

OFR Responses

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MICHAEL DOURSON

Ranking Member Carper:

1. For decades, both Republican and Democratic administrations alike have had written policies limiting White House contacts with agencies that have investigatory and enforcement responsibilities. These policies have recognized that even a simple phone call from the White House to an agency inquiring about or flagging a specific matter can upset the evenhanded application of the law. I recently learned that Devon Energy, a strong political supporter of Administrator Pruitt's, informed the EPA just 5 days after Mr. Pruitt was sworn in as Administrator that it was no longer willing to install air pollution technology or pay a high penalty to EPA for its illegal air emissions of cancer-causing benzene and other chemicals. We also know that Trump family casinos, hotels and golf courses have been the subject of EPA enforcement actions for violations of the Clean Air Act and Clean Water Act.

- a. Do you agree that it is essential that in making decisions, EPA's OCSPP must be shielded from political influence and spared even the appearance of being subject to political influence or considerations?

If confirmed, I commit to work with Administrator Pruitt and his team to ensure strict compliance with all legal and ethical obligations.

- b. Will you commit to restricting communications between OCSPP and the White House staff regarding specific matters under the authority of OCSPP?

If confirmed, I commit to work with Administrator Pruitt and his team to ensure strict compliance with all legal and ethical obligations.

- c. Will you commit to ensuring the staff of OCSPP is familiar with those restrictions?

If confirmed, I commit to work with Administrator Pruitt and his team to ensure strict compliance with all legal and ethical obligations.

- d. Will you commit to advising this Committee within one week if any inappropriate communications from White House staff to OCSPP staff, including you, occur?

If confirmed, I commit to work with Administrator Pruitt and his team to ensure strict compliance with all legal and ethical obligations.

2. Recently, EPA conducted “anti-leaking” training for its employees¹. According to EPA sources, the briefing stated that “Prohibitions we will discuss do not refer to “Whistleblowing”. Agency employees have the right to make lawful disclosures to anyone, including, for example, management officials, the Inspector General, and/or the Office of Special Counsel. Employees may make disclosures to the EPA Office of the Inspector General through the EPA OIG Hotline at 888-546-8740.” This presentation evidently failed to note the rights of federal employees have to make disclosures to Congress.

5 U.S.C. § 7211, provides that: The right of employees, individually or collectively, to petition Congress or a Member of Congress or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied. Pursuant to 5 U.S.C. § 2302(b)(8), it is a violation of federal law to retaliate against whistleblowers. That law states: Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority ... take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of. ... (A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences- (i) a violation of any law, rule, or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation... " In addition, pursuant to 18 U.S.C. § 1505, it is against federal law to interfere with a Congressional inquiry: Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress.

- a. If you are confirmed, will you commit to protect the rights of all career employees in OCSPP to make lawful disclosures, including their right to speak with Congress?

If confirmed, I commit to protecting the rights of OCSPP employees and will follow the law.

- b. Will you commit to communicate employees’ whistleblower rights via email to all OCSPP employees within a week of being sworn in?

If confirmed, I commit to protecting the rights of OCSPP employees and will follow the law.

3. Recently, EPA decided not to revoke all the remaining tolerances for chlorpyrifos as had been proposed by the Obama Administration.

¹ <http://wapo.st/2xF0423>

- a. Do you believe that EPA should ever use epidemiological studies as a basis for the agency to conclude that it cannot make a determination that exposure to a substance can occur with a “reasonable certainty of no harm” under the Federal Food, Drug and Cosmetic Act (FFDCA)? If so, when? If not, please fully describe the reasons why not.

Epidemiology studies are an important part of any risk assessment and should be evaluated routinely as part of any risk management decision. I believe there will be situations where the use of epidemiological data is appropriate. This will depend on the quality of the epidemiological data and the specifics of the determination it informs.

- b. One of the complicating factors surrounding the proposed Obama Administration’s ban on the remaining uses of chlorpyrifos was the assertion made by some that there is uncertainty associated with the level of chlorpyrifos that causes an adverse health effect and debate about which biological endpoint should be used to define what an “adverse” health effect should be. If EPA cannot make a “reasonable certainty of no harm” finding under the FFDCA for a substance, how would you suggest EPA resolve such uncertainties in order to comply with both FFDCA and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)?

Scientific approaches exist to help quantify and understand the impacts of uncertainty on a decision. If confirmed, I would use these approaches and would additionally seek further data and information to inform decision making.

4. EPA currently uses a 10-fold safety factor to account for the added risks mutagenic carcinogenic chemicals pose to vulnerable sub-populations. Will you commit to continue this approach? If not, please provide a specific explanation for when, why and how you would deviate from this approach.

I am familiar with EPA’s Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens (March, 2005). If confirmed, I commit to using the best available science in considering any regulatory actions that come to me for decision making.

5. EPA often uses a safety adjustment factor when it writes rules that protect people from exposure to chemicals. That factor accounts for the interspecies variability between the effect of the chemical on an animal that is measured in laboratory tests and the predicted effect of the chemical on people.
 - a. If you are confirmed, will you commit to continue to support this approach?

Yes, when appropriate I will continue to use this approach.

- b. If not, how would you propose to account for interspecies differences between a chemical's measured effect on an animal and its predicted effect on a human?

When sufficient data and understanding exists, physiologically based pharmacokinetic (PBPK) models can be used to inform the differences between animals and humans.

6. One argument that is often made to justify less protective chemical safety standards is to set an adverse effect end-point that is 'more adverse' than other end-points. For example, it would take higher exposure levels to a chemical for the chemical to actually cause cancer than it would for a biochemical marker that is a known precursor to cancer to be observed. Using cancer as the end-point in this scenario would allow for a less stringent safety standard for that chemical to be set.
 - a. Generally speaking, if there is an end-point that is a precursor or otherwise predictive of a serious illness or risk of acute toxicity, is there ever a scenario in which EPA should regulate to protect against the precursor end-point rather than the more serious one? If so, please describe such scenarios. If not, please fully explain why not.

There are scenarios where this is appropriate. It's use will depend on our understanding of the chemical's mechanism of action

- b. Additionally, if it is your view that safety standards should not seek to prevent effects that are known to be predictive of more serious ones, please explain your views on whether the FDA should continue to approve cholesterol-lowering medications or whether it should simply focus its efforts on ways to better treat heart attacks. If you believe that preventive medicine should continue to be developed and approved, why are your views different for chemical safety standards?

The appropriate use of safety factors is determined by available data and our understanding of a chemical's mode of action. I do not have an opinion on FDA actions.

7. On February 28, 2017, President Trump directed EPA and the Army Corps to review and possibly rescind or repeal the Clean Water Rule in Executive Order 13776. EPA recently ended the public comment process on the first step of a two-step process to repeal the rule and replace it with a rule that will protect far fewer sources of drinking water. Individuals with first-hand knowledge of the process EPA utilized to prepare its have informed my staff that:
 - a) When EPA first submitted the proposed repeal rule to OMB, the draft stated that the agency would undertake a new cost-benefit analysis as part of the second step of its process.

- b) OMB interpreted EPA's first proposal to mean that the rule's repeal would not avoid any costs to industry or have any economic impact at all. EPA's political staff then directed the career staff to undertake a new economic analysis. In response to this direction from OMB, EPA career staff reportedly changed the table included in the 2015 rule to i) reflect 2016 dollars instead of 2014 dollars, ii) convert "annual costs incurred" under the Clean Water Rule to "annual costs avoided" due to its repeal and iii) convert "annual benefits gained" under the Clean Water Rule to "annual benefits forgone" due to its repeal. This new table was sent to OMB on June 8, 2017.
- c) OMB correctly concluded from EPA's June 8 submittal that repealing the rule would cost more in lost benefits than it would save industry in compliance costs. On June 13, 2017, presumably to avoid such an admission on the part of EPA, EPA career staff were verbally directed by political staff to solve this 'problem' by simply deleting the majority of the benefits of the rule from the table and re-submitting it to OMB, which they did².

The direction that was reportedly provided to the EPA career staff to make the various revisions to what was submitted to OMB was verbal, not written. If you are confirmed, do you commit to ensure that career staff in OCSPP will receive appropriately documented, rather than verbal, direction from political officials before they take action? If not, why not?

I support the appropriate use of both written and oral guidance and would endeavor to use each in appropriate circumstances.

8. Thank you for your response to my pre-hearing questions. I have some follow-up questions. In the spreadsheet you provided that listed sponsors, project description and project type information, there are several entities that seem incorrect. For each of these, please explain the apparent discrepancy, and if any of these entries are errors, please submit a corrected version of the spreadsheet in excel format:

- i. Several entries that list the American Chemistry Council as its sponsor as "collaborative" rather than "private sector;"

This designation is correct. The overall project was a collaboration of several organizations.

- ii. Listing an entry in which the California Chamber of Commerce is the sponsor as "non-profit" rather than "private sector;"

The non-profit designation is correct (see: <https://www.calchamber.com/aboutus/Pages/default.aspx>).

²

https://www.epa.gov/sites/production/files/2017-06/documents/economic_analysis_proposed_step1_rule.pdf

- iii. Listing an entry in which the CEFIC is the sponsor as a “collaboration” rather than “private sector”;

This designation is correct. The overall project was a collaboration of several organizations.

- iv. Listing an entry in which Concurrent Technologies Corporation is the sponsor as “government” rather than “private sector”;

This designation is correct. TERA was a subcontractor to CTC who was working for the government.

- v. Listing an entry in which EPRI is the sponsor as a “collaboration” rather than “private sector”;

This designation is correct. The overall project was a collaboration of several organizations.

- vi. Listing an entry in which ICL-IP is the sponsor as a “collaboration” rather than “private sector”;

This designation is correct. The overall project was a collaboration of several organizations.

- vii. Listing an entry in which ILSI-NA is the sponsor as “non-profit” rather than “private sector”;

This designation is correct. ILSI is a 501(c)(3) nonprofit organization.

- viii. Listing an entry in which Lockheed Martin Corporation is the sponsor as “government” rather than “private sector”;

This designation is correct. TERA was a subcontractor to Lockheed Martin Corporation who was working for the government.

- ix. Listing an entry in which McKenna, Long and Aldridge is the sponsor as “government” rather than “private sector”;

Yes, this is a mistake. A corrected spreadsheet is attached. Thank you.

- x. Listing an entry in which Silicones Environment Safety & Health Council is the sponsor as “non-profit” rather than “private sector”;

Yes, this is a mistake. A corrected spreadsheet is attached. Thank you.

- xi. Listing an entry in which Summit Technology is the sponsor as “government” rather than “private sector”;

This designation is correct. TERA was working with Summit Toxicology and the National Library of Medicine on this task.

- xii. Listing an entry in which ToxServices is the sponsor as “government” rather than “private sector”;

This designation is correct. TERA was a subcontractor to ToxServices who was working for the government.

- xiii. Listing an entry in which the Vinyl Acetate Council is the sponsor as a “collaboration” rather than “private sector”; and

This designation is correct. The overall project was a collaboration of several organizations.

- xiv. Listing an entry in which Waste Management is the sponsor as a “collaboration” rather than “private sector”.

This designation is correct. The overall project was a collaboration of several organizations.

- b. Please identify the “multiple sponsors” listed for each entry on this spreadsheet and indicate the percentage of funding received from each sponsor.

Descriptions of all collaborative projects are a matter of public record, and can be found at websites associated with the Alliance for Risk Assessment (ARA) or Toxicology Excellence for Risk Assessment (TERA). I would be happy to direct your staff to the appropriate location if they have specific questions. Funding amounts are not specified, but sponsors who offer remuneration in excess of 2% of TERA income are designated at <http://www.tera.org/about/FundingSources.html>.

- c. Please describe the criteria you used to designate an entity as a “non-profit,” how you defined “sponsor” and how you defined “project “type”.

We generally use 501(c)(3) designations as nonprofits. “Sponsors” refer to any group that supports the mission of Toxicology Excellence for Risk Assessment (TERA) whether or not they also obtain a report or opinion. “Project type” generally refers to whether the remuneration is from a government or other nonprofit, or from a private entity.

- d. In the “Summary of billed hours” table, there is no designation for government-sponsored work for TERA for 1995-2015. Could you provide a new table that includes this information?

This is possible, but would take more time than permitted in answering these questions, since individual records for each year would have to be reviewed.

- e. In the spreadsheet that includes this chart, you seem to have calculated the percentage of work done by sector by counting the number of projects you classified as falling under each sector and dividing by the total number of projects listed.

This is not correct. Rather, the percentage of work in the “Summary of billed hours” spreadsheet entitled “Question 2-TERA Yearly Funding 1995-2015” is based on the amount of time devoted to either nonprofit or profit areas by year. Time spent in the “collaborative” sector of the spreadsheet entitled “Question 3-Project Database January 2010 to June 2015” is evenly divided into profit and nonprofit times of the “Question 2” spreadsheet.

This does not reflect relative funding for projects in each sector, however. Please provide a detailed breakdown of the percentage of total funding received for projects included in each sector, using the corrected version of the table requested in c.

Summaries of funding amounts per sector were not developed.

- f. In the chart, the work on the Kids+Chemical Safety website is described as: “Develop a kids risk webpage, in part.” The project is listed as a collaborative twice, once with the American Chemistry Council (ACC) as the sponsor and once with the Combined Federal Campaign (CFC) as the sponsor. Did the CFC hire or pay TERA to develop the website?

No.

If not, what was their specific sponsorship role?

Funding by CFC was through contributions from CFC to TERA, and TERA’s decision to use this funding for the kids website.

If so, how long after ACC hired TERA to develop the website did CFC contribute?

Continuously.

What percentage of the costs of developing the website were paid for by the CFC?

Various funding amounts are not given per sponsoring groups.

Did the CFC itself fund the website, or was it donations through a CFC listing?

Donations were through a CFC listing.

If so, were these donations from the federal government?

Various funding amounts are not given per sponsoring groups. However, the ACC contribution was the major part of the initial sponsorship.

9. The following questions refer to the chart I used during the hearing (attached). For each chemical listed on this chart, please provide a complete description of:
- a. The year(s) in which you, TERA or other TERA employees were funded to work on the chemical.

The chart below has a number of errors. Please see attachment 1.

- b. The name of the entity or entities that provided such funding, and the funding amount. If the activity was a collaboration, please list all collaborators as well as the amount of funding each collaborator contributed to the effort.

Please see attachment 1, but note that specific funding levels are not shown because summaries of this information were not developed. However, if funding is over 2% in any one year for any sponsor past 2010, this can be found through links to specific years at <http://www.tera.org/about/FundingSources.html>.

- c. The type of activity (risk assessment, peer review, research paper, presentation, litigation support, etc) that was funded and the deliverables provided to the sponsor.

Please see attachment 1.

Science for Sale		
Chemical & Known Harms	EPA/Agency Safe Level	Dourson "Safe" Level
1,4-Dioxane <i>(Likely carcinogen)</i>	0.35 ppb	1000x higher
1-Bromopropane <i>(Neurotoxin)</i>	0.3 – 10 ppm	2 – 67x higher
PFOA <i>(Thyroid disruption)</i>	.07 ppb	2,143x higher
TCE <i>(Carcinogen)</i>	2 µg/m ³	1.5 – 15x higher
Perchlorate <i>(Thyroid disruption)</i>	0.7 µg/kg/day	8.6x higher
Chlorpyrifos <i>(Neurotoxin)</i>	.0017 – 0.3 µg/kg/day	33–5,882x higher
Alachlor degradates <i>(Liver, kidney damage)</i>	20 – 70 ppb	80 – 280x higher
Acetochlor degradates <i>(Thyroid, reproductive disruption)</i>	100 – 300 ppb	4.7 –14x higher
Diacetyl <i>(Severe lung damage)</i>	5 – 10 ppb	20 – 40x higher
Acrylamide <i>(Neurotoxin, likely carcinogen)</i>	.002 mg/kg/day	10 – 25x higher

10. Do you believe that there is a safe level of exposure to perchlorate for i) a pregnant woman, and ii) a toddler, with serious iodine deficiencies, and if so, what is it? Do you believe that there is a safe level of exposure to perchlorate for i) a pregnant woman, and ii) a toddler, who gets insufficient iodine according to World Health Organization guidelines, and if so, what is it?

If confirmed, I will evaluate chemicals under the statutory authorities granted by Congress to safeguard the public.

11. On September 21, 2017, the Consumer Product Safety Commission (CPSC) approved a petition³ that called for CPSC to write regulations requiring the removal of organohalogen flame retardants from four types of consumer products.

- a. An argument against the petition is that EPA is currently reviewing flame retardants under TSCA. Do you agree that EPA is currently undertaking a risk evaluation on only the Cyclic Aliphatic Bromide Cluster flame retardants (i.e. only one class) and that EPA is required by law to complete this risk evaluation and finishing a regulation (if needed) by November 29, 2021?

I am aware that EPA is evaluating some flame retardants. I am unclear of the timeline.

- b. According to EPA's website⁴, "the hexabromocyclodecanes (HBCD cluster) in the cyclic aliphatic bromide cluster consists of the following chemicals: Hexabromocyclododecane; 1,2,5,6,9,10-Hexabromocyclododecane; and 1,2,5,6-Tetrabromocyclooctane. Two of these chemicals are used as flame retardants, no uses for 1,2,5,6-tetrabromocyclooctane have been identified. The primary use of

the two chemicals is in expanded polystyrene foam (EPS) and extruded polystyrene foam (XPS) in the building and construction industry for thermal insulation boards and laminates for sheathing products. They are also used in plastics (additive) and textiles (back-coating). In the United States, the HBCD cluster was historically used as a flame retardant in the back coating of textiles; however, research and information gathering indicates that the HBCD cluster is no longer used in consumer textile applications outside of the automotive industry.” Do you agree that this type of flame retardant is generally not used in consumer products such as children’s products, furniture, mattresses and the casings surrounding electronics? If not, why not?

Beyond the details on the EPA webpage, I am not familiar with the different types of products that different flame retardants are used with. If confirmed, I can look into this.

12. Do you agree to provide complete, accurate and timely responses to requests for information submitted to you by *any* Member of the Environment and Public Works Committee? If not, why not?

Yes

13. Before the end of the last Administration, EPA proposed to ban some uses of three dangerous chemicals using its new Toxic Substances Control Act authority. TCE is a probable carcinogen that is found in drinking water all across the country. Accidental exposures to MC, which is used in paint and furniture strippers, has killed at least 56 people since 1980. And a second chemical used in paint strippers, NMP, is dangerous for pregnant women to be exposed to. Some have suggested that these bans should not be finalized, saying instead that EPA should study the uses of these chemicals for three more years before proposing a rule. Do you disagree that more exposures, more illnesses and maybe even more deaths would probably occur as a result of a three year delay in these proposed bans? If so, on what basis? If EPA has already determined that some uses of these chemicals are dangerous, how could one justify the extra time, taxpayer dollars and risk to human health that would occur by studying these same uses for three additional years instead of acting to finalize the bans now?

I am not sufficiently familiar with EPA’s proposed bans to respond to these questions. If confirmed, I will seek a briefing on the status of these proposed bans and I commit to evaluating all the scientific evidence to inform EPA’s decision.

14. Recently, EPA announced that Administrator Pruitt would be publishing brief summaries of his calendars biweekly, after dozens of Freedom of Information Act requests for this information as well as a March request by me and my colleagues that he do so. During the Obama Administration, the Administrator, regional Administrators and all those serving in confirmed roles published their calendars daily⁵. If you are confirmed, will you commit to

publishing your calendars daily? If not, why not?

If confirmed, I will make my calendar available on a timely basis.

15. Section 26 of the newly enacted TSCA states that:

“(4) CHEMICAL SUBSTANCES WITH COMPLETED RISK ASSESSMENTS.—
With respect to a chemical substance listed in the 2014 update to the TSCA Work Plan for Chemical Assessments for which the Administrator has published a completed risk assessment prior to the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator may publish proposed and final rules under section 6(a) that are consistent with the scope of the completed risk assessment for the chemical substance and consistent with other applicable requirements of section 6.”

Page 1 of Attachment 1 is an email sent by EPA on March 17, 2016, the substance of which was shared with the bipartisan and bicameral negotiators of the Toxic Substances Control Act. It states that EPA “just discovered a technical issue that will have significant policy implications for EPA’s ongoing work under Section 6. As currently drafted, both Senate and House bills could frustrate EPA’s ability to timely manage risks that have been (or may be) identified in our current Work Plan risk assessments.” The email goes on to describe several risk assessments on chemical substances (TCE, NMP, MC and 1-BP) that had been completed or were near completion by EPA, and stated that “EPA is *not* looking at all the conditions of use for these chemicals. This approach, which might be characterized as a *partial* risk evaluation or *partial* safety determination, we see as simply not contemplated under the Senate and House bills. The section 6 structure in both bills would require EPA to assess a chemical in its entirety, based on all conditions of use – not just a subset of those uses.” EPA then went on to state that if it were to move forward with rulemakings to restrict or ban some or all of these substances (which it has subsequently proposed to do), there would be some risk that the rules would be found to be inconsistent with the new statutory requirement to assess all conditions of use. EPA said that it would “welcome an opportunity to work with you on a drafting solution to this issue.”

- a. Do you agree with EPA’s March 17, 2016 view that if it had moved forward with these partial risk evaluations and rulemakings absent explicit statutory authority to do so even though the risk evaluations had not considered all conditions of use, that EPA could have been sued for not complying with the law’s requirements? If not, please provide specific reasons why not.

If confirmed I will commit to thorough review of the final statute and would be happy to meet with the committee to further discuss any outstanding concerns.

- b. Pages 2 and 3 of Attachment 1 consist of April 2, 2016 Technical Assistance from EPA that was provided to the Senate on a drafting solution to address the problem identified by EPA on March 17, 2016. Do you agree that this language, which is also drafted as an amendment to Section 26, bears a close resemblance to the language that was enacted into law, and, like the enacted text, provides EPA with statutory authority to complete rulemakings on the chemical substances on which it completed risk assessments prior to the enactment of the new law even though the risk assessments were not undertaken for

all conditions of use? If not, please provide specific reasons why not.

If confirmed I will commit to thorough review of the final statute and would be happy to meet with the committee to further discuss any outstanding concerns.

16. The newly enacted TSCA, for new chemicals, states that:

“(e) REGULATION PENDING DEVELOPMENT OF INFORMATION.—(1)(A)

If the Administrator determines that—

(i) the information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of a chemical substance with respect to which notice is required by subsection (a); or

(ii)(I) in the absence of sufficient information to permit the Administrator to make such an evaluation, the manufacture, processing, distribution in commerce, use, or disposal of such substance, or any combination of such activities, may present an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use; or (II) such substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance,

the Administrator shall issue an order, to take effect on the expiration of the applicable review period, to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of such substance or to prohibit or limit any combination of such activities to the extent necessary to protect against an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, and the submitter of the notice may commence manufacture of the chemical substance, or manufacture or processing of the chemical substance for a significant new use, including while any required information is being developed, only in compliance with the order.”

Attachment 2 consists of a portion of EPA’s Technical Assistance on an April 7, 2016 draft of Section 5 of TSCA that EPA provided to the Senate. Comment A7 provides EPA’s views on section 5(e). This comment noted a change from previous drafts, observing that the draft allowed manufacture of a new chemical to proceed even if EPA did not have enough information to determine whether it posed an unreasonable risk. This is because the draft as written allowed for manufacture to proceed if EPA *either* took steps to obtain sufficient information about the chemical substance (but before it received and evaluated that information) OR if it imposed a risk management order. EPA also suggested some edits to this draft to restore the “functionality of the prior draft,” which ensured that manufacture could not proceed unless/until the information about the chemical substance was sufficient and EPA made the necessary risk determination, or in compliance with an EPA-issued order to protect against unreasonable risk under the conditions of use while the information was being developed. Do you agree that the statute requires EPA to issue an order to protect against an unreasonable risk a new chemical substance may pose under the conditions of use, either while information EPA needs to assess the chemical substance is developed, or if EPA determines that the substance may present an unreasonable risk under the conditions of use, or if such substance is or will be produced in substantial

quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance? If not, please provide specific reasons why not, using statutory text to explain your reasoning.

If confirmed I will commit to thorough review of the final statute and would be happy to meet with the committee to further discuss any outstanding concerns.

17. Section 5(f)(4) of TSCA states that:

“(4) TREATMENT OF NONCONFORMING USES.—Not later than 90 days after taking an action under paragraph (2) or (3) or issuing an order under subsection (e) relating to a chemical substance with respect to which the Administrator has made a determination under subsection (a)(3)(A) or (B), the Administrator shall consider whether to promulgate a rule pursuant to subsection (a)(2) that identifies as a significant new use any manufacturing, processing, use, distribution in commerce, or disposal of the chemical substance that does not conform to the restrictions imposed by the action or order, and, as applicable, initiate such a rulemaking or publish a statement describing the reasons of the Administrator for not initiating such a rulemaking.”

Attachment 3 is an April 9, 2016 email from EPA providing responses to questions on the April 7 draft included in Attachment 2. The email asks whether the removal of provisions 5(e)(4) and 5(f)(1)(C) in that draft would also remove EPA’s requirement to consider whether to issue a Significant New Use Rule (SNUR) when it issued orders to a submitter of a pre-manufacturing notice (PMN) (and explain its decision if it chose not to do so). EPA responded in the affirmative. Do you agree that the enacted law retained the April 7 draft’s requirement to consider whether to issue a Significant New Use Rule (SNUR) when EPA has issued an order to a submitter of a pre-manufacturing notice (PMN) (and explain its decision if it chooses not to do so)? If not, please provide specific reasons why not, using statutory text to explain your reasoning.

If confirmed I will commit to thorough review of the final statute and would be happy to meet with the committee to further discuss any outstanding concerns.

18. The newly enacted TSCA requires EPA, for existing chemicals that are designated a high-priority chemical substance or otherwise designated for a risk evaluation, to:

“conduct risk evaluations pursuant to this paragraph to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use.”

In the statute, ‘conditions of use’ is defined as:

“the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.”

Attachment 4 is a December 12, 2016 (post-enactment) email conveying Technical Assistance from EPA that responded to several questions posed about how EPA was required to do risk evaluations for a chemical substance under the conditions of use. Do you agree with EPA’s responses to these questions as well as the narrative that precedes the specific responses to questions? If not, please provide specific reasons why not, indicating in your response how your views are consistent with the statutory text excerpted above (or, as applicable, how EPA’s responses are inconsistent with the statutory text excerpted above).

If confirmed I will commit to thorough review of the final statute and would be happy to meet with the committee to further discuss any outstanding concerns.

19. Attachment 5 is a document that includes EPA’s technical assistance and observations that compared an April 12 2016 Senate draft of section 5 to an April 18, 2016 House draft.

- a. On pages 2 and 15, EPA provides comments related to the 90-day period for review of a PMN. Do you agree that the enacted law includes text that reflects EPA’s input in these comments? If not, please provide specific reasons why not, using statutory text to explain your reasoning.

If confirmed I will commit to thorough review of the final statute and would be happy to meet with the committee to further discuss any outstanding concerns.

- b. On Page 14, EPA notes the deletion of the requirement not to consider costs or other non-risk factors when considering section 5(h) exemption requests.

Do you agree that the enacted law retained this deletion in this subsection, but included the requirement in sections 5(a), 5(e) and 5(f)? If not, please provide specific reasons why not, using statutory text to explain your reasoning.

If confirmed I will commit to thorough review of the final statute and would be happy to meet with the committee to further discuss any outstanding concerns.

20. Attachment 6 consists of EPA's comments to a draft of Senate section 5 dated around April 12, 2016.

- a. EPA's comment A22 notes the absence of the requirement not to consider costs or other non-risk factors when considering section 5(h) exemption requests. Do you agree that the enacted law does not include the requirement in this subsection, but does include the requirement in subsections 5(a), 5(e) and 5(f)? If not, please provide specific reasons why not, using statutory text to explain your reasoning.

If confirmed I will commit to thorough review of the final statute and would be happy to meet with the committee to further discuss any outstanding concerns.

- b. Do you agree that while this same EPA comment identifies one inconsistency between the above-described text that is absent from subsection 5(h) but appears throughout the rest of section 5, it does not identify another difference, namely the presence of the term "specific uses identified in the application" in subsection 5(h) versus the term "conditions of use" that appears throughout the rest of section 5? If not, why not?

If confirmed I will commit to thorough review of the final statute and would be happy to meet with the committee to further discuss any outstanding concerns.

21. Attachment 7 consists of EPA's comments to an April 3, 2016 Senate draft of section 5.

- a. On page 1, EPA observes that "5(e) requires no action on the part of the Administrator whatsoever: it is wholly discretionary authority to impose requirements on the manufacture pending development of information." Do you agree that the enacted law requires EPA to either prohibit manufacture or issue an order to mitigate against potential risk while information is being developed by a manufacturer? If not, please provide specific reasons why not, using statutory text to explain your reasoning.

If confirmed I will commit to thorough review of the final statute and would be happy to meet with the committee to further discuss any outstanding concerns.

- b. On page 2, EPA responds to a question posed by Senate staff, stating “We think it is important not to limit review to the uses identified in the notice. If the identified uses seem fine, and EPA therefore does nothing, the submitter is free to submit an NOC and then manufacture in any way he or she wants. EPA often uses 5(e) orders to address uses beyond those specified in notices.” Do you agree that the enacted statute requires EPA to review the conditions of use (as that term is defined in the statute) of a chemical substance when it reviews a PMN as EPA advised the Senate in this comment? If not, please provide specific reasons why not, using statutory text to explain your reasoning.

If confirmed I will commit to thorough review of the final statute and would be happy to meet with the committee to further discuss any outstanding concerns.

- c. On page 9, EPA says that “It seems like the best solution, per above comment, may be to drop the limitation above that the order pertain only to the conditions of use specified in the notice.” Do you agree that the enacted statute incorporated EPA’s proposed ‘best solution’ and did not limit orders only to the conditions of use specified in the notice? If not, please provide specific reasons why not, using statutory text to explain your reasoning.

If confirmed I will commit to thorough review of the final statute and would be happy to meet with the committee to further discuss any outstanding concerns.

- d. A second EPA comment on page 9 states that “A possible solution would be, in line with the Senate bill and offer, to drop (e) and require EPA to issue an order under what is now (f) any time EPA either makes a may present finding or lacks sufficient info, as necessary to make the unlikely to present finding.” Do you agree that the enacted text retains section 5(e) and also requires EPA to issue an order any time EPA either makes a may present finding or lacks sufficient information before manufacturing can commence? If not, please provide specific reasons why not, using statutory text to explain your reasoning.

If confirmed I will commit to thorough review of the final statute and would be happy to meet with the committee to further discuss any outstanding concerns.

- e. On page 16, EPA responds to a question from Senate staff about whether, in the 5(h) exemptions section, it makes sense to deviate from the rest of the section’s

references to ‘conditions of use’ and instead limit EPA’s exemption determination to the uses of the chemical substance identified in the exemption request. EPA responds by stating “We agree that the reference to specific uses makes sense, but not because of anything having to do with a SNUR. It seems to us that, if a party is seeking a partial section 5 exemptions, we would consider only the uses for which they are seeking the exemption, since the exemption would limit them to those.” Do you agree that the enacted statute follows EPA’s advice to retain the authority for EPA to consider just the uses of a chemical substance included in an exemption request, but does not make the same limiting change anywhere else so as not to so limit its review of all conditions of use of a chemical substance subject to a PMN? If not, please provide specific reasons why not, using statutory text to explain your reasoning.

If confirmed I will commit to thorough review of the final statute and would be happy to meet with the committee to further discuss any outstanding concerns.

22. In our private meeting, you described your work on perchlorate as an example where the safety standard you suggested at the time (2004) was based on older science, and said that at that time, you actually recommended a level that was more protective than the one industry was recommending.

Yes, TERA’s self-published recommendation in 2004 was 500-fold lower than the original safe dose proposed by industry.

Isn’t it true that in 2012, seven years after EPA recommended its drinking water reference dose for perchlorate, you wrote a paper⁶ that suggested the removal of the three-fold safety factor designed to protect pregnant women, which, if adopted, means the reference dose would be 8.6 times less protective than EPA’s?

I am not certain of the paper to which you refer. However, in 2004, I coauthored a paper that judged a Reference Dose (RfD) to be 0.002 mg/kg-day based on infants. EPA later came out with a RfD of 0.0007 mg/kg-day based on adults. The TERA and EPA RfDs are less than 3-fold apart. A comparison of the underlying information for these values can be found at <https://toxnet.nlm.nih.gov/newtoxnet/iter.htm>.

ATTACHMENT 1 – DOURSON

1,4-Dioxane¹

- a. 2013 to 2016
- b. PPG industries, Hamp and Associates, Waste Management, Toxicology Excellence for Risk Assessment (TERA), University of Cincinnati, College of Medicine, US National Toxicology Program
- c. Two publications
 - Dioxane occurs in foods (up to 15 ppb in dairy products).
 - Dioxane causes cancer at high doses, but EPA's IRIS peer review panel thought that a nonlinear assessment might be appropriate.
 - The State of Kentucky requested that the Alliance for Risk Assessment petition the government of Japan for relevant data. Four other states joined in this petition. Other collaborators included several consulting groups. Scientists from Health Canada observed.
 - This TERA/RSC work was done after EPA's IRIS document and supports the IRIS peer review panel's suggestion that the cancer findings are due to a nonlinear Mode of Action (MOA).
 - All of this information has been publicly available.
 - Health Canada is using TERA's collaborative work in their evaluation of 1,4-dioxane.

1-Bromopropane²

- a. 2004
- b. Albemarle Corporation and Ameribrom, Inc
- c. A report was generated and made publicly available.
 - In 2004, occupation limits for 1-bromopropane differed by 16-fold.
 - TERA critically evaluated the underlying information and recommended an OEL of 20 ppm based on effects in newborns.
 - TERA's value was lower (i.e., safer) than EPA's.

¹ Source:

- Nishimura et al., 2004. Study of 1,4-dioxane intake in the total diet using the market-basket method. *Journal of Health Science* 50:101-107.
- Dourson, M; Reichard, J; Nance, P; Burleigh-Flayer, H; Parker, A; Vincent, M; McConnell, EE; (2014). Mode of Action Analysis for Liver Tumors from Oral 1,4-Dioxane Exposures and Evidence-Based Dose Response Assessment. *Reg. Toxicol. Pharmacol.* [Volume 68, Issue 3](#), April 2014, Pages 387–401
- Michael L. Dourson, Jeri Higginbotham, Jeff Crum, Heather Burleigh-Flayer, Patricia Nance, Norman D. Forsberg, Mark Lafranconi, John Reichard. 2017. Update: Mode of action (MOA) for liver tumors induced by oral exposure to 1,4-dioxane. *Regulatory Toxicology and Pharmacology* 88:45-55.
- Website is currently in transfer mode. For current version see: <http://med.uc.edu/eh/centers/rsc/risk-resources/ara>.

² <http://bit.ly/2hKulBx>

- An NTP study was published after the TERA assessment showing cancer findings.
- New evaluations based on the cancer suggested lower limits.

PFOA-Dupont³

- a. 2002
- b. State of West Virginia
- c. A report was generated and placed on the website of the State of West Virginia.
 - In 2002, 4 governments and one industry recommended TERA as the independent and neutral party to assist in a PFOA evaluation. A West Virginia judge agreed.
 - Dr. Deanne Statts of West Virginia DEP chaired a 10-member scientific panel.
 - Five panelists were government employees; 3 were from EPA.
 - The panel made a unanimous determination of a safe water level of 150 ppb.
 - All of this information has been publicly available.
 - The science of PFOA has progressed since 2002.

Trichloroethylene (TCE)⁴

- a. 2012 to 2016
- b. American Chemistry Council, Toxicology Excellence for Risk Assessment (TERA) and University of Cincinnati, College of Medicine
- c. The collaboration team had 6 conference calls, including scientists from Australia, 3 webinars, one of which included over 400 folks, and 1 independent peer consultation. The team gave 8 presentations, and published 1 paper.
 - In 2012, the Alliance for Risk Assessment (ARA) was petitioned by the Alliance for Site Closures to review noncancer toxicity of TCE. The Steering Committee of the ARA, composed primarily of government officials, asked the collaboration to focus instead on building range in risk values.
 - The team has had one training session with US states.
 - All of this information has been publicly available.

Perchlorate⁵

- a. 1995 to 2007

³ Source: FINAL CATT REPORT WITH ATTACHMENTS, AUGUST 2002

⁴ Source:

- Michael Dourson, Bernard Gadagbui, Rod Thompson, Edward Pfau, and John Lowe. 2016. Managing Risks of Noncancer Health Effects at Hazardous Waste Sites: A Case Study Using the Reference Concentration (RfC) of Trichloroethylene (TCE). *Regulatory Toxicology and Pharmacology* 80:125-133.
- <http://med.uc.edu/eh/centers/rsc/risk-resources/ara>

⁵ Source: Strawson, J., Q. Zhao and M. Dourson. 2004. Reference dose for perchlorate based on thyroid hormone change in pregnant women as the critical effect. *Reg. Tox. Pharm.* 39: 44-65.

- b. The Perchlorate Study Group (PPG)
- c. TERA developed a report for peer review, monitored toxicology studies and offered comments in peer review meetings of EPA Reference Dose (RfD).
 - Afterwards EPA and the DOD disagreed on the safe dose.
 - TERA independently made its safe dose 500-fold more protective than PPG's original RfD and published it.
 - The NAS also developed a safe dose, which was 25 times higher than EPA's, 12-fold lower than DoD's, but within 3 fold of TERA's value.

Chlorpyrifos⁶

- a. 2004 to 2006
- b. Dow AgroSciences
- c. Two publications
 - The science for chlorpyrifos has progressed since the time of these publications.
 - One epidemiology study shows associations of neurological effects at exposures lower than the current RfD; other studies do not show this association.
 - Based on how chlorpyrifos works this association is not expected.
 - The raw data from this epidemiology study are not available for review.

Alachlor and Acetochlor⁷

- a. 2009-2010
- b. Dow AgroSciences and Monsanto
- c. A public peer review meeting and one publication
 - Michael Dourson talked with senior US EPA leaders to determine their interest. EPA stated that they had developed RfDs for the parent chemicals and did not consider the degradates to be more toxic.
 - Dow AgroSciences and Monsanto petitioned the Alliance for Risk Assessment (ARA) for their review. The ARA Steering Committee endorsed a collaborative approach.
 - TERA formed a team of risk assessment scientists from 3 states and the EPA to develop these RfDs. The resulting values were based on a unanimous consensus.

⁶ Source:

- Zhao, Q., B. Gadagbui and M. Dourson. 2005. Lower birth weight as a critical effect of Chlorpyrifos: A comparison of human and animal data. *Reg. Toxicol. Pharmacol.* 42:55-63.
- Zhao, Q., M. Dourson and B. Gadagbui. 2006. [A Review of the Reference Dose \(RfD\) for Chlorpyrifos.](#) *Reg. Toxicol. Pharmacol.* 44:111-124.

⁷ Source:

- <http://www.tera.org/ART/Degradates/index.html>;
- Gadagbui, B; Maier, M; Dourson, M; Parker, A; Willis, A; Christopher, JP; Hicks, L; Ramasany, S; Roberts, SM. 2010. Derived Reference Doses (RfDs) for the Environmental Degradates of the Herbicides Alachlor and Acetochlor: Results of an Independent Expert Panel Deliberation. *Regulatory Toxicology and Pharmacology* 57:220-234.

Diacetyl⁸

- a. 2009-2010
- b. Food Producers Association
- c. One report that was made available to the public
 - At the time of TERA's work no standards existed for worker protection.
 - TERA's standard published in 2010 (i.e., range from 70 to 200 ppb) was based on the best science at the time, through careful consideration of toxicology, epidemiology, and background exposures.
 - Subsequent analyses published by various organizations, including NIOSH, developed standards of 5 to 20 ppb based on different emphasis on toxicology and epidemiology data.
 - TERA is continuing its ongoing relationship with NIOSH since 2010 through an Interagency Personnel Agreement Fellowship.

Acrylamide⁹

- a. 2007-1009
- b. Burger King Corporation, Frito-Lay, Inc., H.J. Heinz Company, KFC Corporation, McDonald's Corporation, The Proctor & Gamble Manufacturing Company, The Proctor & Gamble Distributing Company, and Wendy's International, Inc.
- c. Litigation support under proposition 65 of California, and several publications
 - TERA determined that the MOA for the most sensitive endpoint, thyroid tumors, was bimodal, with linear at the low dose and an acceleration of thyroid tumors above a threshold for hormonal action.
 - TERA's first publication was supported by industry.
 - TERA's next two publications were in large part self-supported.
 - All of these publications include more findings than EPA's older IRIS document.

⁸ Maier, AM; Kohrman-Vincent, M; Parker, A; Haber, LT. (2010) [Evaluation of concentration-response options for diacetyl in support of occupational risk assessment](#). Reg. Toxicol. and Pharmacol. 58(2): 285-296.

⁹ Source:

- Dourson, M., Hertzberg, R., Allen, B., Haber, L., Parker, A., Kroner, O., Maier, A. and Kohrman, M. 2008. Evidence-Based Dose Response Assessment for Thyroid Tumorigenesis from Acrylamide. Regulatory Toxicology and Pharmacology 52 (2008) 264–289.
- Haber, LT; Maier, A; Kroner, OL; Kohrman, MJ. (2009) Assessment of Human Relevance and Mode of Action for Tunica Vaginalis Mesotheliomas Resulting from Oral Exposure to Acrylamide. Regul. Toxicol. Pharmacol. 53(2): 134-149.
- Maier, A., Kohrman-Vincent, M., Hertzberg, R., Dourson, M., Haber, L.T and Allen, B. 2012. Critical review of dose-response options for F344 rat mammary tumors for acrylamide – Additional insights based on mode of action. Food Chem. Toxicol. 50:5, 1763-1775.

ATTACHMENT 2 - DOURSON

PUBLICATIONS in Regulatory Toxicology and Pharmacology [funding group in brackets and refers to only funding to TERA or the RSC and not to contributing authors]

1. Michael L. Dourson, Jeri Higginbotham, Jeff Crum, Heather Burleigh-Flayer, Patricia Nance, Norman D. Forsberg, Mark Lafronconi, John Reichard. 2017. Update: Mode of action (MOA) for liver tumors induced by oral exposure to 1,4-dioxane. *Regulatory Toxicology and Pharmacology* 88:45-55. [Hamp and Associates, Waste management, and University of Cincinnati, College of Medicine]
2. Richard A. Becker, Vicki Dellarco, Jennifer Seed, Joel M. Kronenberg, Bette Meek, Jennifer Foreman, Christine Palermo, Chris Kirman, Igor Linkov, Rita Schoeny, Michael Dourson, Lynn H. Pottenger, and Mary K. Manibusan. 2017. Quantitative weight of evidence to assess confidence in potential modes of action. *Regulatory Toxicology and Pharmacology*, 86:205–220. [American Chemistry Council]
3. Michael Dourson and Raymond G York. 2016. Advances in Assessing Ingredient Safety. *Regulatory Toxicology and Pharmacology*. 79:S112-S118. [University of Cincinnati, College of Medicine]
4. Michael Dourson, Bernard Gadagbui, Rod Thompson, Edward Pfau, and John Lowe. 2016. Managing Risks of Noncancer Health Effects at Hazardous Waste Sites: A Case Study Using the Reference Concentration (RfC) of Trichloroethylene (TCE). *Regulatory Toxicology and Pharmacology* 80:125-133. [American Chemistry Council]
5. Ted W. Simon, Yiliang Zhu, Michael L. Dourson, Nancy B. Beck. 2016. Bayesian methods for uncertainty factor application for derivation of reference values. *Regulatory Toxicology and Pharmacology* 80:9-24. [American Chemistry Council]
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7. Patterson J., Maier A, Kohrman-Vincent M, and ML Dourson. 2013. Peer consultation on relationship between PAC profile and toxicity of petroleum substances. *Reg. Tox and Pharm*, Volume 67: S86–S93. [American Petroleum Institute]
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- assessment: A case study involving dioxin-contaminated soil. *Reg. Toxicol. Pharmacol.* 66(2): 208-216. [DOW Chemical]
9. Hasegawa R, Hirata-Koizumi M, Dourson ML, Parker A, Ono A, Hirose A. 2013. Safety assessment of boron by application of new uncertainty factors and their subdivision. *Regul. Toxicol. Pharmacol.* 65:1, 108-114. [Toxicology Excellence for Risk Assessment]
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 13. Cain, W., M. L. Dourson, M.J. Kohrman-Vincent and B.C. Allen. 2010. Human Chemosensory Perception of Methyl Isothiocyanate: Odor and Chemesthesis. *Reg. Toxicol. And Pharmacol.* 58(2): 173-180. Available online. [Amvac Chemical Corporation and Taminco and Tessenderlo-Kerley]
 14. Gadagbui, B; Maier, M; Dourson, M; Parker, A; Willis, A; Christopher, JP; Hicks, L; Ramasany, S; Roberts, SM. 2010. Derived Reference Doses (RfDs) for the Environmental Degradates of the Herbicides Alachlor and Acetochlor: Results of an Independent Expert Panel Deliberation. *Regulatory Toxicology and Pharmacology* 57:220-234. [Dow Agro Sciences]
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MATTHEW LEOPOLD

Ranking Member Carper:

1. For decades, both Republican and Democratic administrations alike have had written policies limiting White House contacts with agencies that have investigatory and enforcement responsibilities. These policies have recognized that even a simple phone call from the White House to an agency inquiring about or flagging a specific matter can upset the evenhanded application of the law. I recently learned that Devon Energy, a strong political supporter of Administrator Pruitt's, informed the EPA just 5 days after Mr. Pruitt was sworn in as Administrator that it was no longer willing to install air pollution technology or pay a high penalty to EPA for its illegal air emissions of cancer-causing benzene and other chemicals. We also know that Trump family casinos, hotels and golf courses have been the subject of EPA enforcement actions for violations of the Clean Air Act and Clean Water Act.

- a. Do you agree that it is essential that in making decisions, EPA's Office of General Counsel (OGC) must be shielded from political influence and spared even the appearance of being subject to political influence or considerations?

If confirmed, I commit to work with Administrator Pruitt and his team to ensure strict compliance with all legal and ethical obligations.

- b. Will you commit to restricting communications between OGC and the White House staff regarding specific matters under the authority of OGC?

If confirmed, I commit to work with Administrator Pruitt and his team to ensure strict compliance with all legal and ethical obligations.

- c. Will you commit to ensuring the staff of OGC is familiar with those restrictions?

If confirmed, I commit to work with Administrator Pruitt and his team to ensure strict compliance with all legal and ethical obligations.

- d. Will you commit to advising this Committee within one week if any inappropriate communications from White House staff to OGC staff, including you, occur?

If confirmed, I commit to work with Administrator Pruitt and his team to ensure strict compliance with all legal and ethical obligations.

2. Recently, EPA conducted “anti-leaking” training for its employees¹. According to EPA sources, the briefing stated that “Prohibitions we will discuss do not refer to “Whistleblowing”. Agency employees have the right to make lawful disclosures to anyone, including, for example, management officials, the Inspector General, and/or the Office of Special Counsel. Employees may make disclosures to the EPA Office of the Inspector General through the EPA OIG Hotline at 888-546-8740.” This presentation evidently failed to note the rights of federal employees have to make disclosures to Congress.

5 U.S.C. § 7211, provides that: The right of employees, individually or collectively, to petition Congress or a Member of Congress or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied. Pursuant to 5 U.S.C. § 2302(b)(8), it is a violation of federal law to retaliate against whistleblowers. That law states: Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority ... take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of. ... (A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences- (i) a violation of any law, rule, or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation... " In addition, pursuant to 18 U.S.C. § 1505, it is against federal law to interfere with a Congressional inquiry: Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress.

- a. If you are confirmed, will you commit to protect the rights of all career employees in OGC to make lawful disclosures, including their right to speak with Congress?

If confirmed, I commit to protecting the rights of all EPA employees and will follow the law.

- b. Will you commit to communicate employees’ whistleblower rights via email to all OGC employees within a week of being sworn in?

¹ https://www.washingtonpost.com/politics/whitehouse/federal-employees-are-ordered-to-attend-anti-leaking-classes/2017/09/21/032b40d6-9edd-11e7-b2a7-bc70b6f98089_story.html?utm_term=.e2bfc5e54d95

If confirmed, I commit to protecting the rights of all EPA employees and will follow the law.

3. In the wake of Hurricane Irma, at least 11 deaths and numerous injuries have been reported in Florida due to accidental carbon monoxide poisoning from gasoline-powered portable generators.² One additional death has also been reported in North Carolina, along with other injuries throughout the Southeastern United States.³ Many of these deaths and injuries could have been prevented had stronger safety standards been in place for portable gasoline generators. In November 2016, the U.S. Consumer Product Safety Commission (CPSC), following years of work on the issue, voted to issue a Notice of Proposed Rulemaking (NPRM) to implement a mandatory safety standard for portable generators.⁴ Since then, Administrator Pruitt and Acting CPSC Chairman Buerkle have separately said that section 213 of the Clean Air Act precludes CPSC action.
 - a. Section 213 of the Clean Air Act is intended to regulate emissions from non-road engines or vehicles when the EPA determines that such emissions “are significant contributors to ozone or carbon monoxide concentrations in more than 1 area which has failed to attain the national ambient air quality standards for ozone or carbon monoxide.” In your opinion, would the occasional indoor use of portable generators following a power outage be likely to be a significant contributor to ambient carbon monoxide concentrations in more than 1 area that has failed to attain the national ambient air quality standards for carbon monoxide? Why or why not?

It would be inappropriate for me to prejudge the outcome of a matter that may come before me if confirmed as General Counsel.

- b. There are currently no areas in the United States that have failed to attain the national ambient air quality standards for carbon monoxide, and this has been the case since 2010⁵. As a matter of law, could section 213 of the Clean Air Act be used to regulate carbon monoxide emissions due to the indoor use of portable generators if there are no areas in the United States that fail to attain the national ambient air quality standards for carbon monoxide? Why or why not?

It would be inappropriate for me to prejudge the outcome of a matter that may come before me if confirmed as General Counsel.

4. You spent more time – 6 years – as an attorney in the Environment and Natural Resources Division of the Department of Justice than in any other position. Based on your experience, to what extent do you believe that the work of the Environment and

² <http://www.miamiherald.com/news/weather/hurricane/article174097351.html> <http://www.sun-sentinel.com/news/weather/hurricane/sfl-carbon-monoxide-deaths-20170914-story.html>

³ <http://www.charlotteobserver.com/news/article173612361.html>

⁴ <https://www.federalregister.gov/documents/2016/11/21/2016-26962/safety-standard-for-portable-generators>

⁵ <https://www.epa.gov/green-book/green-book-carbon-monoxide-1971-area-information>

Natural Resources Division makes an important contribution to the protection of public health and the environment? Please explain and describe your views of the contributions the work of the Division makes.

The Environment and Natural Resources Division (ENRD) is the nation's environmental law firm handling work arising from approximately 150 federal civil and criminal statutes, including the Clean Air Act, Clean Water Act, CERCLA, and Safe Drinking Water Act. It serves as counsel to EPA, the Department of the Interior, and other federal agencies that have environmental or natural resource issues. ENRD is important to protecting human health and the environment as it enforces the federal pollution-control laws EPA oversees.

5. Earlier this year, the fiscal year 2018 budget proposal⁶ submitted to Congress sought to eliminate the \$20 million in funding the EPA provides for the Justice Department's Environment and Natural Resources Division. EPA has historically provided about 27 percent of that office's budget. Based on your experience as an attorney in the Environment and Natural Resources Division, please describe the potential impact on the work of the Division of such a reduction in funding. Do you support such a reduction in funding? Please provide your reasoning and any information you have supporting your answer. Since 2005, how much funding has been provided to ENRD by EPA? How much money has DOJ secured through fines, penalties, and commitments to remediate contamination and pollution during this same time period?

I support the important work done by ENRD. It would be inappropriate for me to prejudge the outcome of a matter that may come before me if confirmed as General Counsel. If confirmed, I would manage OGC's functions, including its reliance on ENRD as outside counsel, within the authority and budget provided by Congress.

6. On February 28, 2017, President Trump directed EPA and the Army Corps to review and possibly rescind or repeal the Clean Water Rule in Executive Order 13776. EPA recently ended the public comment process on the first step of a two-step process to repeal the rule and replace it with a rule that will protect far fewer sources of drinking water. Individuals with first-hand knowledge of the process EPA utilized to prepare its have informed my staff that:
 - i) When EPA first submitted the proposed repeal rule to OMB, the draft stated that the agency would undertake a new cost-benefit analysis as part of the second step of its process.
 - ii) OMB interpreted EPA's first proposal to mean that the rule's repeal would not avoid any costs to industry or have any economic impact at all. EPA's political staff then directed the career staff to undertake a new economic analysis. In response to this direction, EPA career staff reportedly changed the table included in the 2015 rule to a) reflect 2016 dollars instead of 2014 dollars, b) convert

⁶ <https://www.documentcloud.org/documents/4061910-EPA-Superfund-reimbursements-to-DOJ-documents.html#document/p7/a378119>

“annual costs incurred” under the Clean Water Rule to “annual costs avoided” due to its repeal and c) convert “annual benefits gained” under the Clean Water Rule to “annual benefits forgone” due to its repeal. This new table was sent to OMB on June 8, 2017.

- iii) OMB correctly concluded from EPA’s June 8 submittal that repealing the rule would cost more in lost benefits than it would save industry in compliance costs. On June 13, 2017, presumably to avoid such an admission on the part of EPA, EPA career staff were verbally directed by political staff to solve this ‘problem’ by simply deleting the majority of the benefits of the rule from the table and re-submitting it to OMB, which they did⁷.
- a) If the events above occurred as described to my staff, do you agree that EPA’s failure to even attempt to undertake a credible cost-benefit analysis of its proposal to repeal the Clean Water Rule would be vulnerable to assertions that the agency ran afoul of both the Clean Water Act and the Administrative Procedure Act? Why or why not?

I am not able to speculate about what may or may not have occurred in this instance. If confirmed, I would work to ensure that the legal requirements for analyzing the cost-benefit of EPA rules are adhered to.

- b) The direction that was reportedly provided to the EPA career staff to make the various revisions to what was submitted to OMB was verbal, not written. If you are confirmed, do you commit to ensure that career staff in OGC will receive appropriately documented, rather than verbal, direction from political officials before they take action? If not, why not?

I support the appropriate use of both written and oral guidance and would endeavor to use each in appropriate circumstances.

8. Do you agree to provide complete, accurate and timely responses to requests for information submitted to you by any Member of the Environment and Public Works Committee? If not, why not?

Yes.

9. Recently, EPA announced that Administrator Pruitt would be publishing brief summaries of his calendars biweekly, after dozens of Freedom of Information Act requests for this information as well as a March request by me and my colleagues that he do so. During the Obama Administration, the Administrator, regional Administrators and all those serving in confirmed roles published their calendars daily⁸. If you are confirmed, will you commit to publishing your calendars daily? If not, why not?

⁷ https://www.epa.gov/sites/production/files/2017-06/documents/economic_analysis_proposed_step1_rule.pdf

See Table 1

⁸ <https://yosemite.epa.gov/opa/admpress.nsf/Calendars?OpenView>

If confirmed, I will make my calendar available on a timely basis.

DAVID ROSS

Ranking Member Carper:

1. For decades, both Republican and Democratic administrations alike have had written policies limiting White House contacts with agencies that have investigatory and enforcement responsibilities. These policies have recognized that even a simple phone call from the White House to an agency inquiring about or flagging a specific matter can upset the evenhanded application of the law. I recently learned that Devon Energy, a strong political supporter of Administrator Pruitt's, informed the EPA just 5 days after Mr. Pruitt was sworn in as Administrator that it was no longer willing to install air pollution technology or pay a high penalty to EPA for its illegal air emissions of cancer-causing benzene and other chemicals. We also know that Trump family casinos, hotels and golf courses have been the subject of EPA enforcement actions for violations of the Clean Air Act and Clean Water Act.
 - a. Do you agree that it is essential that in making decisions, EPA's OW must be shielded from political influence and spared even the appearance of being subject to political influence or considerations?

If confirmed, I commit to work with Administrator Pruitt and his team to ensure strict compliance with all legal and ethical obligations.

- b. Will you commit to restricting communications between OW and the White House staff regarding specific matters under the authority of OW?

If confirmed, I commit to work with Administrator Pruitt and his team to ensure strict compliance with all legal and ethical obligations.

- c. Will you commit to ensuring the staff of OW is familiar with those restrictions?

If confirmed, I commit to work with Administrator Pruitt and his team to ensure strict compliance with all legal and ethical obligations.

- d. Will you commit to advising this Committee within one week if any inappropriate communications from White House staff to OW staff, including you, occur?

If confirmed, I commit to work with Administrator Pruitt and his team to ensure strict compliance with all legal and ethical obligations.

2. Recently, EPA conducted “anti-leaking” training for its employees¹. According to EPA sources, the briefing stated that “Prohibitions we will discuss do not refer to “Whistleblowing”. Agency employees have the right to make lawful disclosures to anyone, including, for example, management officials, the Inspector General, and/or the Office of Special Counsel. Employees may make disclosures to the EPA Office of the Inspector General through the EPA OIG Hotline at 888-546-8740.” This presentation evidently failed to note the rights of federal employees have to make disclosures to Congress.

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- a. If you are confirmed, will you commit to protect the rights of all career employees in OW to make lawful disclosures, including their right to speak with Congress?

If confirmed, I commit to ensuring that the Office of Water and its employees comply with and recognize all applicable legal and ethical requirements and protections.

- b. Will you commit to communicate employees’ whistleblower rights via email to all OW employees within a week of being sworn in?

If confirmed, I commit to protecting the rights of all EPA employees and will follow the law.

¹ https://www.washingtonpost.com/politics/whitehouse/federal-employees-are-ordered-to-attend-anti-leaking-classes/2017/09/21/032b40d6-9edd-11e7-b2a7-bc70b6f98089_story.html?utm_term=.e2bfc5e54d95

3. On February 28, 2017, President Trump directed EPA and the Army Corps to review and possibly rescind or repeal the Clean Water Rule in Executive Order 13776. EPA recently ended the public comment process on the first step of a two-step process to repeal the rule and replace it with a rule that will protect far fewer sources of drinking water. Individuals with first-hand knowledge of the process EPA utilized to prepare its have informed my staff that:
- i) When EPA first submitted the proposed repeal rule to OMB, the draft stated that the agency would undertake a new cost-benefit analysis as part of the second step of its process.
 - ii) OMB interpreted EPA's first proposal to mean that the rule's repeal would not avoid any costs to industry or have any economic impact at all. EPA's political staff then directed the career staff to undertake a new economic analysis. In response to this direction, EPA career staff reportedly changed the table included in the 2015 rule to a) reflect 2016 dollars instead of 2014 dollars, b) convert "annual costs incurred" under the Clean Water Rule to "annual costs avoided" due to its repeal and c) convert "annual benefits gained" under the Clean Water Rule to "annual benefits forgone" due to its repeal. This new table was sent to OMB on June 8, 2017.
 - iii) OMB correctly concluded from EPA's June 8 submittal that repealing the rule would cost more in lost benefits than it would save industry in compliance costs. On June 13, 2017, presumably to avoid such an admission on the part of EPA, EPA career staff were verbally directed by political staff to solve this 'problem' by simply deleting the majority of the benefits of the rule from the table and re-submitting it to OMB, which they did².
- a. If the events above occurred as described to my staff, do you agree that EPA's failure to even attempt to undertake a credible cost-benefit analysis of its proposal to repeal the Clean Water Rule would be vulnerable to assertions that the agency ran afoul of both the Clean Water Act and the Administrative Procedure Act? Why or why not?

Should I be confirmed, I look forward to engaging in the rulemaking process, including working with the Office of General Counsel to ensure the development of a robust administrative record that is grounded in the law.

² https://www.epa.gov/sites/production/files/2017-06/documents/economic_analysis_proposed_step1_rule.pdf

- b. The direction that was reportedly provided to the EPA career staff to make the various revisions to what was submitted to OMB was verbal, not written. If you are confirmed, do you commit to ensure that career staff in OW will receive appropriately documented, rather than verbal, direction from political officials before they take action? If not, why not?

I support the appropriate use of both written and oral guidance and would endeavor to use each in appropriate circumstances.

4. As someone with substantial experience with states' perspectives on the role of states in a federalist regulatory framework, would you agree that environmentally protective strategies developed by states individually and jointly should be given strong deference by federal regulatory agencies like EPA?

Yes, as long as the states comply with baseline federal requirements.

- a. Given that respect for state responsibilities and initiative, would you bring the full force of your authority at EPA to ensure that the Chesapeake Bay states live up to their commitments to reduce pollution loadings under the Chesapeake Bay TMDL?

Should I be confirmed, I will implement the Office of Water program authority to work collaboratively with the states in the Chesapeake Bay region to achieve the targeted water quality improvements in the Bay.

5. Given your substantial experience working with state water programs and as a member of the Assumable Waters Subcommittee of the National Advisory Council for Environmental Policy and Technology, do you support state assumption of Clean Water Act responsibilities and programs?

Yes.

- a. Assuming you support active state engagement in implementing and enforcing Clean Water Act responsibilities, how do you feel about substantially reducing federal funding to state partners to handle these federal obligations?

I support strong federal partnership and collaboration with the states, both financially and logistically, to achieve success in implementing the delegated state programs.

- b. Do you agree with the philosophy that if states assume primary responsibility for keeping their water clean that the federal government should not provide any funding to support their efforts? Why or why not?

I believe in shared financial responsibility and collaborative partnerships with the states in order to realize the promise of cooperative federalism envisioned by the Clean Water Act.

- c. Do you believe from your experience in Wyoming and Wisconsin and familiarity with the financial, technical and legal capacities of other states that they can take care of the nation's water quality on their own?

I believe we can achieve greater success in managing the nation's waters through leveraged relationships, including providing financial and technical support to the states.

- d. How important is EPA's oversight of states' compliance with their Clean Water Act responsibilities?

EPA's oversight and technical support is important in helping the states effectively implement the many Clean Water Act programs.

- e. What can EPA do better to ensure that states are doing their jobs, for example to prevent future water crises as we saw with lead in drinking water in Flint, Michigan?

I believe that EPA can focus on building relationships to establish trust in the collaborative partnership, with smarter, more focused oversight that emphasizes core program areas and responsibilities and deemphasizes box-checking exercises. Effective oversight depends on effective prioritization and shared ownership in establishing those priorities.

6. Do you feel that the Clean Water Act overly limits the ability of developers and agricultural producers to conduct their business and support themselves and the nation's economy?

If implemented correctly and within the legal guideposts established by Congress, no.

- a. Would you advocate rolling back clean water regulation beyond the Clean Water Rule that require developers and agriculture producers to reduce the adverse impacts of their operations on water quality? If so, which ones and why?

I support the development of a predictable and clear regulatory scheme that stays within the legal framework established by Congress while respecting the Constitutional limitations placed on both Congress and the Executive Branch agencies. This basic principle should apply to all EPA regulations, including the development of a regulatory definition for the term "waters of the United States."

- b. Are there other sectors of the economy you feel are over-regulated by Clean Water Act programs? If so, which ones, and what do you advocate EPA should/could/would do to alleviate the burden?

I do not enter federal service with any pre-determined views on this topic.

7. The Farm Bureau has come out strongly against the Clean Water Rule (CWR). But the CWA section 404(f), which was enacted in 1977, specifically exempts normal farming activities including the construction of roads, ditches, and farm ponds. The CWR does not impinge on section 404(f) at all. Which specific farm activities does the CWR affect that are currently exempted under the 2008 guidance that is now in place?

If confirmed, I look forward to learning more about how the agency has implemented 404(f) to ensure the agency has provided the exemptions Congress intended.

8. Did EPA formulate a new, updated legal rationale for embracing the current waters of the United States definition through its proposed repeal and replacement of the Clean Water Rule? If so, please describe your understanding of the rationale.

I am not familiar with the legal analysis EPA performed as part of its ongoing effort to implement President Trump's February 28, 2017 Executive Order.

9. Coal-fired power plants are by far the largest discharger of toxic water pollution in the US. In 2015, an effluent limitations guidelines (ELG) rule was finalized that would require power plants to eliminate the vast majority of this pollution using readily available, affordable wastewater treatment technology. In the last few months, however, EPA has postponed the compliance dates for two waste streams in the rule and begun a new rulemaking to reconsider the standards for these waste streams. EPA has argued that the 2015 rule was too cost-prohibitive to industry, yet the vast majority of power plants will incur zero costs to comply with the 2015 ELG rule. EPA had previously estimated that complying with this rule would prevent 1.4 billion pounds of toxic pollutants, including known carcinogens like arsenic and known neurotoxins like lead and mercury, from being discharged into waterways each year.
 - a. How will you ensure that any revised Steam ELG standards and/or limits do not negatively impact drinking water systems?

The development of effluent limitation guidelines are governed by regulatory procedures that take into account applicable legal, technical, economic and other important considerations. If confirmed, I will work to ensure that Office of Water personnel follow those procedures to develop an appropriate and protective standard.

- b. In its proposed revisions to the 2015 power plant ELG, should EPA consider technology options for treating flue gas desulfurization waste that would limit bromide discharges from power plants? Why or why not?

Should I be confirmed, I look forward to evaluating the status of the regulatory effort at that time, including potential options for that particular waste stream.

10. Do you agree to provide complete, accurate and timely responses to requests for information submitted to you by any Member of the Environment and Public Works Committee? If not, why not?

Yes.

11. Recently, EPA announced that Administrator Pruitt would be publishing brief summaries of his calendars biweekly, after dozens of Freedom of Information Act requests for this information as well as a March request by me and my colleagues that he do so. During the Obama Administration, the Administrator, regional Administrators and all those serving in confirmed roles published their calendars daily³. If you are confirmed, will you commit to publishing your calendars daily? If not, why not?

If confirmed, I will make my calendar available on a timely basis.

12. You are currently the Wisconsin Department of Justice's Environmental Protection Unit Director. It is your responsibility to manage environmental litigation and prosecute violations of state environmental law.
 - a. Under the cooperative federalism structure of many of our environmental statutes, do you believe the federal government, and EPA in particular, is an important partner to state environmental work?

Yes.

- b. The Trump Administration has proposed reducing funding for the Office of Enforcement and Compliance Assurance by 24 percent. In your opinion, how would a funding cut of this size affect the partnership between Wisconsin and EPA?

I am not familiar with the details of the FY18 budget but if confirmed I will work collaboratively with the Office of Enforcement and Compliance Assurance to uphold the mission of the EPA.

³ <https://yosemite.epa.gov/opa/admpress.nsf/Calendars?OpenView>

- c. If the Wisconsin Department of Justice's Environmental Protection Unit was cut by 24 percent, how would that affect the ability of your unit to perform its statutory responsibilities?

I am not in a position to comment on hypotheticals, and the issue is entirely dependent on a variety of factors.

13. The Trump Administration has proposed eliminating the Great Lakes Restoration Initiative. This would cut \$300 million dollars in funding to states like Wisconsin for environmental restoration activities designed to improve the health of the Great Lakes. You have been nominated to head the Office of Water. Do you support the proposed elimination of EPA's Geographic Programs funding? What impact will this have on the Great Lakes? If this program is eliminated, how would you, if confirmed, accomplish your statutorily required objective to improve the health of the nation's waters, including the Great Lakes? In particular, how would the elimination of this program affect multistate and binational commitments and initiatives to deal with non-point source pollution issues and resulting algal blooms, as described in an October 3, 2017 New York Times article⁴? Do you support designation of the Western portions of Lake Erie as impaired and development of a TMDL to identify and reduce the loadings of nutrients, especially phosphorus, that contribute to the problem?

If confirmed, I will work with Office of Water and regional staff to implement the budget Congress provides for the Great Lakes program as effectively and efficiently as possible. Should I be confirmed, I look forward to working with our state partners to holistically address the ongoing challenge of nutrient loading in Lake Erie.

WILLIAM WEHRUM

Ranking Member Carper:

1. For decades, both Republican and Democratic administrations alike have had written policies limiting White House contacts with agencies that have investigatory and enforcement responsibilities. These policies have recognized that even a simple phone call from the White House to an agency inquiring about or flagging a specific matter can upset the evenhanded application of the law. I recently learned that Devon Energy, a strong political supporter of Administrator Pruitt's, informed the EPA just 5 days after Mr. Pruitt was sworn in as Administrator that it was no longer willing to install air pollution technology or pay a high penalty to EPA for its illegal air emissions of cancer-causing benzene and other chemicals. We also know that Trump family casinos, hotels and golf courses have been the subject of EPA enforcement actions for violations of the Clean Air Act and Clean Water Act.
 - a. Do you agree that it is essential that in making decisions, EPA's OAR must be shielded from political influence and spared even the appearance of being subject to political influence or considerations?

If confirmed, I commit to work with Administrator Pruitt and his team to ensure strict compliance with all legal and ethical obligations.

- b. Will you commit to restricting communications between OAR and the White House staff regarding specific matters under the authority of OAR?

If confirmed, I commit to work with Administrator Pruitt and his team to ensure strict compliance with all legal and ethical obligations.

- c. Will you commit to ensuring the staff of OAR is familiar with those restrictions?

If confirmed, I commit to work with Administrator Pruitt and his team to ensure strict compliance with all legal and ethical obligations.

- d. Will you commit to advising this Committee within one week if any inappropriate communications from White House staff to OAR staff, including you, occur?

If confirmed, I commit to work with Administrator Pruitt and his team to ensure strict compliance with all legal and ethical obligations.

2. Recently, EPA conducted “anti-leaking” training for its employees¹. According to EPA sources, the briefing stated that “Prohibitions we will discuss do not refer to “Whistleblowing”. Agency employees have the right to make lawful disclosures to anyone, including, for example, management officials, the Inspector General, and/or the Office of Special Counsel. Employees may make disclosures to the EPA Office of the Inspector General through the EPA OIG Hotline at 888-546-8740.” This presentation evidently failed to note the rights of federal employees have to make disclosures to Congress.

5 U.S.C. § 7211, provides that: The right of employees, individually or collectively, to petition Congress or a Member of Congress or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied. Pursuant to 5 U.S.C. § 2302(b)(8), it is a violation of federal law to retaliate against whistleblowers. That law states: Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority ... take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of. ... (A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences- (i) a violation of any law, rule, or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation... " In addition, pursuant to 18 U.S.C. § 1505, it is against federal law to interfere with a Congressional inquiry: Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress.

- a. If you are confirmed, will you commit to protect the rights of all career employees in OAR to make lawful disclosures, including their right to speak with Congress?
- b. Will you commit to communicate employees’ whistleblower rights via email to all OAR employees within a week of being sworn in?

If confirmed, I will work closely with EPA Office of Administration and

¹ https://www.washingtonpost.com/politics/whitehouse/federal-employees-are-ordered-to-attend-anti-leaking-classes/2017/09/21/032b40d6-9edd-11e7-b2a7-bc70b6f98089_story.html?utm_term=.e2bfc5e54d95

Resources Management to ensure all OAR employees continue to apprised of their rights as federal employees.

3. In the wake of Hurricane Irma, at least 11 deaths and numerous injuries have been reported in Florida due to accidental carbon monoxide poisoning from gasoline-powered portable generators.² One additional death has also been reported in North Carolina, along with other injuries throughout the Southeastern United States.³ Many of these deaths and injuries could have been prevented had stronger safety standards been in place for portable gasoline generators. In November 2016, the U.S. Consumer Product Safety Commission (CPSC), following years of work on the issue, voted to issue a Notice of Proposed Rulemaking (NPRM) to implement a mandatory safety standard for portable generators.⁴ Since then, Administrator Pruitt and Acting CPSC Chairman Buerkle have separately opined that section 213 of the Clean Air Act precludes CPSC action.
 - a. Section 213 of the Clean Air Act is intended to regulate emissions from non-road engines or vehicles when the EPA determines that such emissions “are significant contributors to ozone or carbon monoxide concentrations in more than 1 area which has failed to attain the national ambient air quality standards for ozone or carbon monoxide.” In your opinion, would the occasional indoor use of portable generators following a power outage be likely to be a significant contributor to ambient carbon monoxide concentrations in more than 1 area that has failed to attain the national ambient air quality standards for carbon monoxide? Why or why not?
 - b. There are currently no areas in the United States that have failed to attain the national ambient air quality standards for carbon monoxide, and this has been the case since 2010⁵. As a matter of law, could section 213 of the Clean Air Act be used to regulate carbon monoxide emissions due to the indoor use of portable generators if there are no areas in the United States that fail to attain the national ambient air quality standards for carbon monoxide? Why or why not?

I do not have experience with interpreting or applying CAA § 213 to these circumstances. If confirmed, I will work with Administrator Pruitt as needed to properly implement this section of the Act.

4. Your public financial disclosure material lists, among others, several clients such as the American Petroleum Institute and others that are trade or other associations that consist of individual member companies. For each such association or organization listed on your financial disclosure form, please provide a complete list of the individual companies and other entities that comprise its members.

² <http://www.miamiherald.com/news/weather/hurricane/article174097351.html> <http://www.sun-sentinel.com/news/weather/hurricane/sfl-carbon-monoxide-deaths-20170914-story.html>

³ <http://www.charlotteobserver.com/news/article173612361.html>

⁴ <https://www.federalregister.gov/documents/2016/11/21/2016-26962/safety-standard-for-portable-generators>

⁵ <https://www.epa.gov/green-book/green-book-carbon-monoxide-1971-area-information>

The trade associations listed in my financial disclosure are my clients and not their individual members. As such, I do not have current member lists for my trade association clients.

5. In addition to employees or representatives of the trade associations or organizations listed as your clients, have you met or otherwise communicated with employees or representatives of the companies that are members of the associations or organizations as part of your work for the client itself? If so, which ones?

The trade associations listed in my financial disclosure are my clients and not their individual members. I routinely meet with member companies, but do not keep comprehensive records of such contacts.

6. Your ethics agreement states that you “will not participate personally and substantially in any particular matter involving specific parties in which I know a former client of mine is a party or represents a party for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. 2635.502(d).”
- a. Please provide a list of all such particular matters involving specific parties that you will either need to recuse yourself from or seek authorization to participate in. For each such particular matter, please also indicate whether you plan to seek authorization to participate.
 - b. If that list does not include particular matters involving the list of individual companies and other entities described in question 4, why not?
 - c. 5 C.F.R 2635.502(a) states that
“where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.”

Do you agree that your representation of numerous industry clients in litigation to repeal or weaken EPA regulations would cause a reasonable person with knowledge of the relevant facts to question your impartiality if you are confirmed and continue to participate either in the litigation or in an administrative action designed to accomplish the identical outcome – repeal or weakening of an EPA regulation – that the litigation sought to accomplish? Why or why not?

Attachment A is a list of particular matters involving specific parties to

which I believe my ethics agreement will apply. If confirmed, I will work closely with EPA ethics officials to understand and strictly comply with my ethical obligations.

7. Do you intend to participate in non-public meetings with your former clients or their member companies (as applicable) if you are confirmed, even if the meetings are about the repeal or weakening of the very same EPA regulations you sought, on behalf of those clients, to repeal or weaken through litigation? If so, please explain why this would not cause a reasonable person with knowledge of the relevant facts to question your impartiality in the matter at hand.

If confirmed, I will work closely with EPA ethics officials to understand and strictly comply with my ethical obligations.

8. Your Ethics Agreement also states that you will either recuse yourself from or seek authorization to participate in “any particular matter involving specific parties in which I know the law firm [Hunton & Williams] is a party or represents a party.” Please provide a list of all the EPA-related particular matters involving specific parties in which Hunton & Williams is a party or represents a party, and indicate whether you plan to seek authorization to participate in each such matter.

I do not have a list of all particular matters involving specific parties in which Hunton & Williams is a party or represents a party. If confirmed, I intend to ascertain Hunton’s involvement on a case-by-case basis before becoming involved in any particular matter involving specific parties.

9. On February 28, 2017, President Trump directed EPA and the Army Corps to review and possibly rescind or repeal the Clean Water Rule in Executive Order 13776. EPA recently ended the public comment process on the first step of a two-step process to repeal the rule and replace it with a rule that will protect far fewer sources of drinking water. Individuals with first-hand knowledge of the process EPA utilized to prepare its have informed my staff that:

- a) When EPA first submitted the proposed repeal rule to OMB, the draft stated that the agency would undertake a new cost-benefit analysis as part of the second step of its process.
- b) OMB interpreted EPA’s first proposal to mean that the rule’s repeal would not avoid any costs to industry or have any economic impact at all. EPA’s political staff then directed the career staff to undertake a new economic analysis. In response to this direction from OMB, EPA career staff reportedly changed the table included in the 2015 rule to a) reflect 2016 dollars instead of 2014 dollars, b) convert “annual costs incurred” under the Clean Water Rule to “annual costs avoided” due to its repeal and c) convert “annual benefits gained” under the Clean Water Rule to “annual benefits forgone” due to its repeal. This new table was sent to OMB on June 8, 2017.

- c) OMB correctly concluded from EPA's June 8 submittal that repealing the rule would cost more in lost benefits than it would save industry in compliance costs. On June 13, 2017, presumably to avoid such an admission on the part of EPA, EPA career staff were verbally directed by political staff to solve this 'problem' by simply deleting the majority of the benefits of the rule from the table and re-submitting it to OMB, which they did⁶.

The direction that was reportedly provided to the EPA career staff to make the various revisions to what was submitted to OMB was verbal, not written. If you are confirmed, do you commit to ensure that career staff in OAR will receive appropriately documented, rather than verbal, direction from political officials before they take action? If not, why not?

If confirmed, I will work closely with EPA ethics officials to understand and strictly comply with my ethical obligations.

10. As Attorney General of Oklahoma, Administrator Pruitt copied and pasted materials sent to him by industry onto his own letterhead and sent them to EPA. Similarly, when you last served in EPA's air office, language drafted by your old law firm found its way into an EPA mercury regulation that you helped write. You also repeatedly prevented EPA employees from verifying the public health benefits of reducing mercury exposure.
 - a. If confirmed, do you commit that you will not allow industry to exert an undue influence on any of the regulatory and policy efforts you will be charged with leading? If not, why not?
 - b. Do you commit not to censor or exclude the dedicated and knowledgeable career EPA staff? If not, why not?

If confirmed, I will work closely with EPA ethics officials to understand and strictly comply with my ethical obligations.

11. Do you agree to provide complete, accurate and timely responses to requests for information submitted to you by any Member of the Environment and Public Works Committee? If not, why not?

Administrator Pruitt has made responsiveness to Congress an important priority. The 2800 pages of EPA responses provided to Members of the Environment and Public Works Committee on display at the nomination hearing is a testament to this commitment. Accordingly, I will continue to be a part of EPA's transparent and responsive culture.

⁶ https://www.epa.gov/sites/production/files/2017-06/documents/economic_analysis_proposed_step1_rule.pdf

See Table 1

12. Recently, EPA announced that Administrator Pruitt would be publishing brief summaries of his calendars biweekly, after dozens of Freedom of Information Act requests for this information as well as a March request by me and my colleagues that he do so. During the Obama Administration, the Administrator, regional Administrators and all those serving in confirmed roles published their calendars daily⁷. If you are confirmed, will you commit to publishing your calendars daily? If not, why not?

If confirmed, I will make my calendar available on a timely basis.

13. In 2006, when you were last nominated to lead the Office of Air and Radiation (OAR), the then-Bush Administration requested for FY 2007 \$1.33 billion (adjusting to 2017 dollars) for State and Tribal Assistance Grants, of which \$250 million (in 2017 dollars) was for Air and Radiation programs. Earlier this year, the Trump Administration requested for FY 2018 \$597 million, of which \$168 million was for Air and Radiation programs. This is more than 50% less for the STAG program in general, and almost 1/3 less for Categorical Grants for OAR programs.
- Did you support the request for FY 2007, and do you support the request for FY 2018? Why, or why not?
 - If you support both the requested levels in FY 2007 and FY 2018, why do you believe that a 1/3 cut to the funding levels in FY 2018 from FY 2017 levels is appropriate?

If confirmed, I will manage OAR's programs within the authorities and budget provided by Congress, including STAG grants.

14. How many legal cases have you filed, or joined others in filing against the EPA, since leaving the agency? Please provide a full list with the outcome of each case, including those cases in which the court disagreed with your argument, agreed with your argument, and those in which the court refused to hear the matter.

I believe that I have been involved in five cases against EPA that have been decided: (1) a challenge to EPA's E15 waiver (dismissed on standing); (2) a challenge to EPA's misfueling mitigation rule (dismissed on standing); (3) a challenge to EPA's most recent PM2.5 NAAQS (petition denied); (4) a challenge to the Wise Co., TX nonattainment area designation for the 2008 ozone NAAQS (petition denied); and (5) a challenge to CSAPR (mixed result). I continue to search my files and will update this answer if I find more cases. In addition, Attachment 1 is a table listing all of my pending cases against EPA.

15. You've represented industry in at least thirty-one cases against the EPA since you left the agency. Can you name one Clean Air Act regulation that was promulgated by the Obama Administration – not a voluntary or grant program – that you do support and why? If you support more than one, please name these as well.

⁷ <https://yosemite.epa.gov/opa/admpress.nsf/Calendars?OpenView>

I represent clients in private practice. It is my legal ethical duty to zealously represent their interests.

16. Delaware is already seeing the adverse effects of climate change with sea level rise, ocean acidification, and stronger storms. While all states will be harmed by climate change, the adverse effects will vary by state and region. Would you comment on why it is imperative that we have national standards to reduce carbon pollution? If you do not believe it is imperative, why not?

If confirmed, my primary responsibility will be to faithfully implement the Clean Air Act, including authorities and restrictions applicable to greenhouse gases.

17. In a *per curiam* opinion, the U.S. Circuit Court of Appeals for the District of Columbia affirmed the Endangerment Finding and the U.S. Supreme Court declined to issue a writ of certiorari on the D.C. Circuit's decision. The Endangerment Finding set in motion EPA's legal obligations to set greenhouse gas emissions standards for mobile and stationary sources, including those established by the Clean Power Plan in August 2015.⁸ During an exchange with Senator Gillibrand during Administrator Pruitt's confirmation hearing before the Environment and Public Works Committee, he stated, "I believe that the EPA, because of the *Mass v. EPA* case and the endangerment finding, has obligations to address the CO₂ [carbon dioxide] issue."

- a. Do you agree with Administrator Pruitt's statement?
- b. If the Clean Power Plan is withdrawn, and if confirmed, how will you lead the agency to fulfill its legal obligations to address climate change?

I agree with Administrator Pruitt. If confirmed, my primary responsibility will be to faithfully implement the Clean Air Act, including authorities and restrictions applicable to greenhouse gases.

18. EPA policy prohibits the use of non-EPA e-mail accounts and instructs employees to: "not use any outside e-mail system to conduct official Agency business. If, during an emergency, you use a non-EPA e-mail system, you are responsible for ensuring that any e-mail records and attachments are saved in your office's recordkeeping system." When last at the EPA, did you ever use personal email to conduct official EPA business? Did you ever use an email alias to conduct official EPA business when you last served at the agency? Do you commit that if confirmed, you will not use an email alias or use personal email addresses to conduct EPA business?

I do not recall using personal e-mail to conduct official business when last at EPA. I did not use an e-mail alias to conduct official business when last at EPA. If

⁸ <https://www.epa.gov/climatechange/us-court-appeals-dc-circuit-upholds-epas-action-reduce-greenhouse-gases-under-clean>

confirmed, I intend to use my EPA e-mail account to conduct official business.

19. Clean car standards save consumers money at the pump and help reduce oil imports. Automakers are complying with vehicle standards ahead of schedule. If confirmed, will you commit to support, defend and enforce EPA's current programs to address greenhouse gas emissions from vehicles?

If confirmed, my primary responsibility will be to faithfully implement the Clean Air Act, including authorities and restrictions applicable to greenhouse gases.

20. For the most part, patients and their families only participate in scientific trials and studies once they know their privacy - and any resulting health-related information - will remain confidential and secure. If confirmed, do you commit to respecting confidentiality agreements that exist between researchers and their subjects? Will you protect the health information of the thousands of people that have participated in health studies in the past?

If confirmed, I will comply with appropriate standards to continue the protection of sensitive or confidential information.

21. In December 2007, President Bush's EPA proposed to declare greenhouse gases as a danger to public welfare through a draft Endangerment Finding, stating, "The Administrator proposes to find that the air pollution of elevated levels of greenhouse gas (GHG) concentrations may reasonably be anticipated to endanger public welfare...Carbon dioxide is the most important GHG (greenhouse gas) directly emitted by human activities, and is the most significant driver of climate change."⁹
- a. Do you agree with these statements, if not, why not?
 - b. Did you participate in drafting the proposed Bush Endangerment Finding document in any way? If so, how?

I believe that the climate is changing and that anthropogenic emissions contribute to the change. I did not participate in drafting the proposed Bush Endangerment Finding document.

22. When you last served in the EPA OAR office, did the EPA ever propose to disapprove state mercury emissions control programs that were stronger than the Clean Air Mercury? If so, please provide how many times this happened and what your role was in these actions. Please also provide how this fits in Administrator Pruitt's views of "cooperative federalism."

I do not recall that EPA proposed to disapprove any state program proposed

⁹https://insideclimatenews.org/sites/default/files/2007_Draft_Proposed_Endangerment_Finding.pdf

pursuant to the Clean Air Mercury Rule.

23. The Rule of Law Defense Fund is an affiliate of the Republican Attorneys General Association. Have you ever contributed any money or time to the Rule of Law Defense Fund?

No.

24. Have you ever contributed any money or time to two election fundraising groups, Oklahoma Strong PAC and Liberty 2.0 PAC?

No.

25. How many legal cases have you filed, or joined others in filing, that involved the Renewable Fuel Standard, biofuels or biodiesel since leaving the EPA? Please provide a summary of your argument and the outcome of each case, including those cases in which the court disagreed with your argument.

I was counsel of record on three cases related to the RFS (principal clients are included in parentheses): (1) a challenge to EPA's E15 waiver (API and the Grocery Manufacturers Association); (2) a challenge to EPA's misfueling mitigation rule (API); and (3) a challenge to Minnesota's B10 mandate (API, the Auto Alliance, the American Fuel and Petrochemical Manufacturers).

26. Have you ever argued in court, or been part of a legal argument, that the Renewable Fuel Standard, as being implemented by the EPA, will lead to an increase in the overall demand for corn, which will lead to an increase in the price of corn? If so, please cite the case and the data used for the argument.

I am not authorized by my clients to discuss relevant cases.

27. In your 2005 EPW confirmation hearing, you answered a question, with the following, "I was barred for 1 year starting September 29, 2001, from participating in the particular matters listed in Attachment A of the memorandum and from taking official action on any particular matter in which my former clients, listed in Attachment B, were or represented a party to the matter. The ethics memorandum also addressed the general rulemakings on which I had represented various clients... With respect to the ethylene MACT rule and the semiconductor MACT rule, he [Kenneth J. Wernick, EPA's then Alternate Agency Ethics Official] concluded that it would be prudent for me not to handle these matters during my first year at EPA. Subsequent to that time, there was no bar to my participating as an EPA official in these rulemakings... In accordance with the ethics memorandum referenced above, I refrained for 1 year starting September 29, 2001, from participating in the particular matters identified by the memorandum and from taking official action with respect to any particular matter involving the entities listed in the memorandum. I also did not participate in the

ethylene and semiconductor MACT rules in my first year at EPA
(<https://www.gpo.gov/fdsys/pkg/CHRG-109shrg42275/pdf/CHRG-109shrg42275.pdf>).

- a. Please provide a full list of the cases you filed, joined others in filing, or participated in some way related to the ethylene and semiconductor MACT rules prior to you joining the EPA in 2001. Please include any other work that you may have done while employed at Latham and Watkins – or any other organization – prior to coming to the EPA in 2001 that was related to the ethylene and semiconductor MACT rules.
- b. What led Kenneth J. Wernick, EPA's then Alternate Agency Ethics Official to conclude it wouldn't "be prudent" for you to handle the ethylene MACT rule and the semiconductor MACT rule during your first year at EPA?
- c. In 2001, what other issues and rulemakings did you have to recuse yourself for one year to meet the ethical standards set by the EPA?

Prior to and upon joining EPA in 2001, I sought, obtained, and strictly followed advice from EPA's ethics officials as to my ethical obligations related to my prior work in private practice. My prior ethics agreement is a matter of public record.

28. How many legal cases have you filed, or joined others in filing, since leaving the EPA that challenged rules the Obama EPA had to re-write because the courts said the original rules written by the Bush Administration were illegal?

To my knowledge, I have been involved in three cases challenging rules that EPA issued on remand from court decisions on Bush Administration air rules.

29. On July 8, 2003, Jeff Holmstead, then-EPA Assistant Administrator for Air and Radiation provided the following remarks in his written testimony to the House Energy and Air Quality Subcommittee of the Energy and Commerce Committee, "Clear Skies would also reduce mercury emissions from power plants. EPA is required to regulate mercury because EPA determined that mercury emissions from power plants pose an otherwise unaddressed significant risk to health and the environment, and because control options to reduce this risk are available."¹¹ At the time Mr. Holmstead provided these remarks, you were serving as his chief counselor within the EPA OAR office.
- a. Did you agree at the time with Mr. Holmstead's determination, if so why? If not, why not?
 - b. Did you ever provide legal counsel to Mr. Holmstead, or others within the EPA, that helped provided the legal basis for these remarks?
 - c. Do you agree with Mr. Holmstead's remarks today?

I believe Mr. Holmstead was referring to Administrator Browner’s 1999 “appropriate and necessary” determination, which was still in effect at the time. That determination, as amended in the Mercury and Air Toxics Rule, was determined to be illegal by the US Supreme Court.

30. On July 8, 2003, Jeff Holmstead, then-EPA Assistant Administrator for Air and Radiation provided the following remarks in his written testimony to the House Energy and Air Quality Subcommittee of the Energy and Commerce Committee:
“Mercury, a potent toxin, can cause permanent damage to the brain and nervous system, particularly in developing fetuses when ingested in sufficient quantities. People are exposed to mercury mainly through eating fish contaminated with methylmercury... EPA estimates that 60% of the mercury falling on the U.S. is coming from current man-made sources. Power generation remains the largest man-made source of mercury emissions in the United States...Mercury that ends up in fish may originate as emissions to the air. Mercury emissions are later converted into methylmercury by bacteria. Methylmercury accumulates through the food chain: fish that eat other fish can accumulate high levels of methylmercury”.¹² At the time Mr. Holmstead provided these remarks, you were serving as his chief counselor within the EPA OAR office.

- a. Did you have any involvement in the drafting of these remarks? If so, what was your involvement?
- b. Did you agree at the time with Mr. Holmstead’s remarks, if so why? If not, why not?
- c. Do you still agree with Mr. Holmstead’s remarks today? If not, why not?

I do not recall being involved in drafting Mr. Holmstead’s remarks. I believe that, for the most part, mercury emissions from power plants are dispersed widely in the global atmosphere. I believe that global mercury emissions inventories have significantly changed since my prior time at EPA. Therefore, I cannot speak to his comments related to domestic and global emissions inventories. I believe his comments about the movement and transformation of mercury in the environment are correct.

31. In the *White Stallion Energy Center v. EPA, February 2012*, industry argued, “the record does not support EPA’s findings that mercury, non-mercury HAP metals, and acid gas HAPs [hazardous air pollutants] pose public health hazards.”¹³ Do you agree with this statement? Did you have any involvement with this case, if so, please explain.

I believe that comments were submitted to the record in this rulemaking demonstrating significant flaws in EPA’s exposure and risk assessment. I was not counsel of record in this case.

¹² https://archive.epa.gov/ocir/hearings/testimony/108_2003_2004/web/pdf/2003_0708_jh.pdf ¹³ <https://www.cadc.uscourts.gov/internet/opinions.nsf/284AC47088C07D0985257CBB004F0795/%24file/12-1100-1488346.pdf>

32. On April 17, 2012, Dr. Jerome Paulson, Chair, Council on Environmental Health, American Academy of Pediatrics, testified before the EPW Committee, stating, “Methyl mercury causes localized death of nerve cells and destruction of other cells in the developing brain of an infant or fetus. It interferes with the movement of brain cells and the eventual organization of the brain... The damage it [methylmercury] causes to an individual’s health and development is permanent and irreversible. ... There is no evidence demonstrating a “safe” level of mercury exposure, or a blood mercury concentration below which adverse effects on cognition are not seen. Minimizing mercury exposure is essential to optimal child health.”¹⁴

- a. Do you agree with the American Academy of Pediatrics’ finding on the importance of minimizing mercury exposures for child health? If not, please cite the scientific studies that support your disagreement.
- b. Do you agree the record supports EPA’s findings that mercury, non-mercury hazardous air pollutant metals, and acid gas hazardous air pollutants emitted from uncontrolled power plants pose public health hazards? If not, why not?

I am not familiar with Dr. Paulson’s testimony. I believe that comments were submitted to the record in this rulemaking demonstrating significant flaws in EPA’s exposure and risk assessment.

33. On July 8, 2003, Jeff Holmstead, then-EPA Assistant Administrator for Air and Radiation provided the following remarks in his written testimony to the House Energy and Air Quality Subcommittee of the Energy and Commerce Committee, “We have not developed methodologies for quantifying or monetizing all the expected benefits of Clear Skies... These estimates [for Clear Skies] do not include the many additional benefits that cannot currently be monetized but are likely to be significant, such as human health benefits from reduced risk of mercury emissions, and ecological benefits from improvements in the health of our forests, lakes, and coastal waters.”¹⁵ At the time Mr. Holmstead provided these remarks, you were serving as his chief counselor within the EPA OAR office.

- a. Did you have any involvement in the drafting of these remarks? If so, what was your involvement?
- b. Did you agree at the time with Mr. Holmstead’s remarks, if so why? If not, why not?
- c. Do you agree with Mr. Holmstead’s remarks today that it is currently difficult, or impossible, to monetize the reduced risk of human health and ecological benefits from reducing mercury emissions from power plants? If so, please explain. If not, why not?

¹⁴https://www.epw.senate.gov/public/_cache/files/4/3/4324fd62-dc89-4820-bd93-ff3714fcb30/01AFD79733D77F24A71FEF9DAFCCB056.41712hearingwitness testimony paulson.pdf

¹⁵ https://archive.epa.gov/ocir/hearings/testimony/108_2003_2004/web/pdf/2003_0708_jh.pdf

I do not recall being involved in drafting Mr. Holmstead’s testimony. I believe that EPA was not able in 2003 to monetize all benefits associated with reducing mercury emissions. I do not know the current state of EPA’s knowledge.

34. In 2005 GAO report that reviewed EPA’s cost-benefit analysis for the Clean Air Mercury Rule, which you have testified you were heavily involved in writing, GAO identified, “four major shortcomings in the economic analysis underlying EPA’s proposed mercury control options that limit its usefulness for informing decision makers about the economic trade-offs of the different policy options.”¹⁶
- a. Can you explain the cost-benefit analysis used for the proposed Clean Air Mercury Rule and why it was used?
 - b. Can you explain why the GAO found short-comings with this approach?
 - c. Do you agree that co-benefit pollution reductions should be considered when EPA is quantifying the benefits and costs of regulations? If not, why not?
 - d. While you were at EPA, did the agency ever use co-benefits to justify a clean air rule and has this approach ever been used in the past?

I do not recall being involved in preparing the cost-benefit analysis for the Clean Air Mercury Rule. If confirmed, I intend to address the question of how co-benefits should be considered in cost-benefit analyses. I cannot prejudge the outcome because any such analysis would be an integral part of informal legislative rulemaking.

35. You were substantially involved in EPA’s proposal and adoption of the Clean Air Mercury Rule and accompanying Delisting Rule. In 2005, for your EPW confirmation hearing you were asked the following question for the record: “With regard to trading of mercury, in your view, would it have been legally acceptable for EPA, taking into account the requirements of the Clean Air Act, to propose and adopt a facility specific mercury MACT that did not allow trading?” You answered, “After considering the utility unit emissions that would remain following imposition of the requirements of the Act, EPA determined that it was neither appropriate nor necessary to regulate utility units under section 112 of the Clean Air Act. Once EPA made that determination, it would not have been legally appropriate for EPA to issue a MACT standard.” Three years later, the D.C. Circuit vacated the EPA’s decision to delist power plants as a source under Section 112. Six years later under the Obama Administration, the EPA issued the Mercury and Air Toxics Rule to address mercury and air toxic emissions from power plants under the Section 112 of the Clean Air Act.

¹⁶ <http://www.gao.gov/products/GAO-05-252>

- a. Did you disagree with the court’s ruling and legal reasoning against the EPA’s

actions while you were at the agency on mercury and air toxic power plant emissions? Do you continue to disagree today?

- b. Do you still hold the position that it is not “appropriate nor necessary” for the EPA to regulate utility units under Section 112 of the Clean Air Act and therefore, still agree it is not legally appropriate for EPA to issue a MACT standard, as the EPA did through the Mercury and Air Toxics Standard? If so, please explain.
- c. If you do not agree that EPA has met the “necessary and appropriate” criteria found in Section 112(n), what is your understanding of what that would mean for the Mercury and Air Toxics Rule?

I respect the court’s decision with regard to the Clean Air Mercury Rule. I also respect the US Supreme Court’s determination that the “appropriate and necessary” finding relied upon in the Mercury and Air Toxics Rule was illegal.

36. The US Supreme Court has expressly declined to consider whether EPA should have chosen some other mechanism “under section 112” in regulating power plant mercury and all the other HAPs emitted by the industry. What is your position on that precedent?

The Supreme Court chooses which areas they should consider providing judgement on when issuing decisions and which areas they decline to consider. I cannot infer the intent of the court from their decision not to consider this one specific issue.

37. Do you agree that the EPA’s recent consideration of the costs of the Mercury and Air Toxics Rule shows that the agency has met the “necessary and appropriate” criteria Congress provided under 112(n) to direct the EPA to regulate power plant mercury (and other air toxic) emissions under Section 112, and more specifically under Section 112(d)? If not, why not?

If confirmed, I likely will be involved in assessing this question. I cannot prejudge the outcome.

38. The Edison Electric Institute (EEI), the association that represents all U.S. investor-owned electric companies, has told my staff that, to their knowledge, about five facilities received an approval from the EPA to operate for up to an additional year, which was through April 2017. According to EEI, to their knowledge all of their member companies have fully implemented the Mercury and Air Toxics Standard Rule. EPA staff has reported to my staff something similar. The Mercury and Air Toxics Rule protects our children from harmful mercury and air toxics pollution; and by industry accounts is already being met with technology that is already bought, paid for and running on almost all our power plants.
- a. Do dispute reports that nearly all covered facilities are already in compliance with the Mercury and Air Toxics Standard? If so, please explain.
 - b. According to a recent report by Bloomberg New Energy Finance Report and the

Business Council for Sustainable Energy, “consumers now pay 3% less per kilowatt-hour for electricity than in 2007.”¹⁷ This means the near universal compliance of the Mercury and Air Toxics Rule has been achieved without significant impacts to electricity reliability or affordability, in fact electricity prices have gone down. Do you agree? If not, why not?

- c. Even though industry has achieved near universal compliance with the Mercury and Air Toxics Standards and electricity prices have gone down, not up, Administrator Pruitt is currently reviewing whether it is “appropriate and necessary” to issue the standards in the first place. Do you agree that the EPA should be conducting this review, if so, why?
- d. If the EPA determines the agency has not met the “necessary and appropriate” criteria found in Section 112(n), and revokes the Mercury and Air Toxics Rule, what does that mean for all the pollution control technology that has been bought, paid for and running on our power plants helping the industry be in full compliance of the rule?
- e. When you were last at the EPA, or after, do you know of any instances when a power plant bought and installed air control technology and decided not to run the technology? If so, please explain the instance. Please include in your explanation if there were any impacts to downwind states or to air pollution levels.

If confirmed, I likely will be involved in assessing the question of how to appropriately respond to the US Supreme Court’s remand of the MATS “appropriate and necessary” determination. I cannot prejudge the outcome of that assessment. I will note that MATS imposed substantial costs on electric power generators. The fact that power prices have declined in recent years does not necessarily mean that MATS did not impose substantial incremental costs.

39. In a 2016 Law 360 article, you are quoted as saying, “The reason this [the Mercury and Air Toxics Standards Rule] was such a big issue for us is because by EPA’s own analysis, if you look at the benefits generated by the hazardous air pollutant reductions this rule would achieve, the costs vastly outweigh the benefits. So from our perspective, it’s a regulation that made no sense and wasn’t justified.”¹⁸ In April 2017, the EPA asked the D.C. Circuit Court of Appeals to delay oral arguments scheduled the Mercury and Air Toxics Standards (MATS) as it reviews the rule.

¹⁷ <http://www.bcse.org/wp-content/uploads/2017-Sustainable-Energy-in-America-Factbook-Executive-Summary.pdf>

¹⁸ <https://www.law360.com/articles/742955/environmental-group-of-the-year-hunton-williams>

- a. It is clear from this statement you already have a formed view of the validity of the Mercury and Air Toxics Standard going into the agency. Will you commit to this Committee that you will recuse yourself from the review and any possible rewriting of the Mercury and Air Toxics Rule? If not, why not?
- b. Do you continue to believe the Mercury and Air Toxics Standards is a regulation that made no sense and wasn't justified? If so, why?

The quantifiable monetized benefits of the HAP reductions predicted to occur under MATS measured only a few million dollars. I understand that EPA has recalculated the benefits attributable to MATS in response to the Supreme Court remand. I am not familiar with the new estimates. If confirmed, I intend to consider them objectively.

40. Will you commit, that if confirmed, you will not act to weaken the Mercury and Air Toxics Standards, if not, why not?

I cannot prejudge any decision that might be made by EPA if I am confirmed.

41. This year, you represented the American Petroleum Institute as an intervenor in defense of Administrator Pruitt's 90-day stay of oil and gas pollution standards, which the D.C. Circuit found violated the Clean Air Act. In my office, you refused to recuse yourself from participating in this rule, is that still true and how do you justify that, if confirmed, you will come into the EPA as impartial regulator as it relates to this issue? Do you agree with the court's decision, and why not?

Comprehensive rules of ethics govern the transition from private practice to government service. If confirmed, I will work closely with EPA ethics officials to understand and strictly comply with my ethical obligations.

42. Section 109 of the Clean Air Act is very clear. It requires EPA to review the NAAQS for six common air pollutants including ground-level ozone, particulate matter, sulfur dioxide, nitrogen dioxide every 5 years. The Clean Air Act requires EPA to set these standards that "are requisite to protect the public health," with "an adequate margin of safety," and secondary standard necessary to protect public welfare.
- a. If confirmed, will you continue to hold to the five-year National Ambient Air Quality Standards review time period that the Clean Air Act requires of the EPA?
 - b. The science was clear that the 2008 ozone standard was not protecting public health, so EPA was required to Act. Is that not your understanding of the Clean Air Act?
 - c. If confirmed, will you commit to not further delay the implantation of the 2015 ozone NAAQS? If not, why not?

- d. Do you agree with Justice Scalia’s opinion in *Whitman v. American Trucking Associations* that it is “fairly clear that [the Clean Air Act] does not permit the EPA to consider costs in setting the standards” and if so, will you commit not to include consider costs when setting the National Ambient Air Quality Standards? If you do not agree, why not?

If confirmed, I will endeavor to meet all statutory deadlines. I am not familiar with the record for the 2015 ozone NAAQS decision, so cannot comment on the decision to change the standard. I respect all US Supreme Court decisions.

43. In 2006, while you served as Acting Assistant Administrator for Air, the EPA proposed to eliminate lead as a criteria pollutant under the Section 109 Clean Air Act National Ambient Air Quality Standard (NAAQS) process. Did you have any involvement in this proposal? If so, please explain.

Yes, I was involved in developing that proposal. CAA § 108(a)(1)(B) states that ambient levels of a criteria pollutant should “result[] from numerous or diverse mobile or stationary sources.” Information at the time indicated that there were few industrial sources of lead emissions and that lead emissions from mobile sources had been virtually eliminated. The proposal asked for comment on whether lead continued to meet the § 108(a)(1)(B) criterion.

44. Like you, I am an avid runner. In Delaware during the summer, we often have code orange days warning about the high levels of ozone for that day. Much of Delaware’s ozone pollution is coming across the state boundary from upwind states.
- Can you describe how high levels of ozone could damage my lungs if I were to take a long run during a code orange day?
 - Do you agree that ground-level ozone is a dangerous pollutant that causes respiratory and cardiovascular harm? If not, on what basis do you disagree?
 - If confirmed, how would you direct states to work together to reduce ozone pollution?

Inhaling too much ozone can cause a wide range of adverse cardiovascular effects. CAA §§ 110(a)(2)(D) and 126 are designed to address interstate transport (i.e., emissions from upwind states that significantly contribute to downwind nonattainment).

45. Clean Air Act section 110(a)(2)(D)(i)(I), also known as the “Good Neighbor” provision, requires that state implementation plans to address air pollution “contain adequate provisions prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary

ambient air quality standard.” Under this provision of the Clean Air Act, “[w]henver the Administrator finds that the applicable implementation plan for any area is substantially inadequate . . . to mitigate adequately [] interstate pollutant transport . . . or to otherwise comply with any requirement of this chapter, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies.”

- a. Do you support the “Good Neighbor Provision” in the Clean Air Act and agree that this provision does not “encroach upon state sovereignty”? If not, why?
- b. If confirmed, do you commit to fully apply and enforce the Good Neighbor provision?

CAA § 110(a)(2)(D) describes one of many elements that must be included in an approval State Implementation Plan. My hope is that more states address this obligation in the first instance so that US EPA does not need to make findings of substantial inadequacy. If confirmed, my goal is to faithfully implement all aspects of the Clean Air Act.

46. Currently, under the Clean Air Act section 110(a)(2)(D)(i)(I), also known as the “Good Neighbor” provision, Delaware has sent four petitions to the EPA that identify facilities in other states that are emitting air pollution that are significantly contributing to Delaware’s air quality and impacting Delaware’s ability to maintain or be in attainment for the 2008 national ambient air quality standards (NAAQS) for ozone and the 2015 ozone NAAQS. The petitions are for: 1) Brunner Island facility's electric generating units located near York, Pennsylvania; 2) Homer City Generating Station's electric generating units located in Indiana County, Pennsylvania; 3) Harrison Power Station's electric generating units located near Haywood, Harrison County, West Virginia; and 4) Conemaugh Generating Station's electric generating units located in Indiana County, Pennsylvania. In addition, Maryland has filed a petition that requests EPA make a finding that 36 electric generating units located in the states of Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia are emitting air pollutants that significantly contribute to nonattainment or interfere with maintenance of the 2008 and the 2015 ozone NAAQS in Maryland. The EPA has granted itself six months extension on every petition and has done nothing after that. All of the extensions have long since expired.

- a. If confirmed, will you commit to promptly act on Good Neighbor petitions so states, like Delaware and Maryland, can protect their citizens from upwind pollution in neighboring and distant states? If not, why not?
- b. If confirmed, will you support, defend and enforce EPA’s Good Neighbor provisions to address air pollution that crosses state borders? If not, why not?
- c. In some of these situations, like the Harrison Power Station near Haywood in West Virginia, the power plant in question has the needed technology on the

facility to help reduce ozone pollution in downwind Delaware and West Virginia ratepayers are already paying for the technology, but the pollution control isn't running. If confirmed, what will you do to ensure pollution control technology already on facilities runs to ensure downwind states have clean air?

- d. If confirmed, will you fully implement the Cross State Air Pollution Rules?
- e. If the Mercury and Air Toxics Rule is revoked, do you expect there will be an increase in upwind ozone and particulate pollution and have an impact on downwind states? If so, please explain. If not, why?

I think your question relates to CAA § 126 and not to § 110(a)(2)(D). I am not familiar with the specific petitions described in this question. But, I will note that CSAPR and the CSAPR update rule were intended to address interstate transport under § 110(a)(2)(D), such that there should not be a need or justification for § 126 petitions addressing the same plants, pollutants, and standards. If confirmed, I will endeavor to meet all CAA deadlines and my goal will be to faithfully implement all aspects of the CAA.

47. Just last month, you argued against an Obama Administration Occupational Safety and Health Administration indoor air rule that protects construction workers against silica dust, a type of dust that is linked to cancer and lung disease. During your arguments, you are quoted as saying, “People are designed to deal with dust — people are in dusty environments all the time, and it doesn't kill them,”¹⁹The American Industrial Hygiene Association has stated that delaying the full enforcement of this rule will put – and this is their words, quote “2.3 million workers at greater risk to exposure, especially the construction industry — the backbone of our economy”

- a. Please provide the scientific studies that provided the basis for your argument in this case.
- b. When you stated “people are designed to deal with dust,” what did you mean by that statement?
- c. When you were last in the EPA, did you ever work on a rule was deemed later to ignore all of the science dealing with particle matter pollution?
- d. Do you agree that there is robust science linking small particle pollution to negative health impacts, even death? If so, why is the science here different than for silica pollution?

The silica case dealt with the unique toxicological properties of silica and not with the pollutant “particular matter” that is regulated by EPA. The quote in this question was taken out of the context of a broader argument related to

¹⁹ <https://www.eenews.net/greenwire/stories/1060061731/search?keyword=silica>

the question of whether there is an exposure threshold for respirable silica below which significant adverse health effects should not be expected to occur. The silica case remains an active matter and I am not authorized by my clients to say more.

48. Do you agree with President Trump's decision to withdraw the United States from the International Paris Climate Accord? If so, please explain.

President Trump is the Nation's Chief Executive. I believe it was within his authority to withdraw. I respect his decision.

49. In part of his justifications for withdrawing from the Paris Climate Agreement, President Trump stated the Paris Accord could, "cost America as much as 2.7 million lost jobs by 2025 according to the National Economic Research Associates (NERA)."²⁰ This economic statistic and others linked to the NERA study were also distributed in White House materials as reasons the President was deciding to withdraw from the Paris Accord. Soon after the President's speech, NERA stated, "In a set of talking points distributed by the White House in conjunction with its announcement of the US withdrawal from the Paris Agreement, the Trump Administration selectively used results from a NERA Economic Consulting study, "Impacts of Greenhouse Gas Regulations on the Industrial Sector." ... Use of results from this analysis as estimates of the impact of the Paris Agreement alone mischaracterizes the purpose of NERA's analysis, which was to explore the challenges of achieving reductions from US industrial sectors over a longer term. Selective use of results from a single implementation scenario and a single year compounds the mischaracterization."²¹

- a. In light of the NERA statement, do you think the President misspoke when he wrongly cited information from the NERA study in his Paris speech? If not, why not?
- b. If confirmed, will you commit that you will not distort the NERA study – or any other economic study - to justify the U.S. withdrawing from the Paris Climate Accord or to justify the elimination or delay of climate policies?
- c. After the President's Paris Climate Accord speech, MIT's Joint Program on the Science and Policy of Global Change issued a statement stating the President's characterization of their analysis of the Paris Accord to be misleading.²² If confirmed, will you commit that you will not distort the climate science studies to justify the U.S. withdrawing from the Paris Climate Accord or to justify the elimination or delay of climate policies?

²⁰ <https://www.whitehouse.gov/the-press-office/2017/06/01/statement-president-trump-paris-climate-accord>

²¹ <http://www.nera.com/news-events/press-releases/2017/nera-economic-consultings-study-of-us-emissions-reduction-policies.html>

²² <http://news.mit.edu/2017/mit-issues-statement-research-paris-agreement-0602>

I am not familiar with the NERA study, so I cannot assess NERA’s comments. If confirmed, my goal would be not to “distort” anybody’s statements.

50. In a Law360 interview, you were asked, “What is the most challenging case you have worked on and what made it challenging?” You responded, “Without a doubt, it would be Massachusetts v. EPA. I was at the EPA at the time, working as counsel to the assistant administrator for air, Jeff Holmstead.”²³ Please explain in detail, what your involvement was while in the EPA regarding regulations that led to, and the agency’s defense of the Massachusetts v. EPA case.

There were no regulations that led to the Mass v EPA decision. The decision under review was EPA’s denial of a citizen petition asking EPA to regulate GHG emissions from motor vehicles. OAR was responsible in the first instance for preparing the proposed and final denial. OAR staff – including myself – provided support to the government litigation team while the case was pending in the DC Circuit and the US Supreme Court.

ATTACHMENT 1 - WEHRUM

Wehrum – Pending Cases October 12, 2017

Case Number Title	Party Attorney	Originating Case Number Origin
08-1277 American Petroleum Institute v. EPA	American Fuels & Petrochemical Manufacturers Association; American Petroleum Institute; National Petrochemical & Refiners Association; Western States Petroleum Association	EPA-1 : EPA-73FR35838 Environmental Protection Agency
08-1281 Env. Integrity Project v. EPA	American Fuels & Petrochemical Manufacturers Association; American Petroleum Institute; National Petrochemical & Refiners Association	EPA-1 : EPA-73FR35838 Environmental Protection Agency
09-1332 Kinder Morgan CO2 Co., LP v. EPA	Kinder Morgan CO2 Co., LP	EPA-1 : EPA-74FR56260 Environmental Protection Agency
11-1023 Gas Processors Association v. EPA	Gas Processors Association	EPA-1 : EPA-75FR74458 Environmental Protection Agency
11-1309 American Petroleum Institute, et al v. EPA	American Petroleum Institute; Independent Petroleum Association of America	EPA-1 : EPA-76FR38748 Environmental Protection Agency

12-1208 National Rural Electric Coop. v. EPA	National Rural Electric Cooperative Association	EPA-1 : EPA-77FR10324 Environmental Protection Agency
12-1352 National Rural Electric Cooper v. EPA	National Rural Electric Cooperative Association	EPA-1 : EPA-77FR34830 Environmental Protection Agency
12-1405 American Petroleum Institute v. EPA	American Petroleum Institute	EPA-1 : EPA-77FR49490 Environmental Protection Agency
12-1406 Gas Processors Association v. EPA	American Petroleum Institute	EPA-1 : EPA-77FR49490 Environmental Protection Agency
12-1442 American Petroleum Institute, et al v. EPA	11/13/2012 Open American Fuel & Petrochemical Manufacturers; American Petroleum Institute	EPA-1 : EPA-77FR56422 Environmental Protection Agency
13-1063 American Petroleum Institute v. EPA	American Petroleum Institute	EPA-1 : EPA-78FR2210 Environmental Protection Agency

13-1108 American Petroleum Institute v. EPA	American Petroleum Institute	EPA-1 : EPA-77FR49490 Environmental Protection Agency
13-1233 Conservation Law Foundation, et al v. EPA	National Rural Electric Cooperative Association	EPA-1 : EPA-78FR6674 Environmental Protection Agency
13-1256 Sierra Club, et al v. EPA	American Coke and Coal Chemicals Institute; American Forest & Paper Association; American Iron and Steel Institute; American Wood Council; Biomass Power Association; Chamber of Commerce of the United States of America; Corn Refiners Association; National Association of Manufacturers; National Oilseed Processors; Rubber Manufacturers Association; Southeastern Lumber Manufacturers Association	EPA-1 : EPA-76FR15608 Environmental Protection Agency
13-1289 American Petroleum Institute v. EPA	American Petroleum Institute	EPA-1 : EPA-78FR58416 Environmental Protection Agency
14-1199 PSEG Power LLC, et al v. EPA	National Rural Electric Cooperative Association	EPA-1 : EPA-79FR48072 Environmental Protection Agency
14-1267 Georgia-Pacific LLC v. EPA	Georgia-Pacific LLC	EPA-1 : EPA-79FR60898 Environmental Protection Agency
15-1021 Gas Processors Association v. EPA	Gas Processors Association	EPA-1 : EPA-79FR70352 Environmental Protection Agency
15-1044 American Petroleum Institute v. EPA	American Petroleum Institute	EPA-1 : EPA-79FR79018 Environmental Protection Agency
15-1197 American Petroleum Institute v. EPA	American Petroleum Institute	EPA-1 : EPA-80FR25068 Environmental Protection Agency
15-1473 Gas Processors Association v. EPA	Gas Processors Association	EPA-1 : EPA-80FR64262 Environmental Protection Agency
15-1487 Sierra Club, et al v. EPA, et al	Brick Industry Association	EPA-1 : EPA-80FR65470 Environmental Protection Agency

15-1492 Brick Industry Association v. EPA	Brick Industry Association	EPA-1 : EPA-80FR65470 Environmental Protection Agency
16-1021 Sierra Club, et al v. EPA, et al	American Chemistry Council; American Coke and Coal Chemicals Institute; American Forest & Paper Association; American Iron and Steel Institute; American Wood Council; Biomass Power Association; Coalition for Responsible Waste Incineration; Council of Industrial Boiler Owners; National Association of Manufacturers; National Oilseed Processors Association; Southeastern Lumber Manufacturers Association, Inc.	EPA-1 : EPA-80FR72790 Environmental Protection Agency
16-1033 American Fuel & Petrochemical, et al v. EPA	American Fuel & Petrochemical Manufacturers; American Petroleum Institute	EPA-1 : EPA-80FR75178 Environmental Protection Agency
16-1035 Air Alliance Houston, et al v. EPA, et al	American Fuel & Petrochemical Manufacturers; American Petroleum Institute	EPA-1 : EPA-80FR75178 Environmental Protection Agency
16-1179 Brick Industry Association v. EPA	Brick Industry Association	EPA-1 : EPA-81FR31234 Environmental Protection Agency
16-1270 American Petroleum Institute v. EPA	American Petroleum Institute	EPA-1 : EPA-81FR35824 Environmental Protection Agency
16-1271 American Petroleum Institute v. EPA	American Petroleum Institute	EPA-1 : EPA-81FR35944 Environmental Protection Agency
16-1345 American Petroleum Institute v. EPA	American Petroleum Institute	EPA-1 : EPA-81FR51102 Environmental Protection Agency
16-1425 Natural Resources Defense Coun v. EPA	American Petroleum Institute	EPA-1 : EPA-77FR49490 Environmental Protection Agency
17-1088 Utility Air Regulatory Group v. EPA	Utility Air Regulatory Group	EPA-1: EPA-82FR4594 Environmental Protection Agency