfund sites around the Country. There are some samplings that we just can't do right now, as far as having employees go out physically in the field. But that doesn't mean that we are not cleaning up the sites.

On Minden, that is a high priority. I fully intend to visit the Minden community again. That is a community that was forgotten for years, and it is forgotten no more.

Senator Capito. Thank you. I appreciate that, and I know that that will be welcome to the folks in Minden.

Quickly on the PFAS, you probably knew I was going to ask you about that one, as something I am very interested in. You and I have talked about it a lot over the last several years. I am very pleased the EPA has moved forward on the language that Senator Carper and I worked on with Senator Gillibrand that you added 172 PFAS chemicals to the Toxic Release Inventory, so thank you for that. That is a major development providing more information for not just companies, but for individuals and health folks in those communities.

Looking forward, what can we expect for our finalization of the MCL for PFAS and PFOA, as you know, we just passed -- you are probably aware -- last week out of this committee, a Drinking Water Infrastructure Act that asks that that standard be set within a year.

Could you meet that deadline, and where are you on this critical issue?

Mr. Wheeler. We continue to work through the process for the MCL setting as laid out by the Safe Drinking Water Act. We went forward with our reg determination, I believe that was published in February, to comment on that, and we are moving forward.

As far as meeting a one-year deadline, I don't believe that the agency can set an MCL on their own following the Safe Drinking Water Act within a year. But we are working through the issues, and I think it is very important to work through those issues.

But the main point I want to emphasize, while we are doing all of this on the MCL standard setting, and the way the determination that we made, or proposed, is we are continuing to enforce cleanups around the Country. We have enforced 12 cleanups of PFAS contaminated communities around the Country, and we have assisted States and local governments with another two dozen. So where we see the problem in the drinking water anywhere in the Country, we are going after it aggressively to make sure that everyone has safe drinking water.

Senator Capito. Thank you.

As you know, this is a source of concern for many of us, certainly those around that have military bases or firefighting

foam, and we have worked with the DOD on this. But I just want to tell you to expect from me a very aggressive posture on this because I am very passionate about this particular issue when it comes to safe drinking water, and I encourage the EPA to be as quick and as thorough as possible in this area.

The last thing I would like to ask you about, I would like to ask you two more things, but one of them is on, over the weekend, the EPA allowed the sell-through of already manufactured wood heaters that are compliant with step one.

As you know, we have had that discussion. We can't get the bill passed through this committee, and as you know, many people have these wood heaters, and they would like to sell off their inventory before they have to meet the new standard. You have allowed them six months. Senator Carper offered an amendment to allow a year for this sell-through, but I understand you are catching some criticism from others on this.

What is the status of this, and how do you think this is going to be impacted?

Mr. Wheeler. Certainly. First of all, Senator Carper referred to them as antiquated wood heaters. It is important to remember that those wood heaters meet the Obama 2015 standards. So we are not talking about standards that are 20 or 30 years old, but the standards before 2015 were 1988.

So these wood heaters that are currently, that we allow the

sell-through for the next six months, meet the 2015 Obama standards. The reason we increased this even though we decided last year not to, was after talking to a number of people in the wood heating industry, and I think it is either 80 percent or 90 percent are small businesses, they sell off their inventory in the March to May timeframe through rebates and sales at the end of the winter season around the Country.

With the closure of all the stores across the Country, they were unable to sell that inventory, and under their contracts, they have to buy back the wood heaters that are still on the shelves of your Home Depot or Lowe's department stores, hardware stores. They have to buy back the older inventory on their shelves, and that could very easily bankrupt a number of small manufacturers.

So we extended the sell-through to November. That is our proposal, so that they can sell those at the beginning of the winter season this coming fall and try to get rid of that inventory before they start selling the 2020, I guess it is 2020, new heaters.

Senator Capito. Right. I appreciate that, and I appreciate the distinction that these are meeting the 2015 standards, and I think that is an important distinction to make.

The other thing I would say in this current environment that we are in, when we are looking to protect small businesses,

a lot of these wood heaters are sold in our locally-owned small businesses in certain areas of the Country where people really enjoy and use this, not just for fundamental heating, but for recreational, more second home types of things on the creeks and in the hunting cabins all across the State of West Virginia.

So I appreciate your looking out for the small business interests. We have been trying to do that here during this COVID crisis, and I am very fully supportive of the work you have done. I could have gone for a year, but six months, if that gets the desired result, that sounds good to me.

I going to ask a question on the record on the ACE Rule, but I have run out of time. Thank you.

Mr. Wheeler. Thank you, Senator.

Senator Barrasso. Thank you, Senator Capito.

Senator Whitehouse?

Senator Whitehouse. Thank you, Mr. Chair.

Let me start by remarking that what the Chairman called burdensome regulations on coal to protect Rhode Island families' clean air and breathing. The Chairman's burdensome regulations on water pollution are, for Rhode Island families, clean rivers, and [indiscernible] bay, like Delaware, Rhode Island is a downwind and downstream State. So what the Chairman [indiscernible] polluting interests are Rhode Island [indiscernible] our harms, our losses, our injury. So I cannot

[indiscernible].

I would like to ask about the CAFE auto fuel efficiency standards today, particularly the role of Marathon Petroleum in attacking the auto fuel efficiency [indiscernible]. In particular under your watch, what role have you seen Marathon Petroleum play with respect to the fuel efficiency standards?

Mr. Wheeler. Senator, I didn't catch everything you said at the beginning, but as far as your question on the CAFE standards, I did not meet with or discuss with Marathon Oil Company, or actually any oil company on our CAFE standards at all during the process.

So, I did not discuss that with them. I believe that at my hearing last year, Senator Markey told me that the oil industry was supportive. That was the first time I had heard that they were supportive of our rule, but this was not something -- we are working this out with NHTSA. We spent a number of years going over all the technical data behind this, and this was not done on behalf of any oil company at all.

Senator Whitehouse. So your EPA staff did not meet with the agents or representatives of Marathon Petroleum in the preparation of your fuel efficiency regulation?

Mr. Wheeler. Not that I am aware of, and I certainly never discussed that with any of my staff. Not that I am aware of. I certainly didn't, myself.

Senator Whitehouse. Do you know who represents Marathon for lobbying and regulatory purposes?

Mr. Wheeler. Well, again, I get confused between Marathon Oil and Marathon Petroleum. I know one of the lobbyists because he used to work in my law firm and I was recused from meeting with him. So I didn't meet with him at all for the last two years. But I know some of the names of some of the people who represent both companies.

Senator Whitehouse. Was that Michael Birsic?

Mr. Wheeler. It might be, but I didn't meet with him.

Senator Whitehouse. Are you aware, well, I will make these all questions for the record so you have a chance to give full and complete deliberation to making sure that your answers are accurate and complete.

Are you aware of any contact between Marathon Petroleum and the Department of Justice, specifically the Antitrust Division of the Department of Justice?

Mr. Wheeler. No, I am not aware of, and I wouldn't have knowledge of that, no.

Senator Whitehouse. Are you aware of any contact between EPA, anyone on your staff and the Department of Justice Antitrust Division regarding the fuel efficiency standard?

Mr. Wheeler. Not that I am aware of, no.

Senator Whitehouse. Do you know what business Marathon

Petroleum is in?

Mr. Wheeler. I am sorry, you cut off on that. Something, another question about Marathon Petroleum?

Senator Whitehouse. What business Marathon Petroleum is in?

Mr. Wheeler. I am not aware. I would prefer to respond on the record, because I am not sure that I am catching your entire question.

Senator Whitehouse. Do you know that they are auto fuel refiners and sellers?

Mr. Wheeler. Again, I am sorry Senator, I am having a hard time hearing you. I would be happy to respond on the record on questions about Marathon Petroleum.

But again, I have not met with any oil company to talk about the CAFE safety standards since I have been at the agency, and I did not have any conversations with any of my staff about the views of oil companies in regard to the CAFE standards.

Senator Whitehouse. And you are not in contact with them through some of their intermediaries?

Mr. Wheeler. No. I can hear you now. No, I am not.

Senator Whitehouse. Okay. That is it for now. I will make them questions for the record, and I appreciate it very much.

Mr. Wheeler. Senator, I do want to follow up with you.

When I saw you in January, I told you I was getting ready to go to Brazil, with the Amazon to talk about trash-free waters programs. My meetings there were very fruitful, and I look forward to having some further discussions with you about that, and we are making a lot of progress on trying to clean up the plastic debris in the oceans.

Senator Whitehouse. This is one of the rare areas where you and I agree, so let's do that.

Mr. Wheeler. That is why I wanted to draw it to your attention, sir.

[Laughter.]

Senator Inhofe. [Presiding] All right, that is good.

I want to make a comment and a UC request. The EPA's decision to change the greenhouse gas standards for cars and trucks was set by a prior Administration, and it was warranted. In 2017, the Alliance of Automobile Manufacturers sent a letter to the agency. That letter said, if left unchanged, those standards could cause up to 1.1 million Americans to lose their jobs due to the loss of vehicle sales, and low-income households would be hit the hardest.

Now, I will ask unanimous consent without objection, to enter this into the record.

[The referenced information follows:]

Senator Inhofe. Senator -- who is next on here? Senator Cramer.

Senator Cramer. Thank you, Mr. Chairman.

Thank you, Administrator Wheeler for being here, and I want to echo something that Senator Inhofe said. Your opening statement was really fantastic, in fact, I can't wait to post it, because a lot of people would do well to listen to that five minutes of accomplishments of this Administration under your leadership at the EPA. So thank you for that.

I am not real certain about the 500 or so people you have said you have hired or are going to hire, but I will look into that. But I will give you the benefit of the doubt that they are all important and necessary. Thank you for being here.

I also want to thank you, by the way, for the final Waters of the U.S. Rule. That was such an important move. As you know, the previous Administration's WOTUS Rule was burdensome and illegal, as have previous attempts at Waters of the U.S. The fact that you guys finished off one that actually listened to States, listened to landowners, and protects our waters in an appropriate way while also protecting the rights of States and the rights of landowners was really important. I thank you for coming out the North Dakota and meeting with a number of them at my roundtable, so thank you for that.

I want to shift gears a little bit and get your insights on

another issue, the Regional Haze Program. This is an issue very important to North Dakota and North Dakotans. I brought this issue up with Mr. Benevento as well at his hearing process.

As you know, we are a major energy-producing State; coal, oil, gas, wind, we have lots of wind as well.

The last Administration wanted to just keep driving emissions down by using the Regional Haze Program without stopping to think about what the program is all about, and that is, of course, visibility improvement, a very important distinction, visibility improvement.

But the cost of compliance can actually cause plants to have to be shut down, which leads to plant closures, which seems like an awfully steep price to pay for visual improvements that are literally unnoticeable to the naked human eye. North Dakota is already a national leader in air quality. We are one of the very few States who meet all of the Ambient Air Quality Standards that are prescribed by the EPA.

But the previous Administration really wasn't about visibility standards at all, it was about using every tool they could to get after things both in the, well, certainly in the Clean Water Act, but also, of course, the Clean Air Act, and they tried to utilize Regional Haze to accomplish some of those goals.

In August of last year, under your leadership, the EPA

released final guidance outlining the flexibility that States, and once again, recognizing the primacy of States, to have to comply with the program under the Clean Air Act. So with that in mind, I just have a few questions.

One, Regional Haze could be, as I said, a potential reason for plant closures. Do you think it was Congress's or any Administration's goal with the Regional Haze Program to put producers and generators out of business?

Mr. Wheeler. No, I don't, and I think there is a definite difference between the health-based standards versus the visibility aesthetic standard.

Senator Cramer. So, would you agree that the Regional Haze program drives States toward a goal, but does not dictate exactly how States would achieve reasonable progress toward that goal in their SIP, or their State Implementation Plan?

Mr. Wheeler. I believe that is how it should be. The problem that we have right now, and we have been trying to correct it, is the Obama Administration issued a number of FIPs, Federal Implementation Plans, instead of SIPs.

On the Regional Haze side, we have changed 15 of those FIPs into SIPs over the last three years, which is working more cooperatively with the States instead of directing from Washington, D.C.

Senator Cramer. So just to clarify, States do have a lot

of flexibility in how they show that reasonable progress, and they can do that through their SIPs, as opposed to complying with a FIP?

Mr. Wheeler. They should, and that was the way, it is my understanding that the 1990 Clean Air Act Amendments in the --

Senator Cramer. Can you provide any specific examples of States' flexibility?

Mr. Wheeler. I would rather get a specific list back to you.

Senator Cramer. That is fine. Moving forward, I just want to encourage you and Regional Administrator Sopkin to continue these constructive conversations with the North Dakota Department of Environmental Quality as they develop their State Implementation Plan. It is really one more great example of how cooperative federalism really can work, and has, as you have stated many times, the goal of actually being better for the environment as well as being better for the economy. So I appreciate that.

I will follow up with a question on the record relating to Section 401, and where I think there have been Section 401 abuses in places like New York and Washington State, and what the EPA is doing to ensure that the efforts of abuses don't happen in the future.

With that, thank you for being here.

Mr. Wheeler. Thank you.

Senator Inhofe. Senator Merkley? We will go to Senator Booker. Last try here, Senator Van Hollen? Okay. Senator Wicker?

Senator Wicker. Thank you, Mr. Chairman, and Mr. Administrator, thank you for being here.

In 2015, the Grass Roots Rural Small Community Water Systems Act was passed and signed into law on May 6th of this year. The committee passed a bill, the Drinking Water Infrastructure Act, which would reauthorize the Grass Roots Rural and Community Water Systems Act.

I had previously sent a letter two years ago, almost two years ago, regarding concerns about the technical assistance being funded by EPA. My letter mentioned that EPA was awarding grants to organizations that are not located near the community seeking help, which resulted in remote assistance. Remote assistance, I am hearing from out there in my State, is simply not adequate.

Will you commit to ensuring, do you agree that remote assistance is not desirable, it is not optimal, and will you commit to ensuring that rural and small communities receive the necessary onsite technical assistance that they require?

Mr. Wheeler. We certainly strive to provide the best technical assistance that we can, and onsite, you are right, is

preferable.

I would have to check as far as the funding for the program at this point on what our capabilities are, but we try to provide assistance to the small water systems in particular as much as we can.

Senator Wicker. Well, my understanding is the program received \$15 million, an increase of \$2.7 million from the amount appropriated in fiscal year 2019, so work with us on that.

Next, Mr. Administrator, the 2018 America's Water Infrastructure Act included a piece of legislation that I authored entitled Small and Rural Community Clean Water Technical Assistance to Small and Rural Publicly Owned Treatment Works. Congress appropriated \$12.3 million, but EPA has not yet to request applications for this funding.

When does EPA expect to move forward with implementing this legislation so that our small and rural treatment works can receive the technical assistance they need, and in particular, the issuance of applications for this funding?

Mr. Wheeler. We are working on that as we speak. I believe that was funding that we received for 2020, so we are working to get that program up and running.

Senator Wicker. Okay. Well, get back to us on that, and there is an eagerness for action there.

Next, when Congress passed the Clean Water Act, it made it clear that groundwater should not be subject to federal permitting requirements. As a result, States have traditionally taken the lead on regulating groundwater.

However, the Supreme Court recently issued a ruling in the County of Maui v. the Hawaii Wildlife Fund that could change this. As EPA considers the implementation of this Supreme Court ruling, how can you ensure that the traditional role of States be preserved in regulating groundwater?

Mr. Wheeler. We are still reviewing the decision from the Maui case, trying to determine whether or not we need to issue new guidance or potential rulemakings. But we have not reached any conclusions on the best way of implementing the Maui decision at this point.

Senator Wicker. What is your initial impression there, Mr. Administrator?

Mr. Wheeler. I am always hesitant to say anything critical of the courts. They provided a new balancing test, basically, and the decision that is going to be a little difficult. We were hoping for more clear-cut direction, quite frankly, but we are reviewing the decision to see what flexibilities we do have to make sure that the program cannot break.

Senator Wicker. Finally, if I could just ask, in the Consolidated Appropriations Act of 2020, there is a decision

directing your agency to establish clear policies that reflect the carbon neutrality of biomass. It is important that EPA publish a proposal this year to ensure that U.S. manufacturing can compete globally.

What is the timeline for proposing and finalizing a rule recognizing the carbon neutrality of biomass?

Mr. Wheeler. Our proposed rule is currently going through interagency review as we speak, and we hope to publish the proposal in June.

Senator Wicker. In June? Okay, thank you, and I yield back, Mr. Chairman.

Senator Inhofe. Senator Merkley?

Senator Merkley. Great. Thank you very much, Mr. Chairman. Can you hear me okay?

Senator Inhofe. Yes, loud and clear.

Senator Merkley. Okay, terrific. I wanted to start with the exploration of the action on the ten priority chemicals that were aiming for final risk evaluation by the end of this year, and EPA says it is on track to meet that deadline.

The key is not just that the timing be met, but that they be done in accordance with the guidance that was in the TSCA Act, and this was very bipartisan, the whole committee worked very hard on developing the TSCA Act in order to help address issues that had been unaddressed for a very long period of time.

It was a pretty remarkable piece of work that this committee was involved in, so I am particularly concerned about whether or not the actual substance of the efforts is reflecting the desire of Congress for thorough analysis.

Taking asbestos as an example, the EPA, in its draft of its final rule, proceeded to exclude legacy uses of asbestos. The Ninth Circuit Court has said that this exclusion is unacceptable, the law is clear, and so that is one problem.

A second problem is EPA decided to examine only one of the types of asbestos fibers when there are six types that are in commercial use. So that doesn't make sense in honoring the integrity of the analysis.

The third is the EPA decided to ignore the pathways to exposure, including air exposure, contaminated waste, and drinking water exposure, all of which are very relevant.

So meeting a deadline is one thing, but meeting a deadline and actually doing the work in a responsible fashion, a fashion with integrity that addresses the vision that Congress laid out is very important. So I am concerned that this, what we are seeing in the asbestos world may also be happening as you look at other chemicals and if we are using exclusions, waivers, bypasses, ignoring uses, so on and so forth.

So, why not do the asbestos study looking at the legacy uses? Why not look at all six types of fibers? And why not

explore the pathways to exposure that are required under the law?

Mr. Wheeler. Senator, thank you. So our deadline for the first 10 risk evaluations is June 22nd. I don't know if this will make you feel better or not, but we probably will not meet that deadline as of this point. We are spending more time on the first ten. We want to make sure that we get them right.

The peer reviews have taken longer than we had anticipated, and the interagency review process has taken longer than we anticipated. I believe we are on track to have at least two of the first 10 done by June, and the remainder by the end of the summer.

But we are spending more time on them, because we want to make sure we get them correct, and we wanted to make sure that we have the full advice of the peer review process. So we are taking more time on the peer review process and more time on the first 10 chemicals.

On asbestos in particular, on the legacy use, we are going to do a separate, supplemental risk evaluation on the legacy use, since we believe for the other uses, we can finalize that this summer. But the legacy use is going to take longer, and that court decision, as you mentioned, just came down last year. So we will not be able to complete the legacy use risk evaluation in time for the rest of the risk evaluation for

asbestos this summer. So we will be looking at the broader asbestos issues as part of the legacy use risk assessment.

Senator Merkley. So, let me just be specific. Will you commit to examining all six types of asbestos fibers, not just one?

Mr. Wheeler. I believe we have that covered under our SNUR, the Significant New Use Rule. If that is not the case, sir, I will get back to you on that, and provide a follow-up answer to you on the question. But it was my understanding we were addressing that through our SNUR process, which is in tandem with our risk evaluation under TSCA.

Senator Merkley. And will you commit to examining all significant pathways to exposure, including air, contaminated waste, and drinking water?

Mr. Wheeler. When a chemical under the TSCA review process is already being regulated under a different program, we decided early on in setting out the parameters for the TSCA risk evaluations that we would not double regulate that in order to focus the time on the areas of the chemicals that are unregulated at this point.

So while we have already started, well, we are finishing up the first 10, we have already started the next 20. We announced those in December, and we are moving forward on the initial risk assessments for the next 20.

As you know, under the new TSCA law, we have very strict deadlines. We are trying hard to meet those deadlines. The way to do that is to allow the other programs that are already regulating aspects of these chemicals to continue to regulate them, whether it is a hazardous air pollutant under the Air Program, or a regulation under the Water Program.

Senator Merkley. I don't believe it is the case that anyone thinks that asbestos is being properly regulated under, in terms of contaminated waste or drinking water or air in other programs. So these are the type of evasions and bypasses that really concern those of us who work so hard to address these toxic chemicals.

Let me turn to the wood heaters issue. You noted you issued an additional six months --

Senator Barrasso. [Presiding] The Senator's time is expired, and we have members that need to go to vote that have been waiting.

Senator Merkley. Thank you very much, Mr. Chairman.

Senator Barrasso. Thank you.

Senator Carper, you have a quick unanimous consent request?

Senator Carper. Just a quick unanimous consent request, if I could, to submit a 2019 letter from 17 automakers in which they ask that EPA not finalize a rule that would lead to more litigation, but instead negotiate a deal with California and 13

other States. I ask unanimous consent.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Carper. Thank you.

Senator Barrasso. Senator Ernst?

Senator Ernst. Thank you, Mr. Chair, and Administrator Wheeler, it is good to see you. Thank you very much.

As we face this global pandemic, no sector has been spared, none at all, and as resilient and as tenacious as it might be, Iowa's renewable fuels industry is being hit hard. Just as oil has lost demand due to people staying home and not traveling as much, so has ethanol. Close to 40 percent of ethanol production is offline, and these are jobs lost and lives upended across Iowa and throughout rural America. My farmers rely on these markets and many of the livestock producers rely on the dry distiller's grains for their feed rations.

Administrator, first, are you fully aware and informed of the situation facing ethanol producers, and how closely the situation mirrors what is going on in the petroleum industry?

Mr. Wheeler. Yes, and before you entered the room, on a question on as far as the small refineries are concerned, I mentioned the fact that this is hurting both the ethanol industry as well as the small refinery industry.

Senator Ernst. Thank you for recognizing that. One thing that has recently attracted the attention of the farmers and the biofuel producers in my State is the attempt by some in the petroleum sector to blame renewable fuels for the recent

downturn, turning to the severe economic harm waiver to argue that the RFS is the cause of their recent business troubles, not the COVID-19 pandemic.

Are you familiar with this request?

Mr. Wheeler. Yes, I am familiar with the request.

Senator Ernst. To me, the idea that the RFS is the cause of harm to the petroleum sector, when it is very clearly the COVID-19 pandemic, as well as wars between Russia and Saudi Arabia on oil production, this is frustrating to me, and to my farmers in Iowa. Time and time again, we are seeing these battles play out around the RFS Program.

It is my hope that EPA follows the precedent around this provision established by both Republicans and Democrats, those Administrations, that this waiver requires clear evidence that the source of economic pain is the RFS, and not these other factors.

Has EPA made a decision on how to handle this waiver request?

Mr. Wheeler. No, we have not yet.

Senator Ernst. Will you commit that your determination will include precedent from 2008 and 2012 about economic harm?

Mr. Wheeler. Everything we have done under the RFS Program during this Administration has looked at the past precedent, as well as the requirements of the Clean Air Act and the ever-

changing litigation decisions that we receive from court decisions.

Senator Ernst. So, the answer is yes, you will look at precedent?

Mr. Wheeler. Yes.

Senator Ernst. Okay.

Administrator Wheeler, when you and I were in the White House debating those small refinery exemptions last fall, you made commitments to eliminate the E-15 warning labels and to allow E-15 to be sold through existing infrastructure. Likewise, as a part of that broader agreement, Secretary Purdue was to provide funding for rolling out more infrastructure for higher blends of biofuels.

Secretary Purdue put out final rules earlier this month upholding his end of the bargain, but I haven't seen anything on infrastructure yet from the EPA. Since your agency approves E-15 for all vehicle models year 2001 and newer, which is 91 percent of the vehicles on the road today, will you finally eliminate the E-15 warning labels as you committed to do eight months ago?

Mr. Wheeler. Senator, if you remember, after that meeting in the White House, I believe we did go back to you and state that I had, my staff reminded me when I got back from the meeting that I was only looking at the actual pumps, but not the

tanks underground.

So it is actually more complicated than what I said in that meeting, and we are looking at the warning labels because it also impacts and influences the restrictions on the tanks. You can't have product going into the tanks, it will end up leaking, so we have to make sure that those warning labels apply not just to the pumps, but also to the underground tanks, so we don't want to see any fuel get into the water system.

Senator Ernst. When do you expect to see a resolution with that issue?

Mr. Wheeler. As you know, with the Tenth Circuit decision, and the other impacts to the program that have come out over the last few months, the same small group of staff that have been working, that were working on that are also working on these other RFS issues as well. We are a little behind on that, but we certainly hope to get through that as quickly as we can.

Senator Ernst. Okay. Thank you. I appreciate the willingness to work with us and work with rural America on the RFS. It is important that the EPA continue to follow the original Congressional intent of that law.

Thank you, Administrator Wheeler.

Mr. Wheeler. Thank you.

Senator Barrasso. Thank you, Senator Ernst.

Senator Van Hollen?

Senator Van Hollen. Thank you, Mr. Chairman, and thank you, Administrator Wheeler, for your testimony.

I would like to follow-up on some of Senator Cardin's questions regarding the Chesapeake Bay, and I appreciate the statements that you personally made in support of the Chesapeake Bay cleanup effort.

I think we would all have a lot more confidence in the Administration's commitment to that effort if the budgets didn't slash the EPA program for the Chesapeake Bay. We are now funding it on a bipartisan basis in Congress at \$85 million a year, we actually increased it over the last year. Yet, the Administration's budget, once again, came in at \$7.3 million, over a 90 percent cut. So it would boost our confidence in your statements of support if they were reflected in the budget.

Let me just ask you a couple questions, because I heard you saying in response to Senator Cardin's question, well, the Chesapeake Bay Agreement deadline is 2025, and so, Pennsylvania and other States have a longer period of time to come into compliance. But I think we all know that if a missile were fired at us, and we had to ability to intercept it before we knew it was going to land in a bad place, we would do that.

We know that if Pennsylvania, in particular, continues on its current trajectory, there is no way that it will meet the 2025 goals. I mean, right now, they are 25 percent below their

target on some of the nutrient reductions. They have said they are \$300 million below in budget just this year in terms of what is necessary to meet their obligations.

Now, I know we have a disagreement with respect to EPA's enforcement authority. It looks like we will be litigating that. I talked to Maryland's Attorney General today, and would point out that Maryland's watermen have also signaled their intent to file a lawsuit here. So I have to disagree on that piece. But I did hear you say that the EPA, of course, has its permitting authority.

So my question to you is, are you willing to use that authority as leverage to help bring all the Bay States into compliance and be on that track towards compliance by 2025?

Mr. Wheeler. Yes, absolutely. We have, and we will continue to.

As far as the funding question is concerned, we believe the funds we requested for the Chesapeake Bay Program is what we need for that program, but we are using other funds from other programs at the agency in order to meet the goals of cleaning up the Chesapeake Bay.

Senator, you were with me when we gave the \$202 million WIFIA loan to modernize Baltimore's wastewater infrastructure with the purpose of cleaning up the Bay, and we have invited Baltimore to apply for two additional water infrastructure

projects under WIFIA that will also help their obligations for cleaning up the Bay.

So the amount of money we are spending on cleaning up the Bay is not limited to the program funds of the Chesapeake Bay Office. We are using a lot of other resources across the board to ensure that everyone reaches their compliance guidelines and targets by 2025.

Senator Van Hollen. Well, Mr. Administrator, first of all, no, we appreciate that those WIFIA funds are important, as are the funds for the Chesapeake Bay Program, which is why you have strong bipartisan support in the United States Congress. I am not saying that you asked for that cut, but that is a reflection, at least, of where the Administration stands.

Let me just pick up on the thread of using your permit authority to enforce compliance. Can you talk a little bit more about how you can use that authority to make sure that Pennsylvania and the other States are on a track to make sure that we are meeting the goals by 2025?

Mr. Wheeler. Absolutely, and that is exactly what we are doing with the State of Maryland, for example. They are late on five of their permits, and we are using our permit authority to push Maryland --

Senator Van Hollen. Mr. Administrator, I have heard you say that. Look, in Maryland we are working hard. I know we

have a stormwater issue. We are working to fix it. As you also know, it is not going to have any impact on our ability to meet our 2025 targets.

So to compare Maryland's issues that we are dealing with on stormwater to the 25 percent shortfall of Pennsylvania, really is apples to oranges.

Mr. Wheeler. Senator, I would have to disagree, because those five permits are included in Maryland's WIP that they will complete those awas part of their obligations for the Bay.

Senator Van Hollen. I didn't want to belabor the point, but EPA said, "Maryland's plan meets its numeric planning targets for nitrogen and phosphorus at State-based levels."

Anyway, I want to ask you about the Mercury Rule change. This is a change that you proposed to the rule that went into effect in 2012. Is that correct?

Mr. Wheeler. Yes, sir, it is.

Senator Van Hollen. And under that rule, a number of companies already took steps to comply, and by taking those steps, they reduced mercury emissions. Isn't that true?

Mr. Wheeler. Absolutely. The industry has done an incredible job reducing their mercury emissions, and we are very happy and proud of that, and our rule will do nothing to take away those mercury reductions or the technologies that have been deployed, because part of our mercury decision was also the

residual risk and technology review, and that was a bootstrap to make sure that the current standards continue to be implemented.

Senator Van Hollen. Mr. Administrator, if your rule had been in effect in 2012, do you think those industries would have reduced mercury the way they did?

Mr. Wheeler. We would have taken a different approach in 2012.

Senator Van Hollen. The answer is no. You know the answer is no. You know they wouldn't have done this. And so your suggestion that there will definitely be no increase in mercury pollution when you are changing the rule, that did, in fact, lead to reductions in poisonous mercury emissions, is just flat speculation on your part.

This was a gift, as we know, to Murray and Murray Energy, it was on their WIF [indiscernible].

Senator Barrasso. The Senator's time has expired.

Mr. Wheeler. That is offensive, and that is not what we did. We were following the Supreme Court decision, which happened after [indiscernible].]

Senator Barrasso. The Senator's time has expired.

Senator Van Hollen. The Supreme Court asked you to look at it, they didn't ask you to come up with a ruling [indiscernible].

Senator Barrasso. The Senator's time has expired.

Senator Braun?

Senator Braun. Thank you, Mr. Chairman.

Good to see you again, Administrator Wheeler. First time we met, I told you how dear the environment is to me. I spent many, many years involved in agriculture, still do to the extent that I can, and I have been a tree farmer.

We also have gotten now a Senate Climate Caucus. I was the first to cross the threshold as a Republican. We have six others on it, along with seven Democrats. I think the position you are in, now more than ever, has such importance, and I view that because I have got four kids. Younger generations really believe that we need to do a really protective job of taking care of Mother Earth, and I think you cited the progress we have made over time.

Also, I heard that Senator Wicker asked you about forest biomass, and that that ruling will be out, fleshed out, in June. That is great to hear. Agriculture, according to the letter from the 21 expert scientists and so forth said it probably even has more applicability with that same principle.

Is there currently in the EPA consideration of a de minimis rule for annual crops similar to what you are going to be doing here in June with trees?

Mr. Wheeler. We are looking at that in a three-phase process. We are doing the woody biomass first, which was report

language in our appropriations bills over the last few years. We will be looking at the crops. And I am sorry, I don't remember if that is phase two or phase three. But over the next year and a half, we will be rolling out the other CO2.

Senator Braun. Understanding in some detail the benefits of both, there might be more marginal benefit as you look into it from the crop side of it, so keep that in mind. Last month, the EPA announced that three Indiana counties and Lake Porter in Delaware have returned to compliance with federal air quality standards. This significant environmental achievement is a result of hard work by both the Trump Administration and your agency and the State of Indiana. Yet, it seems to be a story that is rarely highlighted.

I am glad that you mentioned earlier the progress that we have made, and like I said, along with that, we need to be steadfast.

Can you discuss how the Trump Administration's focus on technical issues like Ambient Air Quality Standards has made real improvements in the health and lives of Hoosiers and of course, across the Country?

Mr. Wheeler. Absolutely. We have redesignated 38 non-attainment areas as attainment over the last three years, and we have more in the works, I believe. We intend to reach 65 by 2022, and this is working with the States and the local

governments to make sure that they are implementing different procedures and processes to improve the air quality in their communities.

I guess it was last month, we redesignated the last non-attainment area in Florida. As of today, the entire State of Florida is in attainment. We have redesignated a number of communities, in addition to the three you mentioned in Indiana, a number of communities in Ohio, across the whole Midwest so-called Rust Belt.

We are working with communities to make sure that they are providing clean air and meeting the standards, the NAAQ Standards across the board. Thank you for raising that, because that is a lot of hard work, not just by our career employees at the EPA, but also at the State level and also at the local government level. There is a lot of hard work that has gone into reaching and maintaining the air quality standards that we have today.

Senator Braun. You said 38 recently have changed their designation?

Mr. Wheeler. Yes.

Senator Braun. How many out there are still at the non-attainment level, roughly?

Mr. Wheeler. We started with, I believe, 160-some in non-attainment communities around the Country, and so we are making

a lot of progress there.

Senator Braun. Okay. It would be nice to keep posted on that.

Mr. Wheeler. Yes.

Senator Braun. When you are talking about the NAAQ Standards, that 2012 standard was the one set by the Obama Administration's EPA. Can you describe how the agency came to the determination to keep the same standard from the Obama era levels?

Mr. Wheeler. Certainly. We have our CASAC panel, our Clean Air Science Advisory Committee, that they recommended that we keep the same standard. There is a number of uncertainties, scientific uncertainties, that they believe we need to further investigate before we make any additional changes to the standard, and we will be doing that.

The Clean Air Act sets out a five-year timetable. We have to update the NAAQ Standards every five years. The agency has never complied with that. We are on track to do that for the first time this year.

But the important thing to remember is once the five-year review ends, the next five-year review begins the very next day. So some of these scientific uncertainties that were brought to our attention during this review, we have already started some of the research to answer those questions for the next five-year

review, and we will start working on that the day after we finalize this one.

Senator Braun. Thank you.

Senator Barrasso. Thank you, Senator Braun.

Senator Duckworth?

Senator Duckworth. Thank you, Mr. Chairman.

Administrator Wheeler, welcome. Last week, an article published in the Chicago Tribune made an alarming observation. While cities with some of the worst air pollution in the world, like New Delhi, are enjoying clear skies for the first time in decades, Chicago's own soot pollution has gone down by just 1 percent over the last month, and on average, April 2020 was dirtier than both April 2018 and 2017.

I am concerned that the enforcement policy your agency implemented has sent industry the message that they can operate without regulation. This non-enforcement policy is almost certain to hurt low-income communities and communities of color the hardest, where industries that operate without regulation are most located, in black and brown communities in particular.

EPA's Region 5 office is in my backyard, and I take very seriously that the work force there must be able to shelter in place safely. However, I am appalled that EPA would offer a blanket non-enforcement policy without seeking specific information on why these facilities are unable to comply with

their permits.

Can you answer yes or no, is EPA requiring every regulated company that claims it is unable to comply with its monitoring, reporting, or other compliance obligations due to COVID-19 to disclose that information to EPA?

Mr. Wheeler. They will eventually have to, but Senator, no one is allowed to increase their emissions under our enforcement discretion policy, so the premise of your question is incorrect, and our enforcement staff have been very busy.

Since March 16th, we have opened 52 criminal enforcement cases. We have charged 10 defendants; we have concluded 122 civil enforcement actions; we have initiated another 115 civil enforcement actions. We have secured \$21.5 million in Superfund response commitments. We have billed more than \$20 million in Superfund oversight costs, and we have obtained commitments from parties for cleanup of 68,000 cubic yards of contaminated soil and water, all since March 16th.

No one anywhere in this Country is allowed to increase their emissions under our enforcement discretion. The enforcement discretion policy only goes to routine reporting mechanisms that they have to comply with, and we had to issue that because we regulate over 1.1 million facilities across the Country. Many of those facilities have been shut down, and they do not have the staff on hand to submit their reports to us.

They still have to submit their reports, it is just if because of COVID-19, they have to be late, then they have to cite why they were late when they submit the reports to us, but no one is allowed to increase their emissions. And if they do, as I just said, 52 criminal enforcement cases, 122 civil actions, since March 16th. So no one is off the hook on environmental enforcement in this Country.

Senator Duckworth. So, let me make sure I have got this correct. You are saying that EPA currently requires every regulated company to report to EPA and to disclose that information swiftly to Congress and to the public when they cannot comply with the emissions regulations?

Mr. Wheeler. We did not put a deadline on when they have to comply, because a lot of these facilities don't have any employees in their facilities, and we don't want to have to require people to come in to fill out a standard report. Some permits require bi-weekly, monthly, quarterly reports to be filed with the agency, and we don't want to have -- particularly, some of these facilities that are not operating, they are still required to submit their reports.

So if because of COVID-19, Corona 19, if they cannot submit their reports on time, they are allowed to cite Coronavirus. They still have to report to us, but if they are going to be late because of Coronavirus, then they have to cite,

specifically, Coronavirus as the reason why they are late.

But again, they are not allowed to increase their emissions, and if they increase their emissions, we will go after them, and we have been, and we will continue to.

Senator Duckworth. So, I have also seen some reports that EPA has shut down air monitors in Region 5 due to the COVID-19 pandemic.

Mr. Wheeler. Not that I am aware of. All the air monitors are required to be up and running. These are the monitors that the States deploy. The data that comes into us from those monitors is automated, so you don't have to go out in the field.

We actually have in, I believe it was in Michigan, one of the air monitors triggered I believe it was magnesium, and we sent a team out to take a look at the monitor to see if the monitor was accurate or not. So, no, we are still getting all of the data that we normally get from our air monitoring network that is deployed all across the Country.

Senator Duckworth. All right, thank you.

Just one final question. Will you commit to delivering on the recommendations that your own Inspector General made in regard to public disclosure of ethylene oxides risks?

Mr. Wheeler. We finalized with the IG, I believe it was last week, and there are no outstanding issues with the IG on the ethylene oxide report, and we are in agreement with the IG

and on the steps that need to be taken going forward. There are no outstanding steps to that report.

Senator Duckworth. I am out of time, Mr. Chairman.

Senator Barrasso. Thank you, Senator Duckworth.

Senator Whitehouse, I understand you have a few additional questions?

Senator Whitehouse. Yes, I do, Chairman, and thank you.

Senator Barrasso. Oh, I am sorry. I apologize, Senator Gillibrand has been waiting patiently, so I am going to go to her, and then I will go to you, Senator Whitehouse, for your second round of questioning.

Senator Whitehouse. Great. I will stand by.

Senator Barrasso. Thank you. Thank you.

Senator Gillibrand. Thank you, Mr. Chairman.

Administrator Wheeler, New York has been among the hardest hit of all the States in the COVID-19 pandemic. According to the most current official counts, at least 22,843 New Yorkers have lost their lives. Some of the highest death rates have occurred in low-income communities of color in the Bronx, Brooklyn, and Queens. These same communities also have the highest rates of hospitalizations for cardiovascular and respiratory diseases.

Mr. Wheeler. I am sorry, I am having trouble hearing your question.

Senator Gillibrand. Maybe I can do an earphone. Okay.

Administrator Wheeler, can you hear me better now?

Mr. Wheeler. Yes, I can. Thank you very much.

Senator Barrasso. Much better.

Senator Gillibrand. Thank you.

New York has been among the hardest hit States in the COVID-19 pandemic, and according to the most recent official counts, at least 22,843 New Yorkers have lost their lives. Some of the highest death rates have occurred in low-income communities of color, such as the Bronx, Brooklyn, and Queens. These same communities have also the highest rates of hospitalizations for cardiovascular and respiratory diseases that are attributable to particulate matter, ozone, and other air pollutants in New York.

Preliminary studies are showing a higher rate of mortality from COVID-19 among people with chronic diseases like inflammatory lung disease and coronary heart disease, which are linked to long-term exposure to poor air quality. These communities are often downwind from power plants and industrial sources of emissions or experience high levels of emissions from transportation, including heavy-duty trucks and buses.

It is not hard to connect the connect the dots, and while COVID-19 is not only affecting the poorest communities in New York, it should be clear to anyone who is paying attention that

we are seeing much more than a mere coincidence. This should be a major wakeup call, particularly for those who have a responsibility to set and enforce policies to protect public health.

This is why I am deeply, deeply dismayed that in the midst of this unprecedented public health crisis, the EPA has chosen to relax its enforcement role and further weaken clean air protections. The State of New York filed a complaint just last week objecting to EPA's broad non-enforcement policy during the COVID-19 national emergency.

So, my question is, what are the expected public health outcomes, particularly outcomes related to air pollution, on populations with higher vulnerability to COVID-19 of your non-enforcement policy?

Mr. Wheeler. First of all, Senator, we do not have a non-enforcement policy. That is a fallacy. Your Attorney General made a lot of legal mistakes in their announcement last week. We do not have a non-enforcement policy.

As I was just explaining to Senator Duckworth, we have opened 52 criminal enforcement cases since March 16th. We have charged 10 defendants. We have concluded 122 civil enforcement activities since March 16th. We have initiated another 115. So we are very active on the enforcement side, and I am very proud of our enforcement personnel across the Country who are still

enforcing all of our environmental statutes.

You make it very a good point on the heavy duty truck emissions, which is why we are moving forward on heavy duty diesel truck emissions regulations, which is not required under statute, and it is not required under any court order. But it is very important because by 2025, it will be the largest source of NOx emissions from mobile sources. It does have a disproportionate impact, in particular, in inner cities.

We believe it is very important to move forward on new regulations to reduce NOx emissions from the heavy-duty diesel trucks. So we are moving forward on that, and that will help, in particular, New York.

I also just want to point out, we have been working very closely with the New York City Transit Authority on longlasting antimicrobial coating research. The Transit Authority has actually praised the work. This is not the work that I have done, or my political people, but our career scientists at the agency that are working hand-in-hand with your Transit Authority to try to ensure that we have in place antimicrobial coatings on the transit system in New York to protect the New York residents as the city begins to reopen.

We are working hard on that to see what we can develop. It is probably more long-term or medium-term research. But we want to make sure that the people who are dependent upon mass transit

in your city and other cities, and I want to applaud the New York Transit Authority, because they are working hand in hand with us, and the important research that we are doing in New York will be able to be used in other communities around the Country.

Senator Gillibrand. Well, specifically, last year the EPA denied New York's petition under Section 126 of the Clean Air Act for ground-level ozone emitted by polluters in States that are upwind from New York. New York has petitioned the EPA to require those sources to reduce the emissions that are traveling across State lines, resulting in adverse health impacts for New Yorkers.

Given the extraordinary circumstances now and the fact that continued exposure to ground-level ozone will undoubtedly put more New Yorkers at risk, will the EPA drop its opposition to New York's Section 126 petition?

Mr. Wheeler. Well, we are working. We have a number of different decisions from the courts over the last six months or so, I believe three decisions that we are working to figure out how to move forward on. Of course, on the 126, it doesn't just impact New York, but it also impacts the other States as well, and we have pushback from those States.

So, we are working, but at the same time, we are working on the 126 petitions. As Senator Carper likes to refer to it, the

good neighbor policies, we are working to make sure that all the communities, wherever they are located, including New York, have the tools to try to reach attainment on their own, which is why we have worked with 38 communities around the Country to redesignate them after they have met their air quality standards as attainment. We will continue to work with all the New York communities to try to make sure that they all have healthy air, regardless of where those communities are.

We also, I do want to mention, because you mentioned environmental justice, I believe, we put out a round of environmental justice grants just a couple weeks ago to health environmental justice communities address the COVID-19. So we are working aggressively on that as well.

Senator Gillibrand. If I have any minutes left, I just want an update on PFAS. I know you know about the Norlite Facility in Cohoes. We learned that between 2018 and 2019, 2.4 million pounds of toxic firefighting foam was sent by the Department of Defense to Norlite to be destroyed by incineration.

Senator Barrasso. Senator Gillibrand, I am going to ask him to respond in writing to this, because you are a couple of minutes over, and we have a couple more Senators who are waiting to go.

Senator Gillibrand. Okay, thank you. I will send these

questions.

Mr. Wheeler. We are working with the State agency hand in hand.

Senator Gillibrand. Thank you.

Senator Barrasso. Thank you, Senator Gillibrand.

Senator Markey, there is a lot of interest in this hearing. You are actually the 17th member to engage at this point. I know you have been very patiently waiting. So Senator Markey, it is your turn.

Senator Markey. [Indiscernible] have borne some of the worst burdens of the Coronavirus. They are dying and becoming ill at a disproportionately higher rate. Emerging research has linked higher rates of Coronavirus to higher rates of air pollution.

In Massachusetts, I have seen that firsthand in communities like Chelsea. Chelsea is an industrial hub of Boston and a vibrant community of working Latinx immigrants. It has also some of the highest asthma rates in the State, in the Country. It is the hardest hit community in Massachusetts, with a rate of Coronavirus infection that is more than five times the State-wide average.

Despite this clear connection between air pollution and higher rates of Coronavirus infection and death, the Trump Administration is waging a full-out assault on air quality

standards during this respiratory pandemic. Since the beginning of March alone, you have proposed or finalized eight different rules and guidance documents that would increase air pollution, just since the start of this pandemic. Eight different rule changes.

You rolled back the Clean Car standards, which the Environmental Defense Fund estimates will result in as many as 18,500 American deaths by 2050. You decided not to update the National Ambient Air Quality Standards, which your own EPA scientists found could mean that 12,500 more Americans die each and every year. You undermined the Mercury and Air Toxics Standards, Power Plant Emissions Standards, that the EPA itself estimates save 11,000 American lives every single year.

Mr. Wheeler, we are in the middle of a health crisis attacking people's lungs. Your agency is supposed to be the air quality fire department, but instead, you are throwing gasoline on a burning building, knowing that breathing bad air can make the impacts of the Corona virus worse, which I have seen firsthand in communities like Chelsea.

Do you regret taking these eight different actions during the pandemic to make air quality worse? Do you regret doing that?

Mr. Wheeler. First of all, those regulations do not make air quality worse. CAFE will improve air quality. We will be

reducing the CO2 emissions by 1.5 percent per year between now and 2026.

The NAAQS regulation, we are maintaining the Obama NAAQS PM recommendation. At this point, it is out for public comment. We are taking comment on that, so we have not made a final decision. But we took the advice of our Clean Air Science Advisory Committee, and the career staff that you referenced, the career staff were divided.

We had multiple recommendations on that, but the CASAC panel specifically recommended that we maintain the Obama standard, and under the Mercury -- the Mercury standard does not allow any increase in mercury emissions, so the premise there is off. As far as the studies --

Senator Markey. The premise is not off, Mr. Wheeler. You should be ashamed of yourself; your agency should be ashamed of itself. Your job is to protect the public health, and you are taking actions that will make this crisis worse.

You should apologize to the residents of Chelsea, of Brockton, of Lawrence, of Revere, and all of the communities across this Country that are more exposed to this consequence. You should apologize to Americans that you have taken these actions during the pandemic that will only make the crisis worse.

Mr. Wheeler, yes or no. Yes or no, Mr. Wheeler, black and

brown communities are more likely to breathe dirtier air than white communities?

Mr. Wheeler. That is -- there are certainly some environmental justice communities around the Country where the air quality is much worse than other areas, but there are also air quality problems in other communities that are not brown or black. I think every American, regardless of where they live in this Country, deserves to breathe clean air and drink clean water, which is why we are working with communities of all sizes across the Country.

All six criteria air pollutants under the Trump Administration have been decreased over the last three years, and we continue to work to decrease air pollution across the board. We have a very strong record on decreasing air emissions, air pollution, and the air today is healthier than what we found it three years ago.

Senator Markey. Well, shame on you, Mr. Administrator. You should be apologizing to people of color in our Country for what are doing. Shame on you. You need to apologize. You should do so immediately. Every American is being asked to work together to help our communities get through this crisis, but you are taking actions that are likely to harm the most vulnerable amongst us.

Your decisions will make this pandemic worse. This is

unconscionable. History will remember you for the environmental injustice you have perpetrated in the name of the EPA. You are turning the EPA into Every Polluter's Ally, and those polluters are harming the health of the most vulnerable people in our Country right now, as their lungs are being attacked by Coronavirus.

So shame on you, and the EPA is not doing the job which it is legally required to do.

Mr. Wheeler. Sir, your facts are not correct. The air quality is cleaner than it was [indiscernible] years ago.

Senator Barrasso. The Senator's time has expired. Thank you very much, Senator Markey.

I would point out that the United States is a world leader is reducing emissions of fine particulate matter, also known as PM 2.5. The Environmental Health Journal published a study entitled Implementing the U.S. Air Quality Standard for PM 2.5 Worldwide Can Prevent Millions of Premature Deaths per Year. A recent study found that the U.S. reduced its annual particulate matter 2.5 levels by 39 percent from 2000 until the year 2018. I ask unanimous consent to enter this recent report in the record.

[The referenced information follows:]

Senator Barrasso. At this point, I would like to turn to Senator Whitehouse. We have about four minutes remaining.

We were going to close at noon, but I would like to turn to Senator Whitehouse. I know you have a couple of additional questions.

Senator Whitehouse. Thank you very much, Chairman.

Administrator Wheeler, to follow up on our questions about Marathon Petroleum meddling in the fuel efficiency rules, I will settle for a QFR, but I would also like to ask about how your lawyers are engaging with Marathon Petroleum lawyers in the context of the litigation between the 22 States and the Trump Administration over the State fuel efficiency standards. I assume right now, you have no information on that, so I will make that a question for the record, if that is okay.

Mr. Wheeler. I have no information on that, sir.

Senator Whitehouse. Okay. I will ask you to look into it.

With respect to the so-called Secret Science Rule, I would like to share a little bit of history that we have put together, if you don't mind, I will read for a minute from something my office put together. In 1996, Christopher Horner, an R.J. Reynolds lobbyist, acknowledged that R.J. Reynolds had virtually no chance of stopping a second-hand smoke regulation unless the company was able to exercise what he called behind the scenes leadership in constructing what he called explicit procedural

hurdles for EPA to follow and ensue in scientific reports. That original proposal tracks very closely your Secret Science proposal.

In 1997, a Philip Morris memo listed the American Petroleum Institute and a Koch backed fund group as supporting that initiative. In 1998, the lobbying firm working for the tobacco industry branded this initiative the so-called Secret Science Rule, the same term Scott Pruitt used when he rolled the program out in April of 2018.

The Philip Morris front group, the Advancement of Sound Science Coalition, advanced this initiative through the 1990s with fossil fuel company donors, including Amoco, Chevron, Exxon Mobil, and Xcel Petroleum. This group was run by Steve Milloy, who was on Philip Morris's retainer through 2005 and then worked in a number of front groups funded by the Kochs, Exxon Mobil, and Shell, including serving as director of external policy and strategy of Murray Energy. Both Milloy and Christopher Horner worked in President Trump's transition team at EPA.

So, Milloy attended Scott Pruitt's announcement of the Secret Science Proposal, and declared that he had been working on advancing it for 20 years. When you consider the rather sordid history of this proposal and the mischievous motivations of the people behind it, I look at it with a lot of skepticism, and I particularly worry because what is supposedly secret in

all of this is people's individual health data, which obviously we want to keep secret, private. It doesn't mean you can't do science off it, but you don't want because science is done on it, everybody to lose the protection of their personal health records.

So here is the problem. As we are trying to regulate COVID and come up with safety regulations to help with this pandemic, we are going to have to build regulations based on people's health records. Haven't you created something that will hobble our ability to respond to the Coronavirus crisis by attacking science that is based on health records, unless you are willing to throw individual health records into the public in ways that Americans would not tolerate?

Mr. Wheeler. Senator, as you usually do, you packed a lot of information into your question. Let me see if I can try to answer the points that you raised. First of all, I was not aware of the link to the tobacco lobbying in the 1990s. It is my understanding, and this regulation was originally proposed before I joined the agency in 2018, but it is my understanding that a lot of the original regulation proposal was based off of Congressman Lamar Smith's legislation that he introduced, I believe a couple of different Congresses here in the last 10 years or so.

We received a lot of comments on the Science Transparency,

which is the actual name of the regulation, Science Transparency Regulation. We received, I want to say, close to a million comments. When we went back out again at my direction to re-propose and take additional comments, because we want to make sure we get this right, and so we put out another notice and comment for this regulation. And we will, my goal is to get this right at the end of the day, but there are a number of safeguards in this.

The Administrator of the agency, and that is any Administrator in the future as well, can allow any study to be used, even if the information is withheld, the data is withheld. But as far as the personal information, the FDA works with science and research all the time where they mask the personal identification data of the subjects of the science or research, and we can do that at EPA as well. We can follow the FDA's lead on how they mask the individual people that are referenced in these scientific reports.

But when I started working at EPA in 1991, I worked on the Community Right to Know Act implementing the TRI and the Pollution Prevention Act across the TSCA and TRI world. I fundamentally believe the more information you put out to the American public, the more transparent we are with the basis for our regulations, the more acceptance there will be with our regulations, and the better understood our regulations will be.

So that is what is guiding me, is to try to get as much information out to the public. This is also why we went forward with our Guidance Document Proposal which we just issued this week to make sure that all of our guidance documents are put out there for the public to see. I believe in transparency, and that is why [indiscernible].

Senator Whitehouse. [Indiscernible] and that, of course, is a cynical industry ploy to prevent science from getting into the regulatory domain by playing on the desire for privacy about their own health records on the part of individual Americans. And I hope you negotiate that balance well, because I think that there is a very cynical play here by big interests who simply don't want the public to have public health science, because it will reveal the dangers of their products or emissions.

So they have put Americans into the middle, the privacy of American health records into the middle as a leverage point to try to protect their own pollution.

Mr. Wheeler. My goal is to --

Senator Barrasso. Senator, your time has expired. We have another member who has arrived for his first round of questioning, so I want to turn at this point to Senator Sullivan.

Senator Whitehouse. Thank you, Chairman.

Senator Barrasso. Thank you.

First of all, I think the EPA should be praised for its efforts to protect the environment while cutting ill-conceived and duplicative regulations, over-regulation that stymies economic activity and worsens public health. My staff has issued a report in 2012 cataloguing the links between regulatory overreach worsening public health.

I ask unanimous consent to enter into the record Red Tape Making Americans Sick into the record. Without objection, that will be submitted.

[The referenced information follows:]

Senator Barrasso. Senator Sullivan?

Senator Sullivan. Thank you, Mr. Chairman, and I hope my good friend Senator Whitehouse is still watching, because I do want to compliment him, and I want to compliment you, Mr. Administrator.

I happen to think you are doing a great job, particularly relative to some of your predecessors in the Obama Administration who were, in my view, lawless public servants who really, really, really hurt my State, and never listened to my State about anything. And trust me, we know more about the environment, we want to protect our environment way more than Gina McCarthy or any of these other folks there, and I just appreciate your work.

First again, what Senator Whitehouse, your work on the ocean cleanup. It is great to see that you, the President, the U.S. trade rep have all made this a high priority. We are going to continue to press it.

Senator Whitehouse's and my legislation, the Save Our Seas 2.0, which CRS told us we could call the most comprehensive ocean cleanup legislation ever to come out of Congress, we checked with the Congressional Research Service. So, that passed the Senate unanimously in January. We are trying to get it moved through the House.

So can I get your commitment -- I am really glad to see you

highlighted it in your report, but can I get your commitment to help us move that, get it signed into law, put it on the President's desk, not too long? And if you are over on the House, please encourage them to pass it too? I think they are very motivated to do it, but can I get your commitment on that, Mr. Administrator?

Mr. Wheeler. You have my commitment to work with you on the issues. I have to get any, as far as -- I am not sure if OMB has been issued a statement on the legislation or not. I can't get ahead of the White House on endorsing legislation.

Senator Sullivan. Well, you guys help draft the legislation, so hopefully you are good to go with it. Good. Take a look, I think OMB will be fine with it. We did work with the Administration on this quite a lot.

One of the things that kind of, it is interesting. People always talk about science. Again, my colleagues on the other side, I work well with them, a lot of them are my good friends.

But you know, they trot out science. The word science, sometimes, there is occasional -- I mean, we had a great example in Alaska during the Obama Administration. The science of the federal agencies came and said the National Petroleum Reserve of Alaska had no more oil in it. Really? I was the DNR Commissioner at the time in Alaska.

Of course, we knew that was a bunch of bunk science. It

was totally politicized. We were, until this pandemic, having one of the biggest booms in the National Petroleum Reserve of Alaska ever, because there is so much natural resources.

So when I hear the science thing from the other side, I get a little skeptical how much the Obama guys politicized science, certainly in my State, to try to shut down resource development and kill the jobs in my State that are so critical to my economy, but also the U.S. economy.

Mr. Administrator, I do want to talk about an issue that I highlighted in Alaska on your visit, and again, thanks for coming. We welcome you to come back again.

In the 2016 WIN Act, I had one of my first bills, actually, got signed into law under President Obama. And this committee, we had a new program that was focused on small and disadvantaged community water systems. Now, as you know, in Alaska, we have over 30 communities that have no running water or flush toilets, so think about that, America, 30 communities. Thousands of patriotic Americans.

These are some of the people -- you go to these communities in rural Alaska, every person there, every guy there is a veteran, right? The most patriotic place you have ever been. And yet, they can't even wash their hands. The CDC says, wash your hands frequently. They don't have running water. American citizens. It is a scandal. It drives me crazy.

So this program was meant to address this. I appreciated you seeing some of the first-hand challenges.

Unfortunately, as we discussed, when the EPA implemented this program last year, I think it failed to fully understand the Congressional intent, which was very clear, which was this was meant to focus on communities that actually don't have water and sewer, and unfortunately, my State has a lot of these communities.

So, can I get your commitment, I know I got it in Alaska, but I would like to get it in this hearing, to again, work with my communities, align the implementation of this legislation with Congress's original intent to make sure those resources, which by the way, you may have seen in the bill we marked up just last week, we have additional resources in this regard for these kind of disadvantaged communities, that you can really help us focus on that, on the implementation of that legislation?

Mr. Wheeler. Absolutely, and it is my understanding that my staff have been working with your staff, and we are revamping that program to mirror the Congressional intent behind it.

Senator Sullivan. Great. Well, I appreciate that commitment.

Mr. Chairman, is it okay if I ask one more question?

Senator Barrasso. Please.

Senator Sullivan. So, I also want to commend you, Mr. Administrator, what the Chairman just said, the ability to actually get rid of excessive regulations, and yet continue to keep our air and water clean. We have very pristine air and water in our great State, some of the most pristine, beautiful environment in the world. But as you mentioned, you can do both. I think what you guys are demonstrating that.

I really think it is important when you cite these statistics on the progress we have made on pollutants, particularly 50 years of the EPA in existence, how much progress has been made. Because when you read the national media, it always sounds like it is a disaster in the environment. And yet, as you have highlighted, we are actually making very significant progress. Again, Democrats, Republicans, people need to know that, and whether it is greenhouse gas emissions or lead or particulates.

Just two quick final questions. We did that round table in Fairbanks in the PM 2.5 issue. I would like to get an update from you on that, if you have that working with my community. It is a really, really important issue.

And then, continuing the work that we need from the EPA on this big issue of wetlands. The reason I raise that, is it is, as you know, Mr. Administrator, Alaska is currently home to 63 percent of the Nation's jurisdictional waters and 65 percent of

the Nation's wetlands. One State. When the EPA comes and tries to regulate everything like they did during the Obama Administration, it just shuts down the entire State, because we take the gigantic burden for the whole Country on these issues.

I was pleased that you worked on the WOTUS Rule, which again, was a usurpation of Congress's authority under the Obama Administration.

But can I get your commitment to continue to work with my State on innovative ways to address these mitigation issues that are unfairly burdened, the one State in the Nation that has so much of the Nation's wetlands? Yet, there is very little recognition of that, and I think you are starting to do that. But innovative ways to work on mitigation that take into account one State is really essentially carrying the load for much of the Country on this. So those two questions.

Mr. Wheeler. Absolutely, sir. On your first question, we continue to work with your community on the PM 2.5, and we will continue to do that. We want to make sure that Alaskans have clean air, but it also doesn't disproportionately impact your industry and the problems that you have with the unique air bowl, you basically have there in that community.

On the WOTUS, Waters of the U.S., our replacement for that, you know, for the first time ever in drafting a national wetlands regulations, we acknowledged the important role of the

States. Just because a Water of the United States is not a water, just because an important water body or important wetland is not a Water of the United States, doesn't mean it is not already protected under different State rules.

So to have the EPA, I believe it is just a sea change, if you will pardon the metaphor, in the way we are working with the States, to acknowledge the important role that the States have in protecting their own water resources. The difference that Congress, you know, in the original Clean Water Act, as far as navigable waters, and has, of course, been expanded over the years by the Supreme Court, which is why we crafted our replacement rule this year, the Water Protection Rule, to ensure that we are following the Supreme Court cases, as well as the intent behind the Clean Water Act.

But we are, for the first time, I believe, recognizing the important partnership that we have with the States and local communities, but primarily States and tribes on protecting water resources around the Country.

Senator Sullivan. Great. I will have additional questions for the record.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you very much, Senator Sullivan.

At this point, there are no more members asking questions. I do ask unanimous consent to enter materials from the American

Farm Bureau Federation, from the Waters Advocacy Coalition, from the Basin Electric Power Cooperative, and the Hearth, Patio, and Barbeque Association for today's hearings, and without objection, we will do that.

[The referenced information follows:]

Senator Barrasso. I would also point out, in the front page this morning of the Washington Post, and you may not have seen it yet, Administrator Wheeler --

Mr. Wheeler. No, I haven't.

Senator Barrasso. Emissions plunged 17 percent, an unprecedented decline.

So when I hear the Democrats here claiming the issue of emissions causing deaths related to Coronavirus, emissions are specifically down. Senator Sullivan, you wanted to make a comment on that?

Senator Sullivan. Yes, thank you Mr. Chairman, recognizing that there are no more of my colleagues waiting, I did have just one final question, Mr. Administrator. It was an innovative idea that came up, and again, relating to mitigation and stuff in Alaska. As you know, we have Alaska Native Corporation lands that were given to the Native people by the Congress, 44 million acres. A lot of that land was actually contaminated before it was received, and the cleanup costs are enormous, because some of it is very contaminated.

These are the kinds of issues that I want to be able to continue to discuss with your office on maybe looking at wetland mitigation, ways to say, all right, if people are helping clean up those lands, that that can be an offset, not just kind of a one-for-one offset as it relates normally in the Clean Water

Act. Because that is something that I would like to get your commitment to continue to look at those kind of innovative solutions, particularly for my State, which, as I mentioned, has so much of the Country's wetlands and is obviously a big focus of this.

Mr. Wheeler. Absolutely, and I believe the last meeting that I had when I was in Alaska was with some tribal leaders to talk specifically about that issue.

So that is something that I hope we have made some progress since I was there. I will go back and check with my staff to make sure that we are making progress. That is very important, and it cuts across the board in a number of areas, not just for the lands that they took possession of from the Federal Government, but also, if you look at abandoned mines across the Country.

I know Senator Gardner has very important Good Samaritan legislation that would go a long way to cleaning up a lot of these sites that we need to get cleaned up around the Country.

Senator Sullivan. Great. Thank you.

Thank you again, Mr. Chairman.

Senator Barrasso. Thank you, Senator Sullivan.

The other issue, Administrator Wheeler, is on the USA Today Coronavirus pandemic page. Today, the headline, Coronavirus has led to a 17 percent drop in carbon emissions. So again, the

comments that we were hearing from some of our colleagues on the other side of the aisle on issues of emissions and a correlation with Coronavirus, emissions are down significantly as a result of the diminished amount of commerce that is being done.

Mr. Wheeler. Senator, could you indulge me for just two more minutes, I would like to praise the career EPA staff on our disinfectants.

Senator Barrasso. Yes, please.

Mr. Wheeler. They have, since March 6th, approved over 400 disinfectants that can be used by the American public to clean their homes, offices, factories -- exactly. We have it available on a searchable database at epa.gov. We also created an app so that when you are out shopping, and you are trying to purchase disinfectants, to make sure it is important that people buy a disinfectant that is actually authorized by EPA to be effective against the Coronavirus.

I don't want people to buy a product that is not effective against the Coronavirus. It is very important for the health and safety of all of our families across the Country. And our EPA scientists have been working seven days a week around the clock to approve more disinfectants, and they have done an outstanding job in getting these approved.

Senator Barrasso. Thank you very much. I appreciate all the good work that is being done by the EPA and your dedicated

staff.

You will notice in this room, every member has disinfectant available to them at every seat, we are distanced from six feet, we all have our masks that we wore, once we are down here at the questioning, with the distance of taking them off.

But I do want to thank you, and thank all of you for being here today with us. Thank you for your time, thank you for your testimony.

The hearing is adjourned.

[Whereupon, at 12:20 p.m., the hearing was adjourned.]