

EXAMINING EPA'S AGENDA: PROTECTING THE ENVIRONMENT AND ALLOWING
AMERICA'S ECONOMY TO GROW

Wednesday, August 1, 2018

United States Senate

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 10:24 a.m. in room 406, Dirksen Senate Office Building, the Honorable John Barrasso [chairman of the committee] presiding.

Present: Senators Barrasso, Carper, Inhofe, Capito, Boozman, Wicker, Fischer, Moran, Rounds, Ernst, Sullivan, Cardin, Whitehouse, Merkley, Gillibrand, Booker, Markey, Duckworth, and Van Hollen.

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

Senator Barrasso. Before we begin today's hearing, I want to thank Acting EPA Administrator Andrew Wheeler for making it a priority to come to testify before the Committee today. I have been very impressed with how he has started his tenure as head of the Agency.

As Acting Administrator, Mr. Wheeler has emphasized transparency, while implementing policies that protect the environment and allow America's economy to grow.

I would encourage President Trump to nominate Andrew Wheeler to be Administrator of the Environmental Protection Agency. Mr. Wheeler is very qualified for that position. He spent over 25 years working in environmental policy, and in that time he has served as a career employee at the Agency, as a staffer here on Capitol Hill, as a consultant in the private sector, and now in a leadership role of the EPA.

I believe Andrew Wheeler would make an excellent administrator of the Environmental Protection Agency.

With that, I call this hearing to order.

Today, the Committee will hear testimony on the Environmental Protection Agency's work to protect the water we drink, the air we breathe, and the communities we call home. It is my pleasure to welcome back to the Committee Andrew Wheeler

in his new role as Acting Administrator of the EPA.

First, Mr. Wheeler, as you know, the way that this Committee works, sometimes there are roll call votes. I understand there are five roll call votes starting at 11:00 this morning, so there will be members coming and going during the hearing process, so I appreciate your indulgence as we come in and out.

Mr. Wheeler has served on this Committee in a number of capacities, most recently as Staff Director. It is only fitting that our Committee be the first that you testify before in your new role.

Since President Trump has come to office, his Administration has made it a priority to pursue policies that both protect the Nation's environment and allow the economy to grow. Just last week, we saw how the Administration's pro-growth and pro-jobs policies are leading to incredible economic growth. America's economy grew at an impressive 4.1 percent.

Over the past year and a half, the Environmental Protection Agency has been busy rolling back punishing regulations that hurt the economy in my home State of Wyoming and communities across the Country.

Under the previous Administration, the Agency created broad and legally questionable regulation that punished the very communities EPA claimed to be protecting. The so-called Clean

Power Plan would have cost Wyoming energy workers their jobs and closed power plants across the Country. The Obama Administration openly declared war on American coal and the workers who produce this critically important resource.

The so-called Clean Power Plan wasn't just bad policy; it was illegal. Twenty-four States, including Wyoming, filed suit to block this regulation. The Supreme Court has put the rule on hold because of the challenges.

Under the leadership of President Trump, the EPA is now taking steps to undo this damaging rule. The Agency held listening sessions in several different communities to hear feedback on how the regulation should be changed or withdrawn.

One of those listening sessions took place in Campbell County, Wyoming, in the City of Gillette. Wyoming is the leading coal producing State in the Nation. The vast majority of the coal from the Nation comes from Campbell County. America can't afford to leave its energy resources stranded in the ground.

I am thankful the EPA took the time to listen to all stakeholders and reexamined the Agency's deeply flawed rule. It was an important example of Washington listening to the people of Wyoming.

The Administration has also taken major steps to revise the Waters of the United States, or the WOTUS, rule. This

outrageous Obama era rule would have put backyard ponds, puddles, and farm fields under Washington's control. Under that rule, the EPA told farmers and ranchers their irrigation ditches were considered navigable waters and would be regulated by the Federal Government.

The consequences were staggering. The EPA threatened to fine one private landowner in Wyoming \$75,000 a day. The crime he committed was digging a stock pond in his backyard.

This past January, the EPA delayed the implementation date of this devastating rule. This delay gives the Agency time to revise it.

EPA should not punish our ranchers or farmers for managing their land. It must replace the WOTUS Rule with commonsense policy that protects America's waters and respects States and local authorities.

The Agency has also taken important steps to protect small refineries in Wyoming and across the Country. I applaud the Trump Administration for rejecting efforts to undermine the ability of small refineries to obtain hardship relief under the Renewable Fuel Standards, or the RFS.

During the Obama Administration, EPA frequently ignored the law, which requires EPA to grant relief to small refineries suffering economic hardship under RFS. Since then, two Federal appeals courts have rebuked the Agency for decisions denying

hardship relief to small refineries.

EPA must not take any action that would limit the ability of small refineries to obtain hardship relief, restrict when small refineries can apply for hardship relief, disclose the confidential business information of small refineries, or increase the burdens on other refineries. Taking any of these steps would only compound the problems that this broken program has created for American refineries and their workers.

I look forward to hearing more about what the Agency is doing to protect the people of Wyoming and America, to keep our environment clean, and to support the Nation's growing economy.

Acting Administrator Wheeler, thank you for taking the time to come testify today. Thank you for making the Senate Environment and Public Works Committee your first stop on Capitol Hill.

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

[The prepared statement of Senator Barrasso follows:]

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

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

As my colleagues know on this Committee and outside of the Committee, I have been asking for an oversight hearing with the EPA Administrator for many months, and I am pleased that our Committee is holding that hearing today. I have to be honest with you, I am even more pleased that the person sitting at the witness table is our Acting Administrator and not his predecessor.

When Mr. Wheeler took the helm of this Agency, all 25 days ago -- it probably seems like 25 months ago -- the Washington Post noted that we were trading an administrator who is known for "sipping organic juice infused with kale" for an acting administrator who collects Coca-Cola memorabilia.

With that said, Mr. Wheeler, I have something to present to you today, as we begin this hearing, to add to your collection, something that my staff found for sale in, of all places, the Senate cafeteria. I thought you might like to have it. It is a bottle of Coca-Cola that actually has the word "Wheeler" on it.

[Laughter.]

Senator Carper. I don't know if you have some special deal, something in your life we don't know about, Andrew. This is very interesting, but this is your bottle. You will probably

need something stronger before you are finished.

[Laughter.]

Senator Carper. But I am encouraged that there will be a number of differences between Mr. Wheeler and Mr. Pruitt in the way that they approach this important leadership role. For example, I don't expect to hear as much as a peep from Mr. Wheeler today about used mattress shopping or Chick-fil-A or fancy moisturizers.

What we do need to hear from Mr. Wheeler today is how he plans to differentiate himself from Mr. Pruitt across a range of environmental policies that are far more consequential; how we repair the significant damage that Mr. Pruitt has done to the EPA. Will the American public once again be able to trust the EPA to carry out its mission of protecting public health and our environment?

Now, I believe in giving credit where credit is due. In the few weeks that Mr. Wheeler has been the Acting Administrator, he has published his calendars on a daily basis. He has opened up EPA events to the media, as well as began to work to ensure that EPA's beleaguered career staff once again feel valued, respected, and included. He withdrew Mr. Pruitt's parting act to stop enforcing air emission standards for some of the dirtiest heavy-duty trucks on the road under the Clean Air Act, granting one company permission to continue building high-

polluting glider trucks for two years. Thank you for that.

There is a whole lot to be done. Mr. Wheeler has told me repeatedly that he shares my goal of striking a deal between auto makers and the State of California and other States on fuel economy and greenhouse gas tailpipe standards. Unfortunately, the Administration's proposal could not be further from the win-win outcome that many of us on this Committee and outside this Committee believe is within reach.

Instead of providing near-term flexibility and predictability for the auto industry in exchange for more rigorous standards and clean vehicle incentives going forward, the Trump Administration is proposing to free standards for seven straight model years. We can do better than that, and we need to.

The Administration would remove all credits for air conditioning and other improvements and argue that California should be preempted. Such a proposal is not the win-win outcome that stakeholders are asking for, one that keeps the American auto industry competitive, creates more good paying jobs right here at home, and protects our environment well into the future.

Instead, this Administration has, once again, ignored common sense, turned its back on a solution that would allow for States like California to enforce its own clean standards, and decided to listen to the most extreme voices as it pushes

through a plan no one is interested in.

Mr. Pruitt's EPA also had a warped sense of cooperative federalism, especially when it came to protecting downwind States from harmful air pollution. Under Mr. Pruitt, EPA failed to meet the deadlines to designate who was living in unhealthy ozone areas and delayed emission reductions critical to downwind States.

At the same time, Mr. Pruitt's EPA rejected requests from downwind States to require upwind polluters to install or operate existing pollution controls, tried to cut State air program funding, and weakened enforcement efforts. All of these actions were a disaster for the people, like those in my own home State of Delaware, and States like Maryland, New Jersey, New York, Rhode Island, Massachusetts, and others on the East Coast who live at the end of what we call America's tailpipe.

Instead of prioritizing and protecting the polluters, I hope Mr. Wheeler will prioritize and protect the people who are being harmed from those emissions. Under Mr. Pruitt, EPA has also acted to roll back clean water protections by, I think, dishonestly inflating the costs of those rules to industry, while minimizing the health and environmental benefits to the public.

Mr. Wheeler needs to describe how he plans to ensure that clean water and other rules are based on credible data, how they

comply with the law.

Mr. Pruitt misguidedly banned any scientist who had received EPA grant funding from serving on EPA's scientific advisory committees. He proposed to have EPA ignore and not consider some of the best scientific studies in the world. It is my sincere hope that Mr. Wheeler will share with us his plans for ending EPA's war on science.

Disappointedly, too, there is probably no aspect of EPA's implementation of the new Toxic Substances Control Act that will not be litigated. Mr. Pruitt's EPA chose to blatantly disregard the clear and unambiguous law that we largely wrote right here in this Committee and Congress passed with near unanimous support. This kind of blatant disregard for the rule of law needs to end, and it needs to end here.

Mr. Wheeler needs to describe how he plans to stop wasting taxpayer funds and EPA's lawyers' time defending proposals that are clearly illegal, and restore the Agency to one that respects the rule of law and is guided by science.

The day after Mr. Pruitt resigned, I sent Mr. Wheeler a letter. I told him, "You have been granted an enormous challenge and responsibility, but an even greater opportunity. The damage that Scott Pruitt has done to this Agency will not be easily undone. While you and I have not always agreed, and will not always agree, on every environmental policy matter, it is my

hope and expectation that you will carefully consider the lessons of the past as you prepare to chart the Agency's future." We look forward to a continued dialogue and to today's hearing.

Welcome.

[The prepared statement of Senator Carper follows:]

Senator Barrasso. Thank you so much, Senator Carper.

We will now hear from our witness in a few seconds, and that is the Honorable Andrew Wheeler, the Acting Administrator of the U.S. Environmental Protection Agency.

I want to remind Mr. Wheeler that your full written testimony will be made part of the official hearing record, so please keep your comments and your statement to about five minutes so we will have time for questions from the members of the Committee.

I look forward to hearing your testimony.

Mr. Wheeler.

STATEMENT OF THE HONORABLE ANDREW WHEELER, ACTING ADMINISTRATOR,
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Mr. Wheeler. Good morning, Mr. Chairman, Ranking Member Carper, and members of the Committee.

When Chairman Barrasso called me to ask me if this would be my first hearing, I jumped at the opportunity because I couldn't think of another Committee that I would want to testify in front of first.

When President Trump appointed me Acting Administrator, he asked me to focus on three things: clean up the air, clean up the water, and provide regulatory relief to help the economy thrive and create more jobs for American workers. I believe we can accomplish all three at the same time. In fact, we have already made progress on all three fronts in just the past few weeks. We haven't slowed down and we haven't missed a step.

Yesterday, we released EPA's annual report on air quality and we have great news to share. From 1970 to 2017, the combined emissions of the six key pollutants regulated under the NAAQS dropped by 73 percent, while the U.S. economy grew more than 260 percent. This is a remarkable achievement that should be recognized and celebrated. The U.S. leads the world in terms of clean air and air quality progress.

On my first day as Acting Administrator, we sent to OMB for interagency review a proposed rule to set State guidelines for

greenhouse gas emissions from power plants.

We recently finalized the first set of revisions to the 2015 regulations for the disposal of coal ash. These actions will provide States and utilities much needed flexibility in the management of their waste.

Last week, we issued a final rule that codifies the animal waste reporting exemptions which were signed into law in the Fair Agricultural Reporting Method, the FARM Act, Senator Fischer's legislation. We also approved pathways for biodiesel derived from sorghum. This action lays the groundwork for more homegrown fuels under the Renewable Fuels Standard and adds diversity to the Nation's biofuels mix.

Finally, we recently commemorated the one-year anniversary of the Superfund Task Force Report and highlighted the extraordinary progress we have made cleaning up sites and returning them for productive use.

Just this week, we reached a framework to address the outstanding issues of the Anaconda Smelter site in Montana. This framework will allow us to meet our goal of delisting the site by 2025, and this site has been on the list for decades.

As you can see, we are continuing the President's agenda posthaste. The combination of regulatory relief and the President's historic tax cuts continues to spur economic growth across the Country, particularly in communities that were

previously, and wrongly, ignored or forgotten.

One way we can fulfill the President's agenda is providing more certainty to the American people. A lack of certainty from EPA hinders the environmental protections and creates paralysis in the marketplace. We will prioritize certainty in three areas: certainty to the States and local governments, including Tribes; certainty within EPA programs, such as permitting and enforcement actions; and certainty in risk communication.

First, we need to provide more certainty to the States, who are the primary implementers and enforcers of many of our environmental laws and programs. We will work closely with the States to ensure our mutual responsibilities under the law are fulfilled.

Second, we need to provide more certainty within EPA programs. For example, we need to improve our permitting processes. Our goal is to make all permit decisions, up or down, in six months. I am not suggesting that we approve all permits within a set amount of time.

On a similar front, we must provide more certainty in our enforcement actions. When EPA's enforcement actions linger for years, it hurts the competitiveness of American businesses.

Let me be clear, I am not advocating for letting people off the hook or reducing fines. Rather, I am advocating for making enforcement decisions in a timely and consistent manner.

Third, and finally, we need to provide more certainty in risk communication. As an agency, we must be able to speak with one voice and clearly explain to the American people the environmental and health risks that they face in their daily lives. We have fallen short in this area from our response to 9-11 to recent events surrounding the Gold King Mine in Colorado, and most recently in Flint, Michigan. We owe it to the American public to ensure that this does not happen again.

We are also prioritizing our efforts to assist State and local governments in preparing for and responding to natural disasters and extreme weather events. Readiness is all, to quote my favorite author, Shakespeare.

There is no doubt in my mind that we will make improvements in all of these areas. I believe in this Agency; I believe in its mission and I believe in its personnel.

I would like to take a minute to talk about my fellow EPA employees. I know how dedicated and passionate they are, and it is a privilege to work alongside them.

Senator Barrasso. If I could have the witness suspend, please, and ask the officers to remove the disturbance.

[Pause.]

Senator Barrasso. Apologize for the delay. Thank you.

Mr. Wheeler. Quite all right.

I would like to take a minute to talk about my fellow EPA

employees. I know how dedicated and passionate they are, and it is a privilege to work alongside them. I have told them that my instinct will be to defend their work, and I will seek the facts from them before drawing conclusions.

We exist to serve the public. As such, we should conduct our business in a manner fully deserving of the public's trust and confidence. Earlier this week, I issued my own fishbowl memo which lays out the principles and protocols that will guide our efforts to be transparent, open, and accountable to the American public. Our success as an Agency depends on it.

Thank you, and I look forward to answering your questions.

[The prepared statement of Mr. Wheeler follows:]

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

We will start with some questioning, if I may, and I wanted to start by mentioning what I see happening right now in the State of Washington.

The State of Washington is abusing Section 401 of the Clean Water Act in order to block the development of the coal export terminal in that State. The terminal would ship coal from Wyoming, Montana, Utah, and Colorado to markets in Asia. The State of Washington has cited reasons for objecting to the terminal that had nothing to do with water quality, yet they are using Section 401 of the Clean Water Act.

I introduced a bill this week to address this problem. We can't allow States to block the export of American energy.

Will you commit to working with me to identify both legislative and regulatory solutions to stop these abuses?

Mr. Wheeler. Yes, Senator, I will.

Senator Barrasso. Recently, there have been some stories in the press discussing some of your recusals from former clients that you took in terms of meetings you have taken as Deputy Administrator, so I would like to give you the opportunity to address the stories and, if necessary, clarify the record. Visit with us about that and maybe tell the Committee how you are going to honor your recusals from former

clients.

Mr. Wheeler. Absolutely. I have committed, under both the Trump ethics pledge and the ethics regulations, to follow all the guidelines. I have worked with our career ethics official at the EPA. I met with her for the first time before I was actually nominated to go over what the requirements would be, and I have not met with any of my clients that I represented for the two years prior to joining the Agency.

There is one article that mentioned that there was a former client that was in a couple of meetings that I attended. I want to clarify that those weren't meetings; they were actually speeches. I gave speeches at two trade associations, and the client was in the audience in those speeches. And according to ethics, as long as there are more than five people, and there were five times as many people as that in the audience, and I can't control the people that attend a public speech.

Senator Barrasso. Thank you.

The Clean Air Act requires that EPA grant relief to small refineries which suffer disproportionate economic hardship under the Renewable Fuel Standards, the RFS. The law explicitly states that a small refinery may petition the EPA for hardship relief "at any time."

Do you agree that EPA doesn't have the authority to limit when small refineries can apply for hardship relief?

Mr. Wheeler. Absolutely. We cannot limit when they apply for the relief, no.

Senator Barrasso. The law further states the EPA must act within 90 days upon receiving a petition from a small refinery.

Do you agree the EPA doesn't have the authority to delay decisions on a small refinery's petition beyond 90 days?

Mr. Wheeler. I am not sure, to the extent that we have met the 90-day requirements, but we certainly try to meet all the requirements under all of our statutes.

Senator Barrasso. In December of 2017, I sent Administrator Pruitt a letter encouraging the EPA to withdraw its proposed rule on in situ uranium recovery, ISR. The Obama Administration proposed the rule on January 19th, 2017, the final day before President Obama left office. Since then, the Nuclear Regulatory Commission, our Nation's principal nuclear regulator, has stated that there is "no health or safety jurisdiction for EPA's rulemaking."

Uranium production is vital to our Country's national security, our energy security. Wyoming produces more uranium than any other State. When can we expect the EPA to scrap this unnecessary regulation that came out kind of a midnight regulation, came out by the Obama Administration on the final day of that eight-year administration?

Mr. Wheeler. Senator, I have not had the opportunity to be

briefed on that in the last four weeks, but I know that the Nuclear Regulatory Commission also has concerns about that, and we will try to work forward on that expeditiously.

Senator Barrasso. During the first year of the Trump Administration, it is my understanding that EPA finalized 22 deregulatory actions. According to your Agency, these actions could save over \$1 billion in regulatory costs to Americans. Just last July it was announced that the American economy grew 4.1 percent. This continues the trend of strong economic growth under the Trump Administration.

In your opinion, is the Administration's approach to environmental deregulation at the EPA protecting the environment, while also helping our economy? Essentially can we have both a strong economy and a healthy environment at the same time?

Mr. Wheeler. Yes, we can, and I think the data shows that. Thank you.

Senator Barrasso. Senator Carper.

Senator Carper. Again, welcome today, and thank you for --

Mr. Wheeler. Thank you, and thank you for the Coke. I need to clear that through our ethics in-house, but I do appreciate that. Thank you.

Senator Carper. If it doesn't clear, I am sure you will have some takers here. I would be happy to bring out the ice.

Mr. Wheeler. I would be happy to buy it from you.

Senator Carper. Mr. Wheeler, you have told me more than once that you share my goal, I think our goal, of striking a deal between automakers in the State of California and other States on fuel economy and greenhouse gas tailpipe standards. A win-win is what we are looking for.

The auto industry and the State of California also repeatedly told me that they want a deal. Unfortunately, the Administration's proposal that is being released this week is reported to freeze standards at model year 2020 levels, eliminate technology incentives, and preempt California and the 12 States that have followed California's lead, which I believe would be a lose-lose-lose situation; a loss for an industry that needs certainty and predictability, a loss for consumers, and a loss for our environment.

The largest source of air pollution in our Country today is not coal-fired utilities, it is not manufacturing, it is not cement plants; it is mobile sources. That is number one. So, I have a couple of questions to pursue in this regard.

First, if you were presented with a proposal that both the auto industry and the State of California, and 12 States aligned with them, could support, would you welcome such a compromise?

Mr. Wheeler. I would certainly welcome such a compromise. The proposal that is coming out this week, first, it is a

proposal, and we are taking a range of comments from a flatline approach all the way to the numbers that President Obama's proposal had, and a number of steps in between. So, we are taking comments on all of those levels, and we would welcome any comments or proposals from any of the impacted groups, absolutely.

Senator Carper. To follow up on that, could we assume on this Committee that if there was such a deal, essentially a 50-State deal, there would be no effort to preempt California?

Mr. Wheeler. I mean, it is my goal, it is the Administration's goal to come up with a 50-State solution, and we want to have a 50-State solution that does not necessitate preempting California. However, there are a number of goals in the proposal and there are important goals on highway safety, so we would have to make sure that those are met. The proposal will save 1,000 lives per year, which I think is very important, and make sure that we maintain that in any final regulation that goes forward.

Senator Carper. I do a lot of customer calls, and I know my colleagues do as well, businesses large and small. Delaware used to build more cars, trucks, and vans per capita than any State in America. We had a GM plant, Chrysler plant that employed 8,000 people, and those two plants, lost them both at the bottom of the great recession.

I still do customer calls with the auto industry and I ask them three questions: How are you doing? How are we doing? And what can we do to help? Unanimously, they say, with respect to this, what you can do is give us predictability and certainty. They say we don't want to have to build one Chevrolet Malibu for California and 12 other States, and then a different model for the other 37 States.

They say we want to have more near-term flexibility on these standards, but we are happy to have more rigorous standard going forward. We don't want to be in court for the next five or six or seven years with California and other States. Give us the certainty and predictability and enable us to really compete with the rest of the world when we get to 2025 and 2030.

I just ask that we keep that in mind.

Mr. Wheeler. Yes, Senator.

Senator Carper. Second, cross-State pollution. Delaware and other States have made great strides in cleaning up our State's ozone pollution; yet, northern Delaware, where my family and I live, where two-thirds of our citizens live, still does not meet ozone health standards due to emissions not from within our State, but from other States' dirty cars and power plants drifting in to our State.

Ninety-four percent of our air pollution in Delaware comes from sources outside of us, largely from the West and the North.

In 2016, Delaware filed four clean air petitions with EPA, four, showing that four fossil fuel plants, three in Pennsylvania and one in West Virginia, are contributing to our unhealthy ozone days.

The cleanup solutions are easy. The three facilities in Pennsylvania have clean air pollution technology installed. They don't use it. They don't use it. The coal facility over in West Virginia, my native West Virginia, they could go to natural gas and help not only their air quality, but ours as well. We thought Delaware's case was a slam dunk, and I was shocked when EPA proposed to reject these petitions.

Just a couple yes or no questions, if I could.

Before making a final decision, would you commit to reviewing Delaware's rebuttal to EPA's proposed rejections, which were sent to you July 23rd, 2018? I am asking for you just to commit to review our rebuttal.

Mr. Wheeler. I would be happy to review that, Senator, yes.

Senator Carper. Thank you.

Since EPA has refused to have a hearing on this issue in Delaware, would you commit to meet personally with State of Delaware officials before making a final decision on this matter at the place and time of your convenience?

Mr. Wheeler. I would be happy to talk to the officials in

Delaware, yes.

Senator Carper. Thank you.

I don't usually ask yes or no questions, so bear with me, please.

When making final decisions on any Section 126 petition from some of the other States on the end of America's tailpipe, our neighboring States, will you follow the spirit and letter of the law, which requires EPA to prioritize the residents of the State which receive the pollution?

Mr. Wheeler. Yes, Senator, we will follow the letter and spirit of the law. I would add, also, that on the cross-border side, we are working with States to develop new technical tools to help them facilitate the Good Neighbor State plans. On the ozone, at this point, we are showing that all the areas, except for a few areas that have been longstanding in non-attainment, should be in attainment by the early 2020s.

Senator Carper. All right.

Mr. Wheeler. We are very positive about the data that is coming in on that.

Senator Carper. I would just say, Mr. Chairman, if I could, in closing, I think everybody on this Committee, I know the folks here pretty well, and we are Golden Rule people; we treat other people the way we want to be treated, and the idea that folks in States to our west put up pollution, keep their

air clean, their health care costs low, and we end up with dirty air and higher healthcare costs, it is just not fair. It is not the way to treat our neighbors.

Thank you.

Mr. Wheeler. Thank you, Senator.

Senator Barrasso. Thank you, Senator Carper.

Before turning to Senator Inhofe, Andrew, I would say that we are going to start voting shortly, and I will go vote and turn the chair over to Senator Inhofe at the time, who will be chairing the Committee until I return.

Senator Inhofe.

Senator Inhofe. Thank you, Mr. Chairman.

First of all, I liked your opening statement. It is certainty that we want and that we deserve, which we have not been historically given.

I want to elaborate a little bit with a question asked a little bit differently than the comment by the Ranking Member.

Last year, the EPA, along with the Department of Energy, granted 33 of 34 hardship exemptions to refineries due to high RIN costs. The EPA was sued on one petition it denied and ended up losing in court. Opponents of these exemptions say that the refineries are not under a hardship, even though they are actually paying more than their payroll to comply with these mandates that are out there.

If you look at the fact that the EPA has now lost twice in court for not approving exemptions, the EPA is simply applying the law when it does grant them and they should be approving more of them.

How does the EPA thread this needle?

Mr. Wheeler. It is a very difficult needle to thread. We are following the statute and we now have had two court cases that have ruled against the Agency on the granting of the exemptions. We also have appropriations language to remind us to grant the small refinery exemptions.

One area we are trying to do is to provide more transparency around the decisions that we are making on the small refinery exemptions, and I think that will help clear up a lot of the concerns around the issue.

Senator Inhofe. Yes, I think it will.

Now, President Trump and you have committee to returning EPA to cooperative federalism, which I applaud. Unfortunately, some have confused that principle with coercive federalism, where one State dictates their standard to all others. When it comes to the auto industry, and we talked about this a minute ago, the last Administration handed over car emission standards to California, but other States didn't get to weigh in. Because of this, Oklahomans, my State of Oklahoma, are paying more for their SUVs and trucks to subsidize electric cars so California

drivers can afford them, which I find personally a little offensive.

I applaud the EPA and NHTSA for revisiting the midterm review done at the last minute by the Obama Administration.

Now, EPA doesn't have any statutory direction for its auto regulations, but NHTSA does. Do you think EPA and NHTSA should harmonize their regulations so technological feasibility and consumer costs are considered?

Mr. Wheeler. Yes, Senator, I do, and that is what we have done.

Senator Inhofe. All right.

Lastly, I had the honor of attending your opening statement. It was a very good statement. You had all the employees, I don't know how many hundred were there, but you got a very fine response from them. In your opening remarks to the EPA employees, you mentioned the fact that the United States is the gold standard worldwide for the environmental protection and that pollution regulated under NAAQS has dropped 73 percent. You mentioned this again in your opening statement. Nobody ever talks about the success that we have, that we are riding on.

Meanwhile, our economy has expanded three times over and, yet, the pollutions regulated dropped some 73 percent.

The problem that we had in the eight years of the Obama Administration was the use of regulations to punish industries

and States to reshape our economy with little to no benefit for the environment.

Can you elaborate on how you have both a clean environment without handcuffing our economy? How do you plan to do that?

Mr. Wheeler. Absolutely. I think that goes to my comments on certainty. I think if we provide more certainty not just to the regulated community, but to the American people, so that everyone understands the decisions that we are making and why we are making them, we will continue to improve the environment and provide that certainty that businesses are looking for.

Senator Inhofe. That is good.

Aren't there instances where regulations such as the New Source Review can actually get in the way of reducing pollution?

Mr. Wheeler. It can. It can be a disincentive for installing cleaner technologies. And we are trying to stop that.

Senator Inhofe. Good. Good. Thank you very much. You did a great job.

Mr. Wheeler. Thank you, Senator.

Senator Barrasso. Thank you, Senator Inhofe.

Senator Cardin.

Senator Cardin. Mr. Wheeler, welcome. It is a pleasure to have you here.

Mr. Wheeler. Thank you, Senator.

Senator Cardin. I noticed your comments about the improvements in air over the last 40, 50 years. I might tell you we have seen remarkable improvement in the Chesapeake Bay during that period of time, and I say that because the Chesapeake Bay also has been a program that was developed with State flexibility. It is State blueprints that are agreed to by the six surrounding States of the Chesapeake Bay Watershed, as well as the District of Columbia, and it has had the strong support from Congress, including this Committee recently, as well as from the Environmental Protection Agency.

My first question, recognizing the importance of the Chesapeake Bay not just to the surrounding States, but to our region, it is the largest estuary in our hemisphere, will you continue the traditional Environmental Protection Agency support for a strong Federal role in coordinating the work that is done on the Chesapeake Bay?

Mr. Wheeler. Absolutely. In my first week as the Deputy Administrator, I attended the Chesapeake Bay Commission, and next week I will be attending the Chesapeake Bay Leadership Council in Baltimore. It is a high priority for us. I actually live in the Chesapeake Resource Protection Area, and it is a high priority for the Agency.

Senator Cardin. I don't consider that to be a conflict, so you can do whatever you want to to protect our Bay. I would

just ask you also to work closely with the members of this Committee and Congress that have a deep interest in the Chesapeake Bay.

Mr. Wheeler. Yes, I will.

Senator Cardin. Thank you.

The EPA Inspector General recently released a report analyzing the Federal Government's role in the lead contamination crisis in Flint, Michigan, with the hopes of avoiding another crisis in another city.

Will you accept and implement the recommendations of the Inspector General?

Mr. Wheeler. I know that our staff has reviewed the recommendations and we are in the process of planning an implementation program to make sure that we implement them. I haven't been fully briefed on how we are going to implement them yet, but it is a high priority for the Agency and we are moving forward to make sure that something like Flint, Michigan does not happen again.

Senator Cardin. I guess that is the strongest commitment I am going to get here today, but I would just urge you, the Inspector General gives an independent view.

Mr. Wheeler. Yes.

Senator Cardin. It is important that their report receives the respect from the Agency.

Mr. Wheeler. It is.

Senator Cardin. Thank you.

I also appreciate what you said about the workforce, the people that work at the EPA. The first question I have, I recognize the struggle that every cabinet person has with OMB, but are you going to be an advocate for the funds necessary for the EPA in order to be able to carry out its work and be there fighting for the resources you need to carry out your mission?

Mr. Wheeler. Yes, I am an advocate for the resources that we need, and we will fully implement the appropriations that Congress gives us.

Senator Cardin. That was the second question I was going to ask; you already anticipated it. The former staffer here understands the questions that are coming; that is good.

Let me just follow up on that. You said that you wanted to respect the recommendations given to you by your scientists and your professional staff. I assume that also means the Science Advisory Board. That is a resource that you have and it has been called into challenge in the last two years.

Are you committed to allowing the experts to give you unfettered information for you to make decisions that need to be made? Will you also commit to allow them to participate in policy conferences so that you can have the interaction which we have seen over the long period of time with EPA?

Mr. Wheeler. Yes, Senator, I would commit to both of those.

Senator Cardin. Thank you.

Lastly, let me just ask you about your vision as to what you need in support in order to carry out your mission. The EPA is responsible for clean air, clean water, and for our clean environment. You have a new toxic chemical law that has been working on. There is concern that chemicals are not being treated as intended by Congress.

Do you pledge to work with us and outside interest groups to make sure that we do get an independent evaluation of issues such as toxic chemicals to make sure that they are given the independent evaluation as to whether they need to be regulated?

Mr. Wheeler. Yes, Senator, I do. I started my career in the toxics chemical program at EPA in 1991. I worked there for four years and I am excited to be part of the implementation of the new Lautenberg Chemical law, and we want to make sure that we are implementing it in the same manner in which Congress intended it when they passed it.

Senator Cardin. And if we have information, you will consider the information we send to you?

Mr. Wheeler. Yes, Senator, I will.

Senator Cardin. Thank you.

Senator Barrasso. Senator Boozman.

Senator Boozman. Thank you, Mr. Chairman.

Thank you for being here today to testify.

Senator Inhofe mentioned earlier the importance of certainty, and one of the things I would like to ask you about is the fact that on June 27th, then EPA Administrator Pruitt issued a memo reorienting the Agency's approach to when and how it would veto Clean Water Act Section 404 permits issued by the U.S. Army Corps of Engineers.

Recognizing the Agency has not acted on the authority often, only 13 times since 1980, the threat remains that the EPA could stop an infrastructure project that has already gone through a lengthy and expensive permitting process and already received approval to proceed. Threat adds uncertainty to permitting and jeopardizes support for infrastructure projects.

Will EPA, under your direction, proceed with the rulemaking to align the 404(c) process with the June 27th memo?

Mr. Wheeler. We are looking into that and, as we move forward, I think it is very important to provide that certainty, and I agree that, even though it has been rarely used by the Agency, it has created a lot of uncertainty even when it wasn't used.

Senator Boozman. Good. We would appreciate your looking at that.

As Acting Administrator, you will have a highly influential

role in advising the President on how to implement or modify the regulatory footprint of environmental policy in our Nation. How do you anticipate your past experiences will help in improving the way the EPA engages with all stakeholders?

Mr. Wheeler. First of all, having started my career at the Agency as a career employee, I think that has helped me a lot in understanding the processes and the people of the Agency. But I think my 14 years working here at this Committee and meeting with a wide variety of stakeholders from a number of States all across the Country, international as well, has given me appreciation for the different conflicting policy areas that we have at the Agency and that we need to make sure that we are talking to all interested groups as we move forward with any regulation.

Senator Boozman. Very good.

A criticism of EPA during the previous Administration was the Agency's disconnect with rural America. Rural America is having a difficult time right now. Many hardworking Americans in rural States felt they did not have a voice and their opinions did not matter.

What have you done, what do you feel, in other words, what is your planning in the future to facilitate a stronger level of trust between EPA and rural America?

Mr. Wheeler. I think it is very important to make sure

that all of our regulatory actions, our guidance documents, everything takes into account the impact on rural America. The announcement that we made last week on the sorghum pathway for the renewable fuels, that is going to help a lot of rural communities across the upper Midwest. I think making sure that we take actions like that to help grow the economy in rural areas is very important.

Senator Boozman. Very good.

EPA, during the Obama Administration, encroached into other agencies' jurisdictions, resulting in EPA making decisions on issues where they lack the expertise.

Can we count on you to work with other agencies and take their expertise into careful consideration when developing and implementing rules and regulations?

Mr. Wheeler. Yes, we will. We are taking those into consideration, Senator.

Senator Boozman. It seems to me that our air permitting system is in desperate need of updating. The current system we have in place sometimes overstates the air quality impacts of new projects, which can lead to delays or cancelled investments and lost opportunities.

What does the Agency plan to do to fix the broken permitting and New Source Review programs?

Mr. Wheeler. We have implemented several guidance

documents, new guidance to the States and to the community on New Source Review, and we are looking at those now to see which ones of those we need to move forward on regulatory actions to make sure that we provide that certainty.

As Senator Inhofe said on New Source Review, oftentimes it can be counterproductive on cleaning up the environment when it is a disincentive for installing cleaner, more efficient technologies.

Senator Boozman. Very good.

Companies have made billions of dollars in investments complying with the 2013 Boiler Maximum Achievable Control Technology rule. While the rule was expensive, it was generally achievable. Unfortunately, regulatory uncertainty remains, given recent court decisions sending a couple of issues back to EPA to address.

When will EPA complete this rulemaking so facilities can know they have met all of their boiler obligations?

Mr. Wheeler. Senator, I am not positive on the timeline for that, but I would be happy to look into that and get back to your office.

Senator Boozman. Thank you very much.

Thank you, Mr. Chairman.

Mr. Wheeler. Thank you, Senator.

Senator Inhofe. [Presiding.] Thank you, Senator Boozman.

Senator Booker.

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

Thank you very much, sir. It is good to see you here. Mr. Wheeler, I want to focus on EPA's TSCA implementation, if I can, and I would like to start by saying that I am pleased with the strategic plan that the EPA released to reduce animal testing. I was really grateful for that and I hope that this is an issue that we can work together on moving forward.

But, overall, I am concerned about how the EPA is choosing to implement the changes to TSCA that my colleagues and I on this Committee, in a bipartisan way, worked so hard on last Congress. I know you are probably aware of that.

One area I am concerned about is EPA's failure to consider all the sources of exposure that people have to the toxic chemicals that EPA has started to review. In our amended TSCA law, EPA was told by Congress to examine the safety of all known, intended, and reasonably foreseeable uses of a chemical, and the combined impacts of all exposures to a particular chemical, when making their determination about whether a chemical presents an unreasonable risk of harm.

But EPA's problem formulations have dramatically narrowed the conditions that the Agency will use to evaluate the safety of the first 10 chemicals under TSCA. EPA is now indicating that it will ignore known exposures to those first 10 toxic

chemicals, including for the known carcinogen TCE. EPA has warned since 2011 that TCE causes cancer, and in 2017 proposed to ban specific uses of TCE. But, under Scott Pruitt's leadership, EPA proposed to indefinitely postpone the ban on this deadly chemical.

In New Jersey, we have many communities that have been harmed by TCE, but there is one community outside of New Jersey, in Franklin, Indiana, that I want to focus on. In Franklin, they discovered that the community has high levels of TCE in their groundwater and in the air outside many homes, and the children in Franklin are getting cancer at inordinately high rates.

Carrie and Matt Rhinehart, who are in the audience right now, their daughter Emma Grace died four years ago from brain cancer when she was 13 years old. Stacy and Matt Davidson, who are also here, their son Zane has leukemia, but, thank God, it is currently in remission.

High level exposure of TCE makes these families partly vulnerably subpopulation under the TSCA law, but EPA is now saying that it will ignore exposures that come from land, air, and water, meaning it will ignore the types of TCE exposures that these and other families have so painfully endured in deciding whether or not TCE is safe.

The scaling back of our bipartisan chemical safety law, one

of the prouder moments I have had as a Senator, was set in motion by Scott Pruitt, and I am really hopeful that you are going to reverse course on what I think is a bad decision, and the families here agree with me.

So, Mr. Wheeler, as part of the evaluation process, would you commit to comprehensively reviewing the risks of chemicals like TCE by including known releases of chemicals into our air, water, and land, releases that threaten communities across the Country?

Mr. Wheeler. Senator, I am trying to keep track of all the parts of your question. On the last, let me start with that. It is tragic for any chemical to cause the death of a child, and my heart goes out to those families impacted by that. Absolutely, we need to be moving forward to do something on TCE and the other chemicals, which is why we included TCE on the list of the first 10 chemicals for review.

Senator Booker. Well, I guess a yes or no is what I was asking. Would you commit to comprehensively reviewing the risks of chemicals by including known releases into our air, land, and water, released like TCE?

Mr. Wheeler. It is my understanding that we are looking at those pathways as we look at the chemicals on the list. I will need to double-check with our chemical office on that, but it is my understanding it is part of the 10 chemicals, as TCE being

one of the first 10 chemicals that we are examining, that we are examining the different pathways.

Senator Booker. What I worry about, it was Scott Pruitt's decision to move forward within 30 days to finalize the ban on specific uses of TCE. I am worried that that is something that is moving forward. We need to reverse that decision. Do you understand?

Mr. Wheeler. I think I understand what you are saying, but let me check on the status of that.

Senator Booker. And then let me very quickly, methylene chloride. In January 2017, EPA proposed banning all consumer and commercial uses of methylene chloride in paint strippers. The ban, though, was never finalized.

In May, your predecessor agreed to meet with mothers whose sons died suddenly from using paint strippers containing this toxic chemical, and a few days later, Scott Pruitt, today, we are going to finalize the proposed rule and send it out shortly, but since then we have seen nothing. It has been several months, and the mothers who were hoping to prevent other families from experiencing the loss of loved ones, people are really disheartened.

So, my simple question, and I conclude with it, is will you commit to sending the proposed ban of consumer chemicals uses to OMB for the final review in the next two weeks?

Mr. Wheeler. Well, we are continuing to work with OMB and the other agencies and departments that have equity on that chemical issue, and we are trying to move that forward as quickly as we can. I can't commit to a specific time frame, but we are trying to move that forward.

Senator Booker. All right. There are a lot of families from the paint stripping chemicals sitting behind you right now that are really relying on you to save lives. There are extraordinary injustices going on with this kind of inaction by your Agency, and I hope that you will move with all deliberate speed to address these concerns.

Mr. Wheeler. Thank you, Senator.

Senator Booker. Thank you.

Senator Inhofe. Thank you, Senator Booker.

Senator Ernst.

Senator Ernst. Thank you, Mr. Chair.

And thank you, Mr. Wheeler, for being here today. I appreciate it. I know there has been a lot of talk about the small refinery exemptions, so I am going to dive in right with you.

Over the past year and a half, EPA has taken actions that benefit refiners at the expense of farmers, and by retroactively granting an unprecedented number of small refinery exemptions, EPA effectively waived 2.25 billion gallons from refiners' 2016

and 2017 RFS obligations.

Not only do these actions contradict President Trump's pledge to uphold congressionally mandated volumes, but they have also destroyed corn and ethanol demand, leading to lost income for Iowa's farmers, at a time when farm income is already at its lowest level since 2006.

Yes or no, Mr. Wheeler, do you believe the RFS should be implemented in a manner consistent with the original intent of Congress?

Mr. Wheeler. Yes, I do.

Senator Ernst. Thank you. So, let's distill this even further, then. For compliance year 2017, the EPA granted 29 small refinery exemptions, totaling 1.45 billion gallons, which removes that many gallons from obligated parties' compliance requirement, which is the 15 billion gallons, that is the implied corn ethanol requirement, minus the 1.45 billion gallons is 13.55 billion gallons.

So, you just take the 15 that is implied, that is the requirement, minus the 1.45, and it gives you 13.55 billion gallons. So, that is about 10 percent below the statutory requirement, is that correct? It would be about 10 percent.

Mr. Wheeler. I will trust your math, Senator, yes.

Senator Ernst. Okay. So, yes, it is about 10 percent below the statutory requirement. So, if these gallons aren't

reallocated somewhere, then you are not implementing the RFS in a manner that is consistent with the original intent of Congress, correct?

Mr. Wheeler. Well, part of the original intent of Congress was also to grant the waivers, and there is not a provision for reallocating that. We are taking a look at that issue, but we are trying to be much more clear and transparent as we grant any small refinery waivers. As you are aware, we have been sued twice on this for not granting enough, and we have lost both times.

Senator Ernst. I understand that. There is also an obligation, though, of 15 billion gallons, so those gallons that have been granted waivers for, we have to figure out a real allocation strategy.

Mr. Wheeler. I agree we have to figure out a real allocation strategy, but we are confined by the law.

Senator Ernst. Thank you. The law does require 15 billion gallons.

So, last November, before this Committee, you were committed to issuing a determination on whether or not the EPA can grant the Reid Vapor Pressure waiver, and just last week, in Iowa, President Trump again expressed support for removing the outdated regulatory barrier preventing the sale of E15 year-round and indicated his Administration is "very close to

implementing the RVP waiver.”

Can you state for the record that EPA has the authority to begin a rulemaking process to provide RVP relief for ethanol blends of E15 and higher?

Mr. Wheeler. We can certainly start that process. As you know, Senator, there are certainly people that don't believe we have that authority. The legislation that this Committee considered last year would have been very clear in giving EPA that authority, but we are looking at that issue, as you and I have discussed a few times and am happy to discuss with you further, on moving forward on an RVP issue.

Senator Ernst. And we find that that is very important and something that the President has committed to.

I will say, in closing, that RVP parity and the sale of E15 year-round is a no-cost solution that will expand a domestic market for farmers who have been adversely impacted by retaliatory tariffs. RVP parity would not only boost commodity prices, but also be viewed across rural America as the Trump Administration taking concrete action to help during a time of economic hardship.

Acting Administration Wheeler, I do encourage you to follow through on the President's directive and remove this unnecessary and ridiculous restriction. I look forward to working with you on these issues. I know we will have many, many discussions to

follow. Thank you very much.

Mr. Wheeler. Yes, Senator. I look forward to those.

Senator Ernst. Thank you.

Thank you, Mr. Chair.

Senator Inhofe. Thank you, Senator Ernst.

Taking the prerogative of the Chairman, I want to recognize myself for a unanimous consent request.

Last week, Platts ran a story entitled "U.S. Small Refinery Waivers Not Likely Lowering Biofuel Blending." The article cites Sandra Dunphy, an independent analyst who testified last week before the House Energy and Commerce Committee, and I ask unanimous consent to enter this article into the record at this point.

Without objection, so ordered.

[The referenced information follows:]

Senator Inhofe. Senator Whitehouse.

Senator Whitehouse. Thank you, Chairman.

Welcome, Administrator Wheeler.

Mr. Wheeler. Thank you, Senator.

Senator Whitehouse. As you know, I viewed your predecessor's tenure as one characterized by tawdry personal behavior in office, a desire to do damage to the Agency that he led, a flagrant absence of transactional integrity and horrible environmental policies, and I see you as a remedy to three of those four, so in that sense I welcome you.

Mr. Wheeler. Thank you, Senator, three out of four.

Senator Whitehouse. My visit to you, I appreciated very much your courtesy in having me in, and I very much hope that you follow through on putting Teddy Roosevelt's picture up on your wall. I think that would be a good reminder and a good signal.

A lot of what needed to be repaired at EPA had to do with process stuff, rather than the substantive disagreement you and I may have on environmental issues, and some of the process stuff had to do with enforcement. In the first nine months of the Trump Administration which we have data for, enforcement actions declined by 30 percent compared to the first nine months of the Bush Administration, and more than 35 percent compared to the first nine months of the Obama Administration.

In that same period, EPA sought 50 percent less in fines and money for environmental cleanup than in the Bush Administration and almost 90 percent less than under the Obama Administration. Some of that appears to have been a decision made by the EPA Office of Compliance and Enforcement to seek headquarters' approval before beginning certain investigatory actions, and I have the memo here: "Effective immediately OECA Headquarters review is required prior to issuance of information requests under the Clean Air Act, RCRA, and the Clean Water Act."

I would ask that memo be made an exhibit.

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Whitehouse. What is your intention regarding that headquarters review stymying of what had always been the prerogative of the different regional agencies in getting information about potential environmental violations?

Mr. Wheeler. Senator, I haven't seen that memo. Is there a date?

Senator Whitehouse. This memo was dated May 31.

Mr. Wheeler. Of this year or last year?

Senator Whitehouse. Of 2017. So it has been in place for a while. Obviously, if you have to run the ability to even ask information requests through headquarters, that gives headquarters the chance to either just create massive institutional delay or even put the kibosh on an investigation from its very beginning, and that doesn't seem like the right role for headquarters.

Mr. Wheeler. I was not aware of that memo. I would point out, though, that we did not have a Senate-confirmed person and head of OECA until December of last year. I believe that is the longest time that the Agency had ever gone without a Senate-confirmed enforcement person. I think the numbers have gone up significantly since Susan Bodine took over the office, and I think the program itself has improved quite a bit.

Senator Whitehouse. Well, I would like to ask you to get back to me on whether this memo is still in place.

Additionally, one of the problems that bedeviled people trying to get information out of EPA was that FOIA requests were customarily provided extremely slowly, and often only after litigation to force the issue; and members of Congress, myself included, were told we will get you the information you ask for when we get around to it through the FOIA process.

I don't think either of those is good practice for a public agency. Could you let me know what you are doing with respect to FOIA compliance and with respect to Committee requests for information?

Mr. Wheeler. Absolutely. First of all, on FOIA, I know at the beginning of this Administration we had a 700 FOIA case backlog, some cases going back to 2008. We have cleared up the entire backlog.

I would also just point out, for the Administrator's Office at EPA, we saw a 415 percent increase in the number of FOIA requests. What we are doing is we consolidated the FOIA program into one office under our General Counsel's Office, and we are in the process of hiring additional FOIA people.

On the requests to the Committee, as Senator Carper could tell you, when I worked here on staff, I worked very hard to make sure that the Minority received information from the Agency, and I will continue to do that as the Acting Administrator at EPA. I know that we have responded to 54 of 67

requests from the Minority members of this Committee over the last year and a half.

Senator Whitehouse. Thank you. I will send you a list of the ones that remain outstanding, and you can plow through those as well.

Let me just close by saying that I know you have worked very closely with industry for a long time, and I hope that you will give your very serious and earnest consideration to the concerns of people like me from coastal States. We are seeing climate change-driven sea level rise that is going to require us to redraw the map of my damn State. If that is not something to make a Senator serious about protecting it, I don't know what is.

So, I hope that in this position you will take into account not only the concerns of industry and the concerns of the square States in the middle of the Country that don't have coasts, but those of us who are looking at actually having to redraw the maps because of what is happening.

Thanks very much.

Mr. Wheeler. Thank you, Senator.

Senator Barrasso. [Presiding.] Thank you, Senator Whitehouse.

Senator Rounds.

Senator Rounds. Thank you, Mr. Chairman.

Mr. Wheeler, first of all, welcome to the Committee; it is good to see you once again, sir.

Mr. Wheeler. Thank you.

Senator Rounds. I appreciate your interest in your opening statement regarding certainty and the desire to move forward with certainty and transparency. I do think what Senator Ernst was trying to get at with regard to the Renewable Fuel Standard and the small refinery limitation, or at least an exemption for them, and how those two fit together, I would like to explore that with you a little bit. Because it is critical that the Renewable Fuel Standard remain in effect and that it be honored and that it be something that producers in the central part of the Country can count on. They have invested billions of dollars in creating an ethanol industry, and one that they had expected to be in until at least the year 2022.

Now, if we read this correctly, there clearly was the intent of Congress that there be, for traditional ethanol production, a 15 billion gallon per year allowance. We also understand that within that same legislation that there was an allowance that you could make exceptions for hardship for small refineries. There was nothing that we can find that indicates that that would limit or reduce the 15 billion gallon minimum for traditional ethanol production.

Can you share with me where you would come up with or where

there would be logic in taking or in reducing the Renewable Fuel Standard from the 15 billion to follow what was already included in the original law? In other words, when we wrote the law, when Congress wrote the law, they clearly understood that 15 billion was there and made clear. They also understood that we would take into account that small refineries may have a hardship. There was nothing that indicated that that 15 billion would be reduced.

Can you share with me a little bit your thought process on why you would not continue to push and to reallocate for the 15 billion gallons?

Mr. Wheeler. Well, as one of the former congressional staffers who helped write that section of the law, I wish we had spent a little bit more time on some of the details of it now that I am helping to implement it. I could start by saying that we are working to provide more transparency around the small refinery program, the exemption program.

We are creating a dashboard where we will publicize all the information about when we grant a waiver and the circumstances around the waiver. We have to balance that with the confidential business information of the impacted companies, but we are working to try to be more transparent on that side of the program and we are looking to see what we can do as far as making up the difference when we have to grant a waiver from the

15 billion gallons.

But it is not a clear-cut --

Senator Rounds. If I could, I don't think, and I don't find any place where it says it is a waiver from the 15 billion. I think it says an individual refinery may get from their responsibility, but that doesn't absolve us from meeting the 15 billion gallon limit.

Mr. Wheeler. I agree. But then you have the problem, though, that the waivers are being requested and granted after the numbers have already been set, and we are talking about whether we can go back retroactively to change the numbers and change the compliance numbers for the other people in the industry.

Senator Rounds. Well, I like the fact that you are looking at transparency within this process, and, in fact, I think you are moving in the right direction. I actually sent a letter to your predecessor, dated April 13th of this year, requesting that the EPA provide more information on the factors that go into the granting of small refinery exemptions.

Mr. Chairman, I would ask unanimous consent that the copy of the letter be entered into the record.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Rounds. I have yet to receive a substantive response to the letter, as requested, and this is an issue which is of serious consequence to my constituents in South Dakota and throughout the upper Midwest.

Would you commit to reviewing this request and responding to it in a substantive manner?

Mr. Wheeler. Yes, Senator, I will do that.

Senator Rounds. I understand that information that is designated as confidential business information has reportedly been a factor in granting small refinery exemptions, but there must be aspects of the EPA's decision-making process that do not strictly fall under this definition, and I just hope that you would continue, in an open and transparent process, to share with us the process that you are using in granting these.

Mr. Wheeler. Yes.

Senator Rounds. The other piece of this, sir, the RVP across the United States, as the President has indicated his interest in doing it, I would hope that we would expedite that process so that we can actually start marketing this product across the United States year-round. And, if that happens, I think a lot of the issues surrounding meeting that RFP would be handled, because with those markets available year-round, it means people would actually buy the equipment, have the equipment available if they could use it throughout the year.

Those pumps are expensive, and they don't want to use it if the EPA is going to come in and say you can use it six months out of the year, but not year-round.

Would you commit to trying to expedite that part of this process to see if we can't get this behind us and help this industry to succeed?

Mr. Wheeler. Senator, as I am sure you know, that was part of a broader package of a deal trying to address concerns of the oil refining industry, along with the concerns of the ethanol producers, and I am looking actively to try to figure out how we go forward --

Senator Rounds. I appreciate that.

Mr. Chairman, I know my time has passed, but you have taken care of the small refineries. What about the small farmers? What about the folks that are producing on a year-to-year basis enough to get buy in a time in which we have trade issues in front of us, at a time in which they expected that an RFP would be honored by the Federal Government that we made several years ago?

You have taken care of the small refineries, but you haven't taken care of the small farmers. I think we should look at that.

Mr. Wheeler. The RVO number for 2019 is, I believe, 500 million gallons more than what it was the previous year. We

also added the sorghum pathway to help farmers in finding another biofuel feedstock for the RFS program.

We are looking very actively to see what we can do to provide more not just flexibility in the program, but more assistance to the agricultural community.

Senator Rounds. Look forward to working with you, sir.

Mr. Wheeler. Thank you.

Senator Rounds. Thank you.

Senator Barrasso. Thank you, Senator Rounds.

Senator Rounds. Thank you, Mr. Chairman.

Senator Barrasso. Senator Van Hollen.

Senator Van Hollen. Thank you, Mr. Chairman.

Mr. Wheeler, welcome.

Mr. Wheeler. Thank you, Senator.

Senator Van Hollen. I had a question along the lines that Senator Carper asked you. He asked you about the Delaware filing under the Good Neighbor Petition provisions of the Clean Air Act. Maryland also filed a petition back in November 2016. EPA did not respond to it until just a few months ago, at which time they said they proposed to deny the petition.

This is an issue that has united all Marylanders, Republicans and Democrats alike. All of our members of the congressional delegation sent a letter to EPA asking EPA to take another look at this. Governor Hogan, a Republican governor,

has asked the same thing.

So, the first ask I would have is the same that Senator Carper made of you. Would you commit to meet with our Maryland Department of Environment Secretary, Ben Grumbles, to go over Maryland's position on the Good Neighbor Petition?

Mr. Wheeler. I would be happy to meet with Mr. Grumbles. I have known him for years and worked with him briefly.

Senator Van Hollen. I appreciate it.

The letter we got back from EPA said that there was not enough information. I think Ben Grumbles, if you know him, is very diligent. I looked at it; he provided a lot of information. And that it was too costly, even though what we are asking for is plants in these other States to just apply already existing technology.

Do you have any details on why EPA proposed to deny the Maryland petition?

Mr. Wheeler. I don't, and I have not looked at the Maryland petition in the four weeks that I have been Acting Administrator.

Senator Van Hollen. I understand. I appreciate your willingness to do that and meet with Secretary Grumbles. I think it is important because it is simply unfair and the Clean Air Act envisioned this, its amendments envisioned this, that some States are doing their job to clean up their air, but their

air gets polluted by States that are not doing their job. So, I hope we can resolve this issue.

I think you live in the Chesapeake Bay Watershed in Virginia, is that right?

Mr. Wheeler. I do, Senator, yes.

Senator Van Hollen. The Bay agreements over a long period of time have been one of the great environmental success stories. You always feel like you are running in place with the Bay because there is such a drainage basin from so many States and so much development. But the good news is, as a result of these agreements, and most recently the 2014 agreement, we appear to be making progress. Long way to go, but progress.

The most recent agreement included a provision with respect to the TMDL, total maximum daily load. Can you commit that you, as the Acting Head of the EPA, will continue to enforce EPA's role within that agreement?

Mr. Wheeler. Absolutely. I also want to point out it is good news on the Bay. We have a lot of work to do, but just over the last 10 years the seagrass in the Bay have gone from 34,000 acres up to 100,000 acres, and that is one of the first indicators of a healthy bay. So, I think we have made a lot of progress and we continue to make progress.

Senator Van Hollen. I appreciate that.

In the House, our House colleagues attached a provision to

the environmental appropriations bill, a rider to eliminate EPA's enforcement authority under that agreement. I am assuming that you would oppose that limitation on your enforcement authority, is that right?

Mr. Wheeler. We would certainly like to keep all the enforcement authorities that we can, yes.

Senator Van Hollen. Thank you.

Now, just last week EPA released a 2016-2017 milestone at midpoint progress report on the Bay, and again, as you indicated, I indicated, there has been some progress. It did note that the State of Pennsylvania is not meeting its targets for agriculture and urban-suburban runoff. Actually, as part of the Farm Bill I have worked on a bipartisan basis to increase the funds available under the Regional Conservation Partnership Program, so hoping that will go forward as part of the ag bill.

But, what actions can EPA take? As you know, a lot of the pollution in the Bay does come down the Susquehanna River, major tributary to the Bay. This has been an ongoing challenge. What can EPA do to help all of us improve Pennsylvania's performance?

Mr. Wheeler. We are trying to work more cooperatively with all the States in the Chesapeake Bay region. I mentioned to Senator Cardin that in my first week as a Deputy Administrator I attended the Chesapeake Bay Commission, and next week I will be attending the Chesapeake Bay Leadership Council meeting in

Baltimore, and that will be my first meeting on the Chesapeake Bay since I have assumed the duties of Acting Administrator.

I need to look a little bit more into what we can do to work with Pennsylvania, but we are trying to work cooperatively with all the States in the Chesapeake Bay.

Senator Van Hollen. No, I appreciate that and EPA has played a vital role, so I appreciate your commitment there.

I will say, as your own EPA report indicated, the pollution coming down the Susquehanna River from Pennsylvania remains a major challenge, so we want to work cooperatively with Pennsylvania as well, but we really do need your help. So, thank you.

Mr. Wheeler. Thank you, Senator.

Senator Barrasso. Senator Capito.

Senator Capito. Thank you, Mr. Chairman.

Thank you, Mr. Wheeler, for being here with us today. I would first like to take a moment to express my appreciation for your emphasis on improving transparency and increasing good governance practices at the EPA. From what I have heard in the testimony thus far, very cooperative spirit on both sides of the aisle to help not just with our national issues, but with our State issues as well, and certainly appreciate that.

As you well know, West Virginia bore the brunt of the last eight years of bureaucratic red tape coming out of Washington, a

lot of it from the EPA. We are climbing out of that. Our unemployment rate is near its lowest since 2008; our growth rate is tracking the national average, and maybe in some has even exceeded the national rate, which is great. And this is in anticipation of things that are going on now, the regulatory relief that you have been a part of at the EPA, the tax reform and infrastructure investments.

So, we are encouraged by what we see, but we still have a labor participation rate that is lower, and we need to use our skilled workforce deployed in responsible and innovative utilization of our natural resources, which we have in abundance in my State.

My first question is on the Clean Power Plan. As you know, I think you know, I am sure you know, that Appalachia was essentially ignored when the Clean Power Plan first rule was proposed. We couldn't get the EPA to come. Subsequently, this EPA held its first hearing in West Virginia and heard opinions from all sides about the Clean Power Plan.

I have talked about our growing economy in West Virginia and being led by our energy sector. I would like to know from you how do you plan to address the failings that were in the previous Clean Power Plan? Where are you on this and do you expect your rule will return to an inside-the-fence approach and use technologies that are actually commercially available? That

was another sticking point, requiring technologies that were never commercially viable and touting them as being a panacea, I think, which we knew did not really exist.

Your comments on the Clean Power Plan.

Mr. Wheeler. Thank you, Senator. On my first day as Acting Administrator, we sent a new proposal to OMB for interagency review for replacement for the Clean Power Plan. The difference, I would say, between this approach and the approach of the Obama Administration is that we are following the four corners of the Clean Air Act in what we are proposing.

The 2015 proposal had the dubious distinction of being the first environmental regulation to have a stay issue by the Supreme Court, and I believe that was done because it was outside of what the law directed us to do. So, we are going to follow the law and hopefully the proposal will be coming out for public comment sometime in the next 30 to 60 days.

Senator Capito. Okay. Thank you.

I want to talk about chemical safety thresholds. I would encourage a particular emphasis on the PFOS. This is a chemical that has been found in waters particularly in the Parkersburg and Martinsburg area of our State. I had previously urged transparency with the former Administrator when it came to release of the toxicological report that came out that was very long and very complicated, so I can't really interpret that for

you. I am hoping that you will do that as well.

So, would you agree that the PFOS issue is a serious concern and is a high priority within the EPA?

Mr. Wheeler. Absolutely, it is a serious concern and it is a high priority. It was actually one of the first briefings that I requested from the career staff at the Agency when I first started as the Deputy Administrator, and it remains a priority for me and for the Agency as we move forward.

Senator Capito. Well, thank you for that. I think that was obviously the intent of the law that we all worked on, bipartisan, but I am concerned that we still don't have a leveling of the appropriate levels both in safety levels either in the soil or in the water, and it is causing a lot of concern for me as a representative of our State.

Let me just talk a little bit about coal because we know coal has come back. It has come back to a reasonable level. Could you, just in the brief time we have left, say from your perspective, I know you have a lot of experience with coal, how do you see this in terms of a more robust coal industry and the environment, and where you are planning to move with that?

That is a big question.

Mr. Wheeler. It is. Let me address it this way. I have always believed in an all-of-the-above on energy sources, and I don't believe that it is the EPA's job to pick winners or

losers. It is our responsibility to enact the laws that Congress passes. Under my leadership, we will not pick winners and losers between the different fuel sources. That is something that the market will have to decide. But I think it is very important that we don't enact regulations that penalize one energy source over another or emphasize one energy source over another.

Last week, I visited a solar panel facility in Massachusetts. For the first time, two weeks ago, I had never been to the Marcellus Shale to see the drilling that is going on there.

We are trying very hard to be straight down the road and not pick winners or losers on energy sources. I don't believe that is the EPA's responsibility.

Senator Capito. Thank you very much.

Senator Barrasso. Thank you, Senator Capito.

Senator Markey.

Senator Markey. Thank you, Mr. Chairman.

Mr. Wheeler, since 2010, the new fuel economy emission standards have saved consumers more than \$63 billion at the pump, kept 540 million barrels of oil in the ground, reduced carbon pollution by 250 metric tons. Over the lifetime of the current fuel economy standards, consumers will save \$1 trillion on gasoline and will keep 12 billion barrels of oil in the

ground.

That is the simple formula for fuel economy, you save consumers money and you save the planet at the same time, and that is why big oil is attacking these standards. The oil industry is scared to death that the billions of barrels of reserves they are currently claiming on their balance sheets to the Securities and Exchange Commission will end up as so-called stranded assets. They are scared to death that \$1 trillion will stay stranded in the pockets of consumers, and that is why the Trump Administration is moving to roll back these standards.

There has been a lot of news recently about a rift between President Trump and the Koch brothers. President Trump and the Koch brothers might disagree these days on politics, but they are always in agreement on petroleum, and that is why this rollback of fuel economy standards is really all about petroleum. It is oil above all.

According to a leaked draft of the proposed rule, the Trump rollback of fuel economy standards, the number one option that the Trump Administration is considering is freezing the standards at 2020 level, that we don't increase the fuel economy standards after 2020.

Mr. Wheeler, yes or no, do you agree that freezing the fuel economy emissions standards at 2020 levels would lead to more oil being consumed than if we kept the standards at their

current trajectory?

Mr. Wheeler. Senator, I am not sure on that, and I want to be on the record as saying that I have not talked to anybody in the oil industry or received any information from them.

Senator Markey. I didn't ask you that question. I asked you would more oil be consumed if we froze the standards at 2020. That is my question, yes or no.

Mr. Wheeler. I believe the analysis shows that more oil would be consumed.

Senator Markey. That is correct. Even the Trump Administration --

Mr. Wheeler. But it also would save 12,000 lives at \$500 billion.

Senator Markey. Even the Trump Administration's draft report acknowledges we will consume 500,000 more barrels of oil per day if we freeze these standards.

And, by the way, by 2030 we back out under existing standards, if they continued, 2.5 million barrels of oil per day being imported into the United States from Saudi Arabia, from other OPEC countries. That is the number, 2.5 million barrels of oil a day.

Yes or no, Mr. Wheeler, do you agree that freezing the standards at 2020 levels would mean consumers would pay more to fill up their gas tanks than under the current standards?

Mr. Wheeler. That, I do not know. I know that we have \$500 billion in savings to the American consumers under the proposal.

Senator Markey. Well, according to the Union of Concerned Scientists, freezing the standards would cost American drivers an additional \$20 billion alone in 2025 due to higher spending on gasoline. That is money that is transferred right out of the pockets of consumers into the big oil coffers.

Yes or no, do you agree that a freeze on increasing the fuel economy standards would lead to more climate pollution than if we maintained the current standards?

Mr. Wheeler. I believe our data shows it would be negligible between the Obama proposal and our proposal.

Senator Markey. Well, you are wrong. Freezing the standards would mean an additional 2.2 billion metric tons of global warming pollution by 2040, equal to 43 coal-fired power plants.

There is a famous line, Mr. Wheeler, in the movie "All the President's Men": follow the money. When you look at the \$1 trillion that big oil will never receive from American consumers and the 12 billion barrels of oil that they will never produce under the current standards, it becomes pretty clear why big oil would want to attack these standards; and all the auto industry has to do is sit back and drive the getaway car.

So, let me just ask you one final question, Mr. Wheeler. Administrator Pruitt committed to release the EPA scientific report on the carcinogen formaldehyde, but never did so. Will you commit to releasing this report?

Mr. Wheeler. Are you referring to the IRIS report on formaldehyde?

Senator Markey. Yes.

Mr. Wheeler. I have not been briefed specifically on the IRIS formaldehyde report, but I have sat down with our IRIS staff, and what I am trying to do is to provide more certainty to that process to make sure we know how the different assessments will be used in the regulatory programs. It is my understanding that we still have a number of steps to complete on the formaldehyde assessment.

Senator Markey. When will you release it?

Mr. Wheeler. The question that I have to our IRIS staff is what is the purpose of the assessment at this point and whether or not the data that they have used in the assessment is still current, because I know they started that before 2010.

Senator Markey. Will you commit to releasing that report?

Mr. Wheeler. I am sure we will release it, but I need to make sure that the science in the report is still accurate. What I have asked not just for that report, but for everything that we are doing on the IRIS program, to make sure that we know

the purpose of the assessment, because we have a lot of chemicals that we should and could be assessing under the IRIS program, and I want to make sure that they are being used in a regulatory process, because we have other chemicals that need to be assessed as well. So that is one of the questions that I have asked our program staff.

Senator Markey. Well, Pruitt committed to releasing it, and I hope that you put it at the top of your list. I expect you to and get it released so that the public can understand what those dangers are. Thank you.

Mr. Wheeler. And, Senator, on the different reports that you mentioned under the CAFE, we should be going out in the Federal Register in the next day or two with the CAFE proposal, and I would hope that all those organizations will submit those reports for the record.

Senator Barrasso. We are now into the second vote and about halfway through. I wanted to get to the additional.

Thank you so much for your comments.

Senator Fischer.

Senator Fischer. Thank you, Mr. Chairman.

And thank you, Administrator Wheeler, for being here today.

Mr. Wheeler. Thank you.

Senator Fischer. Many of my colleagues have already discussed this issue, but I would also like to visit with you

about small refinery exemptions to the RFS.

As you know, the law allows refineries that produce 75,000 barrels or less per day to seek an exemption from the RFS for the reason of disproportionate economic hardship. The EPA, in consultation with Department of Energy, must consider the findings from a 2011 DOE study and "other economic factors" when analyzing these requests.

So, this disproportionate economic hardship is the critical factor in determining whether a small refinery is awarded an exemption. How is that calculated? That is what is of great interest to small refineries, because it could decide whether they have to comply with the RFS or whether they get a free pass.

My constituents in Nebraska, and others for whom the RFS is a very important item, would be interested in how you interpret that process for purposes of making sure that the law is being upheld; and, for Congress, who wrote the law, understanding how you calculate disproportionate economic hardship is vital for purposes of making sure that you are carrying out that law as we intended. So, for these reasons, I would like to discuss how you are doing that analysis.

It is my understanding that the law does not define disproportionate economic hardship. It is also my understanding that EPA regulations do not define disproportionate economic

hardship. By its definition, disproportionate means you are comparing the impact on the petitioner to the impact on one or more others. Is that correct?

Mr. Wheeler. I believe that is correct, Senator.

If I could say, on the small refinery process, we work closely with Department of Energy. They do the initial analysis and then we work with them on providing additional analysis as well.

What I have committed to do and what we are going to do is provide more transparency on how we make these decisions. We are in the process of developing a dashboard so we can put all the information out publicly so people know when we are issuing a small refinery waiver and the circumstances around that. We have to make sure that we take into account any confidential business information of the company applying for the small business refinery exemption, but we want to try to be as transparent as we can and put all that information, including our process, out for the public to see.

Senator Fischer. Just to confirm, are you saying that the EPA compares the high cost of compliance relative to the entire refinery industry? So, all you basically have to prove, Mr. Administrator, is that you are a small refinery and produce less than 75,000 barrels a day, and that is your ticket in the door?

Mr. Wheeler. Senator, if I could respond back to you in

writing on that, because I want to be very careful because this issue is being looked at very carefully --

Senator Fischer. It is.

Mr. Wheeler. -- not only by us, by everybody else, and I want to make sure that I am giving you the correct information. If I could respond back to you in writing, I would appreciate that.

Senator Fischer. I would appreciate it. Thank you, sir.

What about the disproportionate economic hardship? The court, in 2017, said the EPA can't go so far as to require that a refinery be at risk of going out of business to exempt them from the RFS. But I believe it is equally unacceptable for the EPA to merely exempt a refinery because they fit the definition of a small refinery. And I would think you would agree that there is space between those two options. Would you?

Mr. Wheeler. I would agree there is space between those two options. I think just because a company is a small refinery does not mean it should be entitled to a small refinery exemption; there are other market and business concerns to go into that analysis.

Senator Fischer. When the Agency awarded those 48 small refinery waivers retroactively for 2016 and 2017, I think that it effectively established a de facto RIN cap. Do you agree with that?

Mr. Wheeler. A de facto RIN cap? We take that into account, we take into account the available RINs as we move forward in setting the RVO numbers for the next year, so I am not sure that I would say it was a de facto RIN cap, because we do look at the RIN numbers available before we set the next RVO, and try to factor that into our analysis.

Senator Fischer. Okay. If I could get you questions on this pretty complex issue, I would appreciate answers in a timely manner.

Mr. Wheeler. Absolutely, Senator.

Senator Fischer. Thank you, Administrator.

Mr. Wheeler. Thank you.

Senator Fischer. Thank you, Mr. Chair.

Senator Inhofe. [Presiding.] Having just voted, I assume that we have gone all the way through and that you have a request, Senator Carper, for one last question.

Senator Carper. Yes, I do, please.

Senator Duckworth has not asked her first round. She was here, but other people came in ahead of her, so she is going to try to get back. Hopefully she does, and, if she does, I will yield to her. But thanks, Mr. Chairman.

I want to follow up, if I could, Mr. Wheeler, on your previous answer on cross-State pollution. In your answer, you may recall you stated that most areas will be in attainment for

ozone in the early 2020s. So, with that having been said, here is my question. EPA has not modeled the effects of all of its planned clean air rollbacks on cross-State ozone pollution. Given that, can EPA be certain that Delaware, Maryland, New Jersey, and all these other States on the East Coast will be in attainment? How can EPA be certain that all of us are going to be in attainment in 2023, as EPA has claimed it would be, because you have not modeled the effects of all its planned Clean Air Act rollbacks on cross-State ozone pollution? It seems like we are getting ahead of the horse.

Mr. Wheeler. I can't predict with certainty on that, but what I am told by the career staff at the Agency in the Air Office is that our analysis shows that most areas of the Country will be able to reach attainment in the early 2020s. There are, of course, factors that could change between now and then, but on the current pathway that we are with the emissions that we forecast in the different States in the areas of the Country, we anticipate that most areas of the Country will be in attainment in the early 2020s.

Senator Carper. Maybe most areas, but a bunch of the areas that are not in attainment now, again, it just seems counterintuitive that EPA has not modeled the effects of all of its planned clean air rollbacks on cross-State pollution; yet, EPA feels like Delaware and other States are going to be in

attainment in 2023. It just doesn't add up. We will be following up with questions for the record, and maybe we can get some clarification on this. Thank you.

Mr. Wheeler. Thank you, Senator.

Senator Inhofe. Thank you, Senator Carper.

Senator Whitehouse, did you want to?

Senator Whitehouse. Thank you, I would like to, Mr. Chairman.

I wanted to follow up with Administrator Wheeler on something that he said in response to a question to another Senator, and it had to do, Mr. Wheeler, with not picking winners and losers in the energy industry, and that you would treat all energy sources equally.

If you are presented with a polluting energy source on the one hand and a non-polluting energy source on the other, how do you treat them equally, when it is EPA's duty to protect against pollution?

Mr. Wheeler. Senator, if one energy source has emissions of a criteria pollutant or any of the other pollutants that we regulate, we would, of course, regulate the pollutants for that industry. I am not suggesting that every single environmental law would apply to every single industry and we would treat it across the board. The coal combustion residual would only apply to coal-fired power plants; we wouldn't apply something like

that, of course, to solar or wind. My point is that we shouldn't be enacting regulations that favor one energy source over the other. We will implement all of the laws passed by Congress.

Senator Whitehouse. How would a regulation that protected against pollution not advantage a non-polluting energy source over a polluting energy source?

Mr. Wheeler. I believe some of the criticisms of the Obama Clean Power Plan, for example, is that it gave preferential treatment to some energy sources on the way that they calculated emissions. My point in saying that is that it is not the EPA's role. We are trying to be very even-handed and not pick winners and losers between the different energy sources and equally promote all of them at the same time.

Senator Whitehouse. I get that, but I just want to make sure that your view of what is preferential among energy sources isn't driven by whether or not they are polluters. Because if you are not going to prefer, in the sense of putting regulatory protections up against polluting versus non-polluting sources, we have a problem on our hands.

Mr. Wheeler. Senator, we are regulating sources that pollute, that release, that have emissions.

Senator Whitehouse. Great. So, if a polluting source has to bear a regulatory burden to protect against its pollution,

that is not what you mean by picking winners and losers.

Mr. Wheeler. That is not what I mean, no.

Senator Whitehouse. Thank you.

Senator Inhofe. Thank you, Senator Whitehouse.

We were going to come to an abrupt stop after this vote, but we are going to make an exception because Senator Duckworth wants to be heard, but she will be the last one to ask questions, and then we will close the meeting.

Senator Duckworth.

Senator Duckworth. Thank you, Mr. Chairman. You are very generous and quite a gentleman.

Senator Inhofe. Well, thank you. That is because you cosponsored my aviation bill.

[Laughter.]

Senator Duckworth. Exactly. Exactly. And I just talked to the airline pilots this morning and they are big fans of yours.

Mr. Wheeler, although we don't see eye to eye on most environmental issues, I believe that you are making a good faith effort to reverse the course at EPA and operate in a transparent manner. For example, I support your recent memo calling on your colleagues to be open and accessible, and committing to leading by example on open government efforts, so I thank you for that. I think this is a critical first step towards restoring the

public's trust in the EPA.

Acting Administrator Wheeler, as you know, Congress provided you with an incredibly broad authority under the Safe Drinking Water Act to hire up to 30 individuals without regard to civil service laws. For years, under Republican and Democratic administrations, Congress has trusted EPA administrators to responsibly exercise this special hiring authority; however, your predecessor violated this trust in using the authority to give personal aides lavish pay raises after the White House denied such requests.

To make sure you and future administrators use this special hiring authority in an ethical and transparent manner, Ranking Member Carper and I introduced the EPA Special Hiring Authority Transparency Act. Our bill simply requires that EPA report to Congress whenever it makes an appointment.

To restore confidence in the use of this authority, will you commit to supporting our legislation that will improve transparency and make sure this Committee is notified in regard to who is being appointed under the special hiring authority and why?

Mr. Wheeler. Senator, I would be happy to work with you on your legislation, and I would be happy to provide a list of the people that we have hired under that authority as well.

Senator Duckworth. Thank you.

One area I believe we can work together on, in addition, is reducing lead exposure. Lead is a dangerous neurotoxin for vulnerable populations like young children, pregnant mothers, and the elderly. Exposure to lead can be life-threatening.

Under your predecessor, an interagency task force on lead was convened; however, Congress has not been briefed on the work of this agency. It is unclear whether the Administration fully understands the urgency of this problem and whether they are genuinely compelled to address this issue.

Will you support reporting to Congress on the finding of this task force?

Mr. Wheeler. Yes, Senator, I will.

Senator Duckworth. Thank you.

On a similar note, will you commit to releasing all the records on the Superfund Task Force?

Mr. Wheeler. I thought we had already done that, but I will certainly look into that and have to get back to you on that.

Senator Duckworth. Thank you. I appreciate that.

Mr. Wheeler. That predated my time at the Agency.

Senator Duckworth. Okay, thank you.

And, finally, before I close, I want to address a critical program, the bipartisan Renewable Fuel Standards program, the RFS, that has already been discussed at length in this hearing.

Mr. Wheeler. A few times.

Senator Duckworth. A few times, yes. Well, we are all out there to support our farmers. I am alarmed by this Administration's efforts to undermine this program. Even Brett Kavanaugh, the nominee to serve on the Supreme Court, has sided with the oil industry in several RFS-related cases. Mr. Kavanaugh went as far as to argue that the oil and food industries were palpably and negatively affected by EPA's allegedly illegal E15 waiver and had standing to directly challenge the E15 waiver in court.

As you discussed with my colleagues, Senator Ernst and Senator Rounds and Senator Fischer, EPA has been undermining the RFS on abusing the small refinery exemptions. We need to understand how EPA is making decisions on granting these exemptions. Will you promise to report to Congress on how these decisions are being made, provide public notice on these decisions, and bring greater transparency to this work?

Mr. Wheeler. Absolutely. In fact, we are developing a dashboard so that the whole public can see what we are doing on the issue and when and how we are granting the waivers. We have to be careful that there are confidential business information claims by some of the refiners when they apply for it, so we have to guard that, but we want to make sure that we release as much information as we can to be very transparent and let

everybody know what we are doing and why we are doing it.

Senator Duckworth. Thank you. I need to stress again that ethanol is an American-grown, American-produced product, as opposed to foreign oil that we have sent troops for a decade to fight over. I would rather be supporting American farmers growing American produce to put in American gas tanks.

I understand that the EPA may be constrained by law, as you have testified, and I look forward to working with my colleagues, Senators Rounds and Ernst, on a legislative fix, and I very much thank you for being here and I certainly enjoyed our discussion, and I very much appreciate the return to transparency that you are pledging to bring to the EPA. Thank you.

Mr. Wheeler. Thank you, Senator. I appreciate that.

Senator Inhofe. Thank you, Senator Duckworth. I appreciate you being here very much.

I have two unanimous consent requests to get into the record. There will be no other questioners.

First of all, I would note that, last week, 21 Senators sent a letter to EPA opposing the reallocation of small refinery obligations to other refineries under the RFS, and I ask unanimous consent that this letter be made a part of the record.

Without objection, so ordered.

[The referenced information follows:]

Senator Inhofe. Secondly, I have a chart I think is important. I understand while I was down voting that something came up, some complaints were there in terms of responses, and I want to just compliment you and the EPA for the way you have done that.

The chart is just one example of the huge increase in correspondents EPA has seen over the last Administration. For the Administrator's office, it is over 400 percent increase in fiscal year 2017 over the previous two fiscal years. Again, it is just for the Administrator's office; it does not include other programs like air, water, land, general counsel, research and development, chemicals, and all that.

In total, the EPA has so far responded to 84 percent of the inquiries elected offices have sent in. That is Federal, State, and local. EPA has responded to 81 percent of the Minority members' oversight letters, 65.5 percent of all their inquiries, and it is not doing so. 23,430 pages of documents have been delivered to the Minority members. I don't know whether Minority has had time to read all of these; I suggest probably they haven't.

It doesn't sound like an agency that is ignoring anyone.

I want to commend you and get this on the record so that people are aware of the great job that we are doing with the EPA. All right?

Mr. Wheeler. Thank you, Senator.

Senator Inhofe. You are very welcome.

[The referenced information follows:]

Senator Inhofe. If there are no more questions for today, members may also submit follow-up questions for the record. The hearing record will be open for two weeks.

I want to thank the witnesses for their time and testimony today, and we are adjourned.

[Whereupon, at 12:11 p.m. the committee was adjourned.]